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MAGAZINE



In This Issue

A Portrait of Mental Health Clients
(as told through their lawyers)

The Middle Ground

Basics of the Lanterman-Petris-Short Act

Will Your Will Rock You?

Civil Commitments: A Complicated Matter

COVID-19 Pandemic – Stress and Coping

Intersection of Psychology and Legal Thinking:
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RIVERSIDE LAWYER

MAGAZINE

C O N T E N T S

Columns:

- 3 **President's Message** by Jack Clarke, Jr.
 4 **Barristers President's Message** by Paul Leonidas Lin

COVER STORIES:

- 6 **A Portrait of Mental Health Clients**
 (as told through their lawyers)
 by Juanita E. Mantz and Jennifer Small
- 8 **The Middle Ground**
 by Monica Nguyen
- 10 **Basics of the Lanterman-Petris-Short Act**
 by James Sohn
- 12 **Will Your Will Rock You?**
 by Andrew Gilliland
- 14 **Civil Commitments: A Complicated Matter**
 by Richard Quintino
- 19 **COVID-19 Pandemic — Stress and Coping**
 by Jacqueline Carey-Wilson
- 22 **Intersection of Psychology and Legal Thinking:
 Lessons from the Past Help Us Today**
 by Robert A. Lark, Ph.D.

Features:

- 24 **Opposing Counsel: Richard D. McCune**
 by Devin Teixeira
- 25 **Poly Again Wins the Mock Trial Competition in Riverside County**
 Unfortunately, the State Competition was Cancelled
 by John Wahlin
- 26 **Judicial Profile: Hon. Dorothy McLaughlin**
 by Betty Fracisco

Departments:

- Calendar 2 Membership 27
 Classified Ads 28

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.

The 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 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

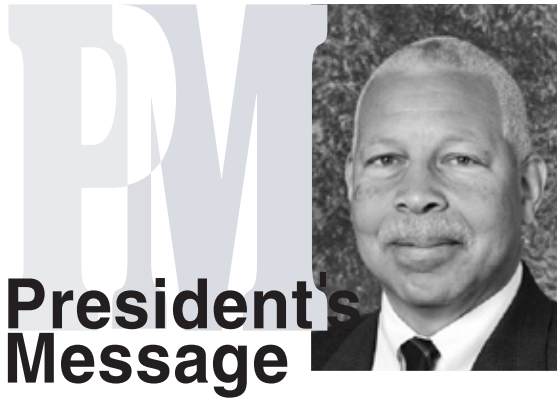
April

All events have been cancelled for the month of April.

EVENTS SUBJECT TO CHANGE.

For the latest calendar information please visit the RCBA's website at riversidecountybar.com.





President's Message

by Jack Clarke, Jr.

A Time to Reflect on What is a Necessity and a Time for Collective Action

“Good actions ennoble us, and we are the sons [and daughters] of our own deeds”
– Cervantes.

As I am writing this, the County of Riverside website is reporting that Riverside County has two hundred and ninety-one (291) confirmed cases of COVID-19 and nine (9) deaths. By the time you read this, we surely will have lost more members of our community. I cannot recall a time of such uncertainty.

At the same time, the fog of life seems to have cleared a bit and I can see with greater clarity what is really needed. We need our first responders. As I sit here, I hear a fire truck responding to an emergency. I see police cars on patrol – Thank God. I have also seen ambulances rushing community members to another group of people that we need. We need our doctors and the professionals who support them. We need the nurses, the physician assistants, and pharmacists. We need the emergency medical technicians and all of the myriad staff and administrators who support and provide supplies for the medical providers. We need our schools. As a community, we frequently criticize our public school systems. But, it is now clear we need teachers. In addition, we also need the school staff who prepare and serve one or two meals a day to our children. We also need so many of our community members who perform those tasks which if undone, would cause us to choke on our own waste. We need them. The things we don't even think about minute-to-minute, those are the things we truly need. It is clear, at least in my opinion,

that many, many of the things we tend to focus most of our attention on are not even near necessities. Much of the stuff we fuss about, now clearly, was a mere glamour.


So, where do we as attorneys fit into the hierarchy of necessity to complete and utter luxury? Objectively, in a society based on the rule of law, we are a necessity. But, in my opinion, we are a necessity only if we stay true to some basic principles. As my mother would say: “we need to remember our home training.” This societal hold that has been placed on us will come to an end. But at least to me, that will be the beginning of a tremendous time of confusion and reorientation to each other. Family relationships will have been tested. The relationships between tenants and property owners will need to be re-set. Debt collections and bankruptcies will have to be resolved. Contracts will need to be interpreted. The powers of government will be scrutinized and evaluated. We will be the tip of the spear in addressing so many of those issues and our courts will be the crucibles to those matters, which cannot be worked out through reasoned discourse, will have to be resolved. But there will be a huge clog of matters that already had been pending in front of all of that.

Thus, in my opinion, our profession will need to rise up. This will not be a time to allow ego to guide decisions. In order to get out of the mess that likely will face us when we return to full operation, we need to, as always, keep our clients' interests in the forefront of what we do. But, that obvious responsibility will now be taking place in a system that will be, hopefully, in a state of swift healing and recovery; we need to push aside perceived slights of opposing counsel. The importance of civility among attorneys will become more important than ever. Indeed, it should be clear now that the persistent call for civility among legal counsel was not really about mere propriety or decorum. It was a cry for an efficient legal system that is based on effort, logic and reason. It was a call for all of us to reflect a learned, honorable profession.

Let's stand with our colleagues, paraprofessionals, and the judiciary to help our entire country heal from this. Please stay well and if you need help, reach out.

Jack Clarke, Jr. is a partner with the law firm of Best, Best & Krieger LLP.





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BARRISTERS PRESIDENT'S MESSAGE

by Paul Leonidas Lin



The real trouble with the world is that too many people grow up.¹

Sometimes as president of the Barristers, I feel like Peter Pan leading the Lost Boys (and Girls) through Neverland. This rang even more true this past Leap Day as we ran around Disneyland. But more importantly,

I knew that I was no longer a Lost Boy and had in fact found my people when we all arrived at the park an hour early just to try to get on the new Star Wars: Rise of the Resistance ride. (Spoiler Alert: we didn't get on it.) Nevertheless, fun was had by all and we look forward to making the Barristers Disneyland Meet Up an annual event.

Fourth Annual Judicial Reception

And now, to business. We will be having our Fourth Annual Judicial Reception on Wednesday, May 6, 2020 from 5:15 p.m. to 7:30 p.m. at the Grier Pavilion, which is located at the Riverside City Hall in downtown Riverside. Come for the beautiful view and delicious food, but stay for the company. Come network with the Riverside legal community and members of the judiciary. Also join us in recognizing our 2020 Judicial Officer of the Year, Attorney Advocate of the Year, and our inaugural Judicial Clerk of the Year. Stay tuned for more information about this event. We hope to see you all there!

Elections for 2020-2021 Barristers Board

We will be holding our annual elections for the upcoming 2020-2021 Barristers Board on Wednesday, June 10, 2020. We will be accepting nominations up until Thursday, April 30, 2020. Available positions include president-elect, treasurer, secretary, and member-at-large. Please visit RiversideBarristers.org/2020-nominations to submit your nominations or send an e-mail to RCBABarristers@gmail.com.

Please note that only Barristers who have attended two or more events in the 2019-2020 period can vote. So there is still time to become eligible to vote! Come to our last few events of the year.

¹ Paraphrasing Walt Disney.



Upcoming Events:

- **Wednesday, April 1** – Trivia Night at Retro Taco at 5:00 p.m.
- **Friday, April 17** – Happy Hour at Route 30 Brewing Co. at 5:00 p.m.
- **Wednesday, May 6** – Judicial Reception starting at 5:15 p.m. at Grier Pavilion.
- **Friday, May 15** – Happy Hour at 5:00 p.m. Location TBD.
- **Wednesday, June 10** – Barristers Board elections at 5:00 p.m. Location TBD.
- **TBA** – Escape Room.

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Stay up to date with our upcoming events!

Website: RiversideBarristers.org

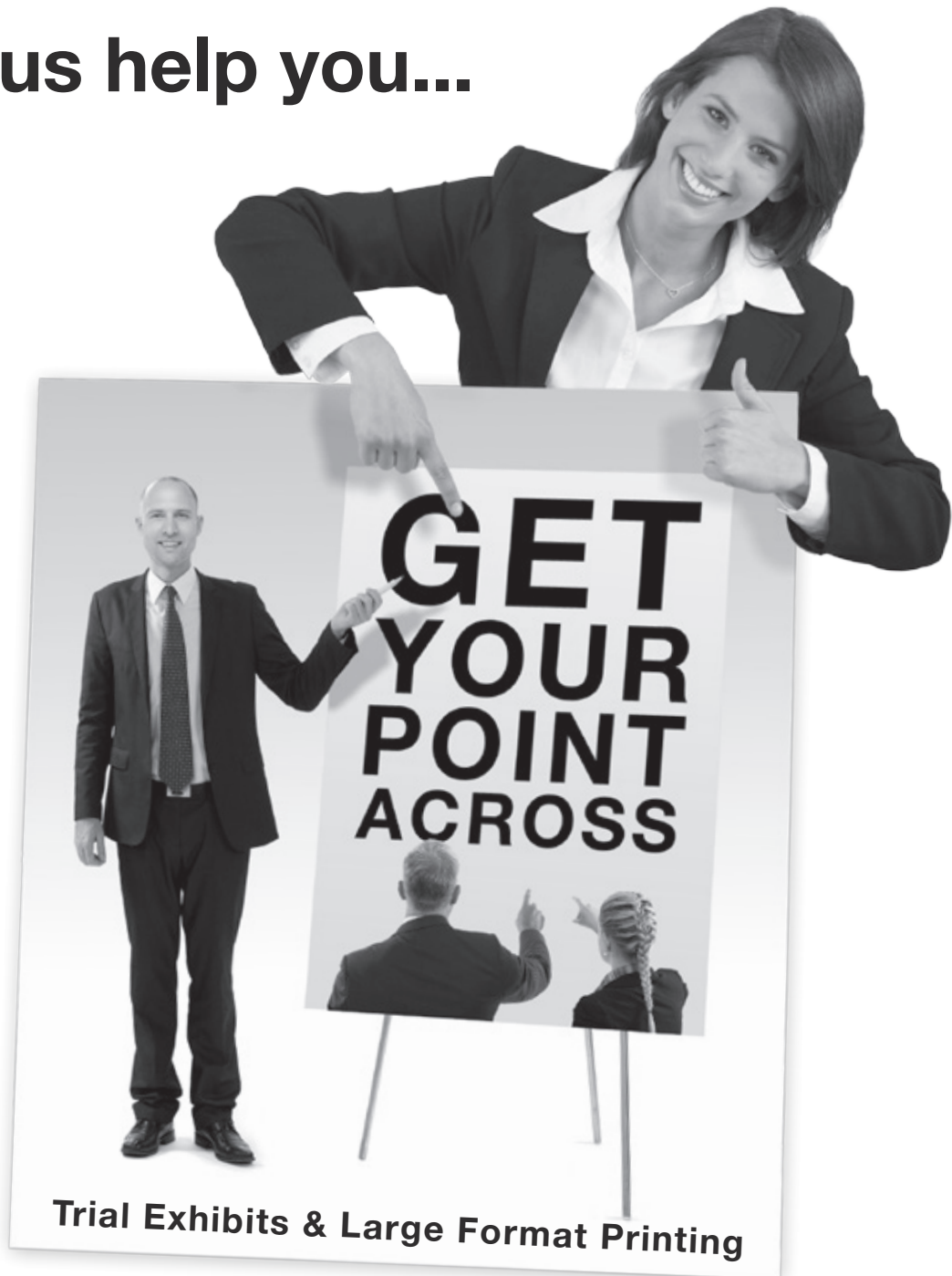
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Paul Leonidas Lin is an attorney at The Lin Law Office Inc. located in downtown Riverside where he practices exclusively in the area of criminal defense and is the immediate past president of the Asian Pacific American Lawyers of the Inland Empire (APALIE). Paul can be reached at PLL@TheLinLawOffice.com or (951) 888-1398.



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A PORTRAIT OF MENTAL HEALTH CLIENTS (AS TOLD THROUGH THEIR LAWYERS)

by Juanita E. Mantz and Jennifer Small

Introduction

My name is Juanita E. Mantz and I am a deputy public defender in mental health court handling incompetency proceedings under Penal Code section 1368. My clients are the most voiceless. I also serve on the Publications Committee for this magazine and in helping the Committee to curate this mental health issue, I asked myself, what else can move the conversation forward? What haven't you heard?

What does our highly educated and well-meaning legal community, for that is surely our audience here in this magazine, need to know? The law is important, in fact, for us, it is almost everything. But I say almost because we all come from privileged positions, whether we are judges, deputy district attorneys, deputy public defenders or members of the private bar. Our position in the world and the privileged position we come from, impacts how we hear and see the world. Thus, as part of our privilege, I would argue that we have a moral and civic duty to hear the stories of those charged with crimes (and the lawyers who may be telling their stories) while, of course, not disregarding stories from the victims.

Mental health is the issue of our times and criminal law is changing, drastically, to become more of a criminal "justice" system. There is still some resistance, however, to recognizing the huge role mental illness plays in our criminal justice system. Thus, my goal in writing this article with my esteemed colleague, Deputy Public Defender Jennifer Small, who practices in the difficult and complicated LPS conservatorship field, representing the gravely disabled and protecting their rights, is to tell you two stories and hope you are listening.

(Names and details have been changed to protect the clients' anonymity).

Jennifer Small, LPS: A visit to Emergency Treatment Services (ETS) and Inpatient Treatment Facility (ITF) (Riverside University Health Systems, Arlington Campus)

You cannot go alone. You know that. You've learned from past experience. You bring along your paralegal, a male. You down your coffee in the car, you know it

will be a difficult day. Checking in at the front desk, all of your belongings, except paper and pen, are put into a locker. You are then escorted to the unit where the patient is being held.

People are situated differently at this place. They are being held at the county's psychiatric facility because they pose a danger to themselves, a danger to others, or they are gravely disabled. The holds vary in lengths: 3 days, 14 days, 30 days, and then there are those who are under an LPS conservatorship and are kept there longer pending placement in other facilities.

Walking into the unit, there is a nurse's station behind glass windows and locked doors and inside is a common area, surrounded by rooms and bathrooms. The furniture is thick plastic furniture. The television is encased in hard plastic. Patients are roaming about the unit. Some are calm, some are upset, and some are extremely symptomatic and behaving accordingly. There are patients who have been there for over a month and have, for the most part, stabilized. There are patients who are just beginning their holds and have not yet stabilized. It is organized chaos. The staff seem to know what is going on with all of the patients, even if you, the visitor does not. Nurses, techs, and psychiatrists go about their work with the patients.

Still, it is scary. We are lawyers. We are not medical professionals. We are out of our element. There are people talking to people I cannot see, seeing things that I do not see. Yelling. Crying. Pacing. The patient I am there to speak with is over it. Trying to maintain their stability in an unstable environment. Continuously triggered in an environment where asking for medications to keep anxiety at bay may hinder placement in a more appropriate setting.

Representing this portion of the population in Riverside County for the past couple of years, I know one thing to be true. More resources are needed. This population is vulnerable and often at the mercy of governmental agencies. Those working with this population are doing difficult and exhausting work. The stress of working with this population does not shake off easily at the end of the day, but we come back. All of us come

back, in our different capacities to provide services to our clientele.

Juanita E. Mantz, Penal Code Section 1368, A Visit to Patton State Hospital (Patton).

I have my court order for a visit. I call and they say they need at least two-days lead time for me to visit. I have so much to do, but I know that I need to visit this client. He is charged with a felony. He thinks people are recording and following him. He has been institutionalized and incarcerated for almost a year. They can hold him for up to two years here if he/she is not able to be restored to competency to stand trial, two years without good time. I want him to take his medication, so I can get him out on a misdemeanor. His original offer was 90 days and a felony charge for resisting arrest. He has no record and was in college when schizophrenia hit him. His family wants him home and every week they visit him at Patton and then stop at a church on the way home and pray to the Virgin Mary to save him.

Patton State Hospital is located in Highland, very close to the San Manuel Casino and only a fifteen-minute drive from my home. I walk on the grounds and park by the administration. I down my Diet Coke and go inside. The administrator Pam gives me my slip and a mask because I forgot to bring my proof for a flu shot. She hands me a panic button and tells me to take off my necklace.

I walk down to the grounds. Patton is a prison, even though we all try to forget. It is not fun. There is barbed wire and a correctional officer at the gate. I show my identification and go inside the gate and watch the track. Throngs of disheveled men in brown jumpsuits walk the grounds. Some look happy to be outside, some look sad, some look distressed, and some look like they do not know where they are. One man runs the track in circles while yelling in the air, raising his fist to the sky. I think, maybe he is cursing God.

The wait list for Patton is 90 days and it always seems ironic to me that there is

such a long wait list for such an awful place, I remember an expert testifying for the prosecution in a Penal Code section 1368 trial, who called Patton a “Club Med” like environment. I cringed when she said the statement.

I am escorted to an area that reminds me of a high school football field. They take me to a portable trailer and I step inside. It resembles a portable classroom. I sit in a room and wait while looking through my client’s file. I can smell a faint hint of mold. They bring my client in. He looks so young. Will he ever be normal? Will there ever be a win? Will he get back to school? I don’t know, but right now, all I can see is a young kid who thinks the television is sending secret code. He does not realize that there is a whole world and life awaiting him out-side this facility. But I do. A success this day will mean that I get my client to take his medications and that he restores in the next month, so he can leave this place and go home.

Juanita E. Mantz is a deputy public defender and a writer. She practices in the Riverside County Public Defender’s Mental Health Unit and has been a deputy public defender for over a decade. She is a member of the Macondo Writers’ workshop and her essays have been published in literary journals, newspapers, and magazines. You can read her blog at <https://www.lifeofjem.com-jemmantz.blogspot.com/>.

Jennifer Small has been a deputy public defender for almost 13 years and practices in the Riverside County Public Defender’s Mental Health Unit. Much of her practice has been geared towards representing the gravely disabled in Riverside County.



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THE MIDDLE GROUND

by Monica Nguyen

It is no secret that Riverside jails serve as involuntary homes to many mentally ill people.¹ An estimated 47 percent of the Riverside jail population suffers from mental illness, with 10 to 15 percent suffering from severe mental illnesses. That equates to approximately nine thousand severely mentally ill citizens being booked into the county jail each year.² Our county mental health department shoulders the burden of providing quality mental health services to these patients. This article seeks to understand how Riverside jails became de facto mental health institutions and how we can help severely mentally ill citizens avoid the criminal justice system.

Over the last fifty years, our country has pushed to close psychiatric hospitals in a trend known as deinstitutionalization.³ Deinstitutionalization began for three main reasons: (1) the invention of psychiatric drugs in the 1950s made it possible for those with severe mental illness to successfully live in the community; (2) society called for the transition of mentally ill patients from institutions to community health centers for treatment; and (3) federal funding such as Medicaid and Medicare paid for placement of mentally ill patients in these community centers. The point of moving severely mentally ill citizens out of psychiatric hospitals was to support their success in community placement. However, as hospitals closed, the U.S. did not have placement for all of the patients displaced by the closures. By 1977, the United States had built 650 community health centers, which provided treatment for only about half of the patients who needed treatment.⁴ Without enough hospitals or community centers to provide refuge, many severely mentally ill patients became homeless.⁵

1 See Riverside County: Mental Illness Taxes Jails at <https://www.pe.com/2014/09/22/riverside-county-mental-illness-taxes-jails/>.

2 See Riverside County: Jails Rebounding From Shocking Lack of Resources at <https://www.pe.com/2019/08/02/riverside-county-jails-rebound-from-shocking-lack-of-resources/>

3 Segal, Andrea J., Frasso, Rosemary & Sisti, Dominic A. "County Jail or Psychiatric Hospital? Ethical Challenges in Correctional Mental Health Care". *Qualitative Health Research* (2018, Vol. 28(6), pgs. 963-976).

4 See Deinstitutionalization, Its Causes, Effects, Pros and Cons at <https://www.thebalance.com/deinstitutionalization-3306067#:~:text=Deinstitutionalization%20is%20a%20government%20policy,while%20also%20cutting%20government%20budgets.>

5 Segal, Andrea J., Frasso, Rosemary & Sisti, Dominic A. "County Jail or Psychiatric Hospital? Ethical Challenges in Correctional Mental Health Care". *Qualitative Health Research* (2018, Vol. 28(6), pgs. 963-976).

Homelessness exposes severely mentally ill citizens to a higher likelihood of incarceration. This is because the condition of homelessness places severely mentally ill citizens in circumstances that cause them to interact with the justice system far more than sheltered citizens. For example, I have represented many mentally ill homeless clients who were charged with resisting a peace officer. The charges stemmed from the combination of a very mentally ill citizen, living on the streets, suffering from a severely altered reality, and coming into contact with peace officers. Frequently, these citizens, in their sickened state, do not understand the peace officers' commands and do not understand that they are doing anything wrong. A simple conversation can quickly escalate into an arrest in these circumstances. In these cases, it is the mental illness driving my client's actions, not any intent to commit a crime.

Other charges that I have found to follow my homeless clients include panhandling, trespassing, drunk in public, and petty theft. Many years ago, I represented a mentally ill homeless client who was charged with a petty theft. He had previously been convicted of a petty theft and had two prior theft-related "strike" offenses. He stole a box of food from a food bank serving the homeless. The prosecution was seeking a sentence of 25 years to life because of the "three strikes" law. My client stole to cure his hunger, not out of an intention to criminally harm someone else.

Many times I have represented clients charged with trespassing because they are seeking shelter in locations where they have no right to be present. I've had clients who suffer from delusions that cause them to believe that the location that they are seeking shelter in is truly their home and they have no clue that they are trespassing. Their delusions and need for a place to live cause the conduct, not a desire to commit a crime.

If these patients were in safe locations where they could receive their medications, they could avoid the criminal justice system all together. Deinstitutionalization provided greater due process rights to mentally ill citizens who could care for themselves with medication. However, an unintended consequence of the movement was to leave many mentally ill people homeless, severely sick, and subsequently incarcerated.

Lamb, H.R., Weinberger, L.E. "Deinstitutionalization: Promises and problems." Jossey-Bass: San Francisco (2001).

I do not want to return to a time when our country institutionalized sick people who can thrive in the community with assistance. But what has happened is that our jails have essentially become the mental health institutions that the deinstitutionalization movement fought against.

The answer is to focus on a middle ground, which is community placement. These placements include residential programs, group homes, board and care placements, and room and board placements. We need many options between hospitalization and the streets.

I have represented many severely mentally ill patients who have achieved extraordinary recovery in community placements. These successes were, in part, achieved through supportive community placement. The more patients off the streets and in community placements, the more our entire community benefits.

Monica Nguyen is an attorney with the Riverside County Public Defender's Office. She been with the Public Defender's Office for 13 years and specializes in the practice of mental health law.

Brittany Young is an intern at the Law Offices of the Public Defender, Riverside County and is currently pursuing a Master's in forensic psychology at California Baptist University. Her research assisted in the writing of this article.



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BASICS OF THE LANTERMAN-PETRIS-SHORT ACT

by James Sohn

What do you want to be when you grow up? In my earlier years, my responses to this kind of question varied widely. Professional surfer, school teacher, chemist, federal agent, and medical doctor all made it on the list at one time or another. Little did I know then – or even while in law school – that my winding road would lead me, fortunately, to the Office of County Counsel for the County of Riverside. I have now the rewarding opportunity to represent the Riverside County Public Guardian in both probate and Lanterman-Petris-Short (“LPS”) proceedings. In this article, I will focus on the LPS side of my job and will try to explain some of the basics of the LPS Act.

Purposes of the LPS Act

The LPS Act is found in the California Welfare and Institutions Code starting at section 5000. “The LPS Act governs the involuntary detention, evaluation, and treatment of persons who, as a result of mental disorder, are dangerous or gravely disabled.”¹ Among the many purposes of the LPS Act, our State Legislature identified goals to protect public safety, safeguard individual rights, and “provide individualized treatment, supervision, and placement services by a conservatorship program for persons who are gravely disabled.”²

In the context of an LPS conservatorship, the term “gravely disabled” usually refers to a person who, “as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.”³

72-Hour Hold

Many people in California have used or heard used the term “5150,” but what does it mean? A “5150” situation involves a person who, as a result of a mental health disorder, is a danger to self or others or is gravely disabled.⁴ The law authorizes certain individuals, such as peace officers and attending staff in county mental health facilities, to take or cause to be taken into custody a person for up to 72 hours in an approved county facility if there is probable cause that that person meets

the “5150” standard.⁵ However, before admission into the facility, the professional in charge, or a designee, must assess the individual in person to determine the appropriateness of the involuntary detention.⁶ A “5150” hold is often the starting point for an LPS conservatorship.

14-Day Hold

A person who has been put on a 72-hour hold “may be certified” to be held for an additional “14 days of intensive treatment related to the mental health disorder” if (1) an evaluating mental health professional has found that the person, due to a mental health disorder, remains a danger to self or others or is gravely disabled; (2) a proper county-designated facility agrees to admit the person; and (3) the person has not or cannot voluntarily accept treatment.⁷

Conservatorship Petition

When a gravely disabled person is unwilling or incapable of accepting voluntarily mental health treatment, the mental health professional in charge of that person’s evaluation or treatment may recommend an LPS conservatorship to – as relevant to our county – the Riverside County Public Guardian.⁸ In Riverside County, only the Public Guardian is authorized to initiate LPS conservatorship proceedings.⁹

If the Public Guardian pleads the need for a temporary conservatorship, and if the court is satisfied that a temporary conservatorship is appropriate, then the court may appoint the Public Guardian as a temporary conservator for a period of 30 days.¹⁰

On the issue of whether a person is gravely disabled, the proposed conservatee has the right to a trial by jury.¹¹ “The court shall appoint the public defender or other attorney” to represent the proposed conservatee for the trial on the petition for conservatorship.¹² The burden of proof to establish that a person is gravely dis-

⁵ *Ibid.*

⁶ Welf. & Inst. Code § 5151.

⁷ Welf. & Inst. Code § 5250.

⁸ Welf. & Inst. Code § 5352.

⁹ *Kaplan v. Superior Court* (1989) 216 Cal.App.3d 1354, 1360-1361.

¹⁰ Welf. & Inst. Code § 5352.1, subd. (a).

¹¹ Welf. & Inst. Code § 5350, subd. (d)(1).

¹² Welf. & Inst. Code § 5365.

¹ *Conservatorship of John L.* (2010) 48 Cal.4th 131, 142.

² Welf. & Inst. Code § 5001, subds. (c), (d), & (e).

³ Welf. & Inst. Code § 5008, subd. (h)(1)(A). This statute also includes impairment by chronic alcoholism as a basis for grave disability.

⁴ Welf. & Inst. Code § 5150, subd. (a).

abled is proof beyond a reasonable doubt.¹³ If the trier of fact finds the person to be gravely disabled, the LPS conservatorship will automatically terminate after one year, but the conservator may petition for reappointment for additional year-long extensions.¹⁴

Concluding Thoughts

This area practice can be complex and challenging; however, it is also meaningful and rewarding. From my experience, all the players involved in the LPS conservatorship process (e.g. the court, the Public Defender, the Public Guardian, County Counsel, medical professionals, etc.) are genuinely trying to help a person who may be in need. Sure, there are differences of opinions, factual disputes, and legal hurdles, but the environment is collegial, professional, and productive. I might even say that this is a job I want to do when I grow up!

James Sohn has been a deputy county counsel with the Office of County Counsel for the County of Riverside since May 2019. His area of practice involves probate and Lanterman-Petris-Short matters.



¹³ *Conservatorship of John L.*, *supra*, 48 Cal.4th at p. 143.
¹⁴ Welf. & Inst. Code § 5361.

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WILL YOUR WILL ROCK YOU?

by Andrew Gilliland

Pete Townshend of The Who is known for his ability to story tell through the medium of rock music. In the 1970s, he penned into existence two characters that touched audiences in very different ways. Most over the age of 40 remember the pinball wizard as the protagonist of the rock opera *Tommy* who was deaf, dumb, and blind, but somehow could still play pinball. A lesser known character created in the 1970s by Pete Townshend is the Mod known as Jimmy from the double album *Quadrophenia*, a tribute to The Who's roots as a Mod band in the mid-1960s. This rock anthem's double album tells the story of a young Mod in 1960s England sorting his way through sex, drugs, and music while riding his scooter and fighting "Rockers." For Townshend, the album title says it all about Jimmy's mental state. Jimmy, the protagonist, is doubly schizophrenic making him "quadrophrenic." Thus, Jimmy is doubly "mad" according to the logic of Pete Townshend.

Like the rock opera *Tommy*, the album was made into a feature length movie, which became part of "midnight movie madness" of the 1980s, along with such other cult films like *The Rocky Horror Picture Show*. As the title *Quadrophenia* implies, the driving force through the movie is whether Jimmy is "mad" or just sane in a mad world. At one-point in the movie, Jimmy's mother verbally confronts him about being "mad" because he takes blues (amphetamines) and drives around on his scooter at late hours in the night. Jimmy reacts by shouting back that he's not mad, and his mom replies that what he does is not "normal." My personal favorite line in the movie is Jimmy's reply asking his mother "Oh yea! What's normal then?" Jimmy's father eventually gets involved leading to a touching moment of how mental health problems run in the family. Tragedy continues to strike poor Jimmy as he tumbles down into a world of madness fueled by "blues" until he reaches the seminal moment where he drives his scooter off the White Cliffs of Dover.

In the world of estate planning, the "mad" issue at the forefront in *Quadrophenia* manifests itself in the form of determining whether the individual who creates the estate plan has capacity to do so or whether they would be deemed "mad" at the time of creating a will by a court of law. While Jimmy's mother could not answer the questions of "What is normal then?", the California Probate Code does provide specificity on what is normal for a

person to be determined to have capacity when creating a will.

Section 6100.5 of the California Probate Code describes when an individual is not mentally competent to make a will, which conversely implies the factors necessary to determine an individual is competent. Thus, having the mental capacity to make a will requires that the proposed testator/testatrix be able to:

1. Understand what they are doing by creating the will;
2. Know what assets they generally have; and
3. Identify who their spouse, children and parents are and anyone else who is affected by the will.

Determining whether the individual can satisfy these factors should take place through the intake process with a written questionnaire and the initial interview by the attorney. The intake questionnaire can be used as evidence to satisfy all three prongs when it is written or completed online by the proposed testator/testatrix. If someone else has completed the intake questionnaire other than the proposed testator/testatrix, best practices would be to have such individual sign the questionnaire as an acknowledgement that they understand what is in the questionnaire. During the initial interview, asking why the individual is seeking to have an estate plan created for them generally provides a satisfactory or unsatisfactory response as to whether they understand what they are doing.

Additionally, pursuant to Section 6100.5 of the California Probate Code, to have mental capacity to create a will, the testator/testatrix also must not:

"suffer[] from a mental health disorder with symptoms including delusions or hallucinations, which delusions or hallucinations result in the individual's devising property in a way that, except for the existence of the delusions or hallucinations, the individual would not have done."

How you determine whether someone is suffering "from a mental health disorder" with hallucinations or delusions can be very difficult because attorneys are not trained mental health specialists. However, asking why the individual desires to leave their estate or a portion of it to an individual or organization can provide insight as to whether the individual understands what they are doing and why they are doing it or if there is some sort of under-

lying mental health disorder resulting in a delusion. If ever there is any doubt created by this process, sending the individual to be evaluated by a mental health professional would be the best practice.

It is also important to note that just because someone is eccentric, believes in things that you do not, or has certain personality traits that are outside of normal experience, this does not mean that they lack capacity. These beliefs, foibles, and eccentricities must go to the testamentary act and affect one of the factors set forth in Section 6100.5 of the California Probate Code. Lacking capacity to create a will is far more than being outside the norm of societal behaviors or thought processes.

Thus, the answer to the question of "What's normal then?" in the context of the capacity to execute a will is that the individual must know what they are doing, what they have, and who they are leaving their stuff to. In a will contest, it is always difficult to prove that at the time of execution the person lacked capacity. This is especially true when there is an attorney involved in the creation and execution of the will because the attorney should evaluate the individual to see if they have the capacity. A quality intake process also can be relied on in any subsequent will contest.

Andrew Gilliland is a solo practitioner focusing on estate planning and probate with offices in Riverside and Murrieta. Andrew is a member of the RCBA's Publications Committee.



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CIVIL COMMITMENTS: A COMPLICATED MATTER

by Richard Quintino

There are five types of criminal civil commitments. Two of them evolve from incompetency to stand trial and three of them are post-judgment convictions/commitments. In this article, I will briefly outline the elements of each civil commitment.

Murphy Conservatorships

The first civil commitment deals with Penal Code (“PC”) section 1368. If someone is charged with a serious or violent felony, and yet is not competent to stand trial on the charges, under current law, there is a maximum two-year period (without good time) to attempt to restore to competency. The defendant is sent to a state mental hospital during that period of time. As the end of that period approaches, the hospital advises the court whether the defendant can be restored. If restored, criminal proceedings are reinstated and criminal prosecution proceeds. If the defendant cannot be restored, he or she is returned to court for further proceedings. At that time, the court can entertain its discretion under PC 1385 to dismiss the charges and release the defendant. Or, the court can refer the matter to the Public Guardian to investigate whether a conservatorship proceeding should be undertaken. This is commonly referred to as a “Murphy Conservatorship” (after the state senator who sponsored the bill). (Note, there are two other types of conservatorships, Probate Code section 1800, et seq. and Welfare and Institutions Code (WIC) section 5008, subd. (h)(1)(A), which I will not be addressing in this article).

The elements of a Murphy Conservatorship are laid out in WIC 5008(h)(1)(B), which requires:

- a. That as a result of a mental disorder, the defendant is unwilling to accept or incapable of accepting treatment voluntarily; and
- b. The defendant has been found mentally incompetent under PC 1370; and
- c. The indictment or information pending against the defendant at the time of commitment charges a felony involving serious threat to the physical well-being of others; and
- d. The indictment or information has not been dismissed; and
- e. As a result of the mental disorder, the defendant is unable to understand the nature and purpose of the proceedings taken against him or her and is

unable to assist counsel in the conduct of his or her defense in a rational matter; and

- f. The defendant represents, as a result of his or her mental disorder, a substantial danger of physical harm to others.

Each of these elements have to be proven beyond a reasonable doubt to a unanimous jury. The mental disorders that qualify are psychotic disorders found in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5). If found true, the conservancy is for one year, renewable each year thereafter.

WIC 6500

The next type of civil commitment falls under the WIC 6500, which arises from incompetency to stand trial and applies to individuals who have a primary diagnosis of a developmental disability (also called intellectual disability and formerly referred to as mental retardation).

A person with a developmental disability and who has been receiving services from a regional center may be subject to this kind of civil commitment under WIC 6500, et seq.

To be subject to this statute, first, the defendant has to be found not likely to be restored to competency under PC 1370.1. As the two-year period of attempted restoration comes to an end, his or her regional center can make a request of the local District Attorney to file a WIC 6500 petition. The elements of this petition are:

- a. The defendant has been determined by a regional center to have a developmental disability as defined in WIC 6500; and
- b. Because of his or her developmental disability, he or she represents a danger to himself/herself or others as defined in WIC 6500.

If these elements are proven beyond reasonable doubt to a unanimous jury, the court will order the defendant confined to the least restrictive facility. In our region, there are two such facilities (Porterville Developmental Center and Canyon Springs Community Center), as well as licensed residential group homes. The commitment is for one year, renewable thereafter each year, if the regional center requests an extension.

A WIC 6500 petition can be requested by a regional center, even if the developmentally disabled person has not been charged with a crime. Also, the parents of the

person with a developmental disability can request the District Attorney to file a WIC 6500 petition.

NGI (Guilty but not Guilty by reason of insanity)

The next three types of civil commitments arise from criminal post judgment/commitment proceedings.

The first is found in PC 1026-1026.5 proceedings: guilty, but not guilty by reason of insanity. PC 1026 sets up a two-step process to determine whether a person was insane at the time he or she committed a serious or violent felony. First, the jury must find whether the defendant is guilty of the crime. If found guilty, the jury then determines if the defendant was insane at the time of committing the crime. If both are true, the court then commits, not convicts the defendant. The defendant is not sentenced, but instead is committed to a term which would have been the maximum he or she would have received if criminally convicted. The court considers whether the defendant is amenable to out-patient treatment, if not, the defendant is committed to a state hospital.

After serving 180 days of this commitment, the defendant can petition for a restoration of sanity trial per PC 1026.2. This is a two-step process. First, the court conducts a hearing to determine if the defendant is amenable to out-patient treatment. If found true, then the court refers the defendant for out-patient treatment. After a successful year in out-patient treatment, the defendant can petition the court for a restoration of sanity trial. The defendant has the burden at trial by a preponderance of evidence that he or she is “no longer a danger to the health and safety of others, due to a mental defect, disease or disorder.” (PC 1026.2(e)).

Once the maximum period of commitment is about to conclude, if the director of the state hospital feels the defendant should remain in a locked facility, he or she can request the District Attorney to file an extension of commitment petition per PC 1026.5. The elements of this petition are:

- a. The defendant has a mental disorder, defect or disease as defined in PC 1026; and
- b. That as a result of the mental defect, disease or disorder he or she represents a serious threat of harm to the health and safety of others; and
- c. That he or she presently has serious difficulty in controlling their dangerous behavior.

If all elements are found true beyond a reasonable doubt by a unanimous jury, the defendant’s commitment is extended for two years, and can be renewed every two years by the filing of a new extension petition, and trial.

Mentally Disordered Offender (MDO)

The next civil commitment arises after a person has committed a serious or violent felony and has been given a determinate prison sentence. As his or her parole time approaches, the Department of Corrections screens the defendant to see if he or she meets the criteria of PC 2962 (mentally disordered offender, hereinafter referred to as “MDO”).

There are six elements and a trial is conducted in the county where the defendant is housed. If the defendant meets the six criteria, he or she is then paroled to a State of California mental hospital, instead of being paroled into the community. The PC 2962 commitment can be extended each year of his or her parole. At the end of the PC 2962 period of commitment, the state hospital can request the District Attorney of the county of his or her crime to file a PC 2970 extension petition. This petition has three of the six elements of the PC 2962 petition:

- a. The defendant has a severe mental disorder as defined in PC 2962; and
- b. The disorder is not in remission or cannot be kept in remission without treatment as defined in PC 2962; and
- c. Because of the mental disorder, he or she represent a substantial danger of physical harm to others as defined in PC 2962.

If all three elements are proven beyond reasonable doubt to a unanimous jury the defendant’s commitment is extended for a year and can be extended each year thereafter if the medical director of the state hospital requests an extension.

MDOs can become eligible for out-patient treatment, which is known as “conditional release program” (CONREP) per PC 1600, et seq. If placed in out-patient treatment through CONREP, their order of commitment is tolled. CONREP can be terminated upon a hearing before the commitment judge.

If the defendant wants to end his or her CONREP commitment, he or she, at the annual review by CONREP, can request a PC 2970 trial. If found not to meet the PC 2970 criteria, he or she is unconditionally released

Sexually Violent Predators

The last form of civil commitment is an *indeterminate commitment* per WIC 6600, et seq. The elements of this commitment are:

- a. The defendant has been convicted of one or more qualifying sexual offenses against one or more victims as defined under WIC 6600, subd. (b), or, with a child less than fourteen years of age as defined in WIC 6600.1; and

- b. The defendant has a diagnosed mental disorder; and
- c. As a result of that diagnosed mental disorder the defendant is a danger to the health and safety of others because it is likely that he or she will engage in sexually violent predatory criminal behavior; and
- d. It is necessary to keep them in custody in a secure facility to ensure the health and safety of others.

If each element is proved beyond a reasonable doubt to a unanimous jury, the defendant is committed indefinitely at Coalinga State Hospital, per WIC 6604. Coalinga State Hospital offers the defendant sex offender treatment program (STOP), which he or she can voluntarily undertake, but cannot be forced to undergo. If the defendant successfully completes STOP, he or she can seek post-commitment remedies pursuant to WIC 6605 and 6608, unconditional release or conditional release.

Once committed under WIC 6604, the respondent is given an annually review by forensic psychologists. If the annual review finds that he or she no longer meets the criteria of WIC 6600, then he or she can petition the court for a WIC 6605 unconditional release trial. If the

annual report finds that he continues to meet the WIC 6600 criteria, then he or she can petition the court for a WIC 6608 trial, conditional release. If he or she successfully completes one year of conditional release, he or she can request a court hearing to determine whether he or she can be unconditionally released.

Conclusion

All five of the civil commitments involve individuals who have a mental disorder or developmental disability. All of them require an element of dangerousness caused by their mental disability/disorder. The trier of fact has to balance individual liberty against community safety. Once committed, the state provides voluntary treatment and in some cases, can seek involuntary medication orders. All of the commitments are quasi-criminal in that the District Attorney has the burden to prove beyond reasonable doubt and must obtain a unanimous verdict, and all involve commitments to a locked or a secure facility.

Richard Quintino is an attorney with the Law Offices of the Riverside County Public Defender and has been assigned to handle civil commitment cases for the last 12 years.



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COVID-19 PANDEMIC — STRESS AND COPING

by Jacqueline Carey-Wilson

As of this writing, Riverside County – along with many communities all over the world – is experiencing a public health crisis that is affecting everyday lives in a way never seen before in our lifetimes. This article chronicles the evolution of the COVID 19 pandemic and offers a broad array of coping strategies for our readers.

In early January 2020, stories first trickled out of China about the unusual prevalence of individuals diagnosed with pneumonia in the city of Wuhan. Soon the reports changed from pneumonia to the underlying cause: a novel coronavirus.

On January 11, China reported its first death from the new virus. The first case in the United States was reported on January 13, when a 35-year-old resident of Washington state was diagnosed with the same virus. The Washington resident had recently returned home from Wuhan.

On January 23, China placed Wuhan under quarantine and, a week later, the World Health Organization (WHO) declared a global public health emergency.

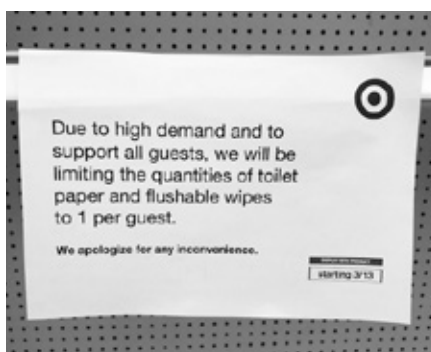
By February 8, China reported 811 deaths as a result of the coronavirus. Two days later WHO named the new virus COVID-19.

COVID-19 spread and reports of new infections came from different parts of the world. On February 19, Italy placed all residents on lockdown.

On March 8, WHO declared a pandemic – a global outbreak of disease. Pandemics happen when a new virus emerges to infect people and can spread between people sustainably. Because there is little to no pre-existing immunity against the new virus, it spreads worldwide.

By March 17, most states had declared a state of emergency as a result of COVID-19.

The United States Supreme Court cancelled oral arguments and most courts have closed, except for emergency orders and hearings in civil, and in-custody criminal



arraignments and preliminary hearings. Most organized religions have cancelled in person services and many have reached out to their members through social media like Facebook or YouTube.

In order to mitigate the impact of COVID-19 and to disrupt the spread of the virus, at least thirty states, including California, and many nations across the globe have issued stay-at-home or lockdown orders.

In California, all residents are ordered to stay at home or place of residence except to obtain food, care for a relative or friend, get necessary health care, or go to an essential job. When individuals leave home, they are required to maintain a distance of at least six feet from other people. Restaurants are closed to dining in and are open only for take-out. Movie theatres, amusement parks, ski resorts, hiking trails, museums, libraries, and state and national parks are closed. Many employees are working remotely from home and millions have filed for unemployment benefits due to the numerous closed businesses. Social gatherings are limited to ten people.

As people all over the world adjust to the new normal of social distancing, quarantines, and self-isolation, there has been a rush to stock up on food, medical and cleaning supplies, and paper goods such as paper towels and toilet paper. Customers are experiencing long lines at supermarkets and big box stores like Costco and Sam's Club. Certain store

shelves are empty and some products are out of stock on line.

Education institutions from elementary to university level have closed and many students are attending classes online. All collegiate and major league sporting events have been cancelled or the season postponed, including the 2020 Olympics in Japan, which are now scheduled to begin in July 2021.

On March 31, WHO reported 754,948 confirmed cases worldwide, with 36,571 deaths in 203 countries. In the United States, the U.S. Centers for Disease Control and

Prevention (CDC) reported 163,539 COVID-19 infections and 2,860 deaths. Infections are reported in all 50 states, and in the District of Columbia, Puerto Rico, Guam, Northern Mariana Islands, and the U.S. Virgin Islands.

As of March 31, the California Department of Health reported 5,763 confirmed cases and 135 deaths throughout the state. The Riverside County Department of Health reported 291 confirmed cases and 9 deaths in the county. The San Bernardino County Department of Health reported 125 confirmed cases and 4 deaths in the county. These numbers will be outdated by the time you read this article, as they change significantly each day.

Families are staying home and many events, including graduations, proms, weddings, birthday parties, plays, concerts, performances, recitals, and sporting events, have been cancelled or indefinitely postponed. As we adjust to this new reality, it is important to acknowledge and grieve lost routines, social connections, family structures, and our sense of security — and then create new ways to move forward. The CDC offers the following coping strategies to help guide of us through this challenging period.

Stress and Coping

The outbreak of coronavirus disease 2019 (COVID-19) may be stressful for people. Fear and anxiety about a disease can be overwhelming and cause strong emotions in adults and children. Coping with stress will make you, the people you care about, and your community stronger.

Everyone reacts differently to stressful situations.

How you respond to the outbreak can depend on your background, the things that make you different from other people, and the community you live in.

People who may respond more strongly to the stress of a crisis include:

- Older people and people with chronic diseases who are at higher risk for COVID-19
- Children and teens
- People who are helping with the response to COVID-19, such as doctors and other health care providers, or first responders
- People who have mental health conditions including problems with substance use

If you, or someone you care about, are feeling overwhelmed with emotions like sadness, depression, or anxiety, or feel like you want to harm yourself or others call:

- 911
- Substance Abuse and Mental Health Services Administration's (SAMHSA's) Disaster Distress Helpline: 1-800-985-5990 or text TalkWithUs to 66746. (TTY 1-800-846-8517)
- Visit the National Domestic Violence Hotline or call 1-800-799-7233 and TTY 1-800-787-3224

Stress during an infectious disease outbreak can include:

- Fear and worry about your own health and the health of your loved ones
- Changes in sleep or eating patterns
- Difficulty sleeping or concentrating
- Worsening of chronic health problems
- Increased use of alcohol, tobacco, or other drugs

People with preexisting mental health conditions should continue with their treatment and be aware of new or worsening symptoms. Additional information can be found at the Substance Abuse and Mental Health Services Administration (SAMHSA) website.

Taking care of yourself, your friends, and your family can help you cope with stress. Helping others cope with their stress can also make your community stronger.

Things you can do to support yourself:

- Take breaks from watching, reading, or listening to news stories, including social media. Hearing about the pandemic repeatedly can be upsetting.
- Take care of your body. Take deep breaths, stretch, or meditate. Try to eat healthy, well-balanced meals, exercise regularly, get plenty of sleep, and avoid alcohol and drugs.
- Make time to unwind. Try to do some other activities you enjoy.
- Connect with others. Talk with people you trust about your concerns and how you are feeling.

Call your healthcare provider if stress gets in the way of your daily activities for several days in a row.

Reduce stress in yourself and others:

Sharing the facts about COVID-19 and understanding the actual risk to yourself and people you care about can make an outbreak less stressful. When you share accurate information about COVID-19 you can help make people feel less stressed and allow you to connect with them.

Learn more about taking care of your emotional health.

For Parents

Children and teens react, in part, on what they see from the adults around them. When parents and caregivers deal with the COVID-19 calmly and confidently, they can provide the best support for their children. Parents can be more reassuring to others around them, especially children, if they are better prepared.

Not all children and teens respond to stress in the same way. Some common changes to watch for include:

- Excessive crying or irritation in younger children
- Returning to behaviors they have outgrown (for example, toileting accidents or bedwetting)
- Excessive worry or sadness
- Unhealthy eating or sleeping habits
- Irritability and “acting out” behaviors in teens
- Poor school performance or avoiding school

- Difficulty with attention and concentration
- Avoidance of activities enjoyed in the past
- Unexplained headaches or body pain
- Use of alcohol, tobacco, or other drugs

Below are ways you can support your child:

- Take time to talk with your child or teen about the COVID-19 outbreak. Answer questions and share facts about COVID-19 in a way that your child or teen can understand.
- Reassure your child or teen that they are safe. Let them know it is ok if they feel upset. Share with them how you deal with your own stress so that they can learn how to cope from you.
- Limit your family's exposure to news coverage of the event, including social media. Children may misinterpret what they hear and can be frightened about something they do not understand.
- Try to keep up with regular routines. If schools are closed, create a schedule for learning activities and relaxing or fun activities.
- Be a role model. Take breaks, get plenty of sleep, exercise, and eat well. Connect with your friends and family members.

Learn more about helping children cope.

For Responders

Responding to COVID-19 can take an emotional toll on you. There are things you can do to reduce secondary traumatic stress (STS) reactions:

- Acknowledge that STS can impact anyone helping families after a traumatic event.
- Learn the symptoms including physical (fatigue, illness) and mental (fear, withdrawal, guilt).
- Allow time for you and your family to recover from responding to the pandemic.
- Create a menu of personal self-care activities that you enjoy, such as spending time with friends and family, exercising, or reading a book.
- Take a break from media coverage of COVID-19.
- Ask for help if you feel overwhelmed or concerned that COVID-19 is affecting your ability to care for your family and patients as you did before the outbreak.

Learn more tips for taking care of yourself during emergency response.

For People who have been Released from Quarantine

Being separated from others if a healthcare provider thinks you may have been exposed to COVID-19 can be stressful, even if you do not get sick. Everyone feels differently after coming out of quarantine. Some feelings include:

- Mixed emotions, including relief after quarantine
- Fear and worry about your own health and the health of your loved ones
- Stress from the experience of monitoring yourself or being monitored by others for signs and symptoms of COVID-19
- Sadness, anger, or frustration because friends or loved ones have unfounded fears of contracting the disease from contact with you, even though you have been determined not to be contagious
- Guilt about not being able to perform normal work or parenting duties during quarantine
- Other emotional or mental health changes

Children may also feel upset or have other strong emotions if they, or someone they know, has been released from quarantine. You can help your child cope.

Resources on the CDC Website

For Everyone

- *Coping with a Disaster or Traumatic Event*
- *Managing Stress and Anxiety (American Sign Language Video)*

For Communities

- *Coping with stress during an infectious disease outbreak*
- *Taking Care of Your Behavioral Health during an Infectious Disease Outbreak*

For Families and Children

- *Helping Children Cope with Emergencies*
- *Coping After a Disaster – A Ready Wrigley activity book for children age 3-10*

For First Responders

- *Emergency Responders: Tips for taking care of yourself*
- *Disaster Technical Assistance Center (SAMHSA)*

This difficult time creates many different types of challenges. It is possible that these new circumstances may also create many positive opportunities for personal growth, innovation, and creativity. It is important to remember that the more we can all demonstrate empathy and care for our loved ones, friends, families, neighbors, and members of our community, we will create the likelihood of a more positive outcome for all of us.

Jacqueline Carey-Wilson is a deputy county counsel with San Bernardino County, past president of the Riverside County Bar Association and the Federal Bar Association, Inland Empire Chapter, and the editor of the Riverside Lawyer.

Photos by Jacqueline Carey-Wilson



INTERSECTION OF PSYCHOLOGY AND LEGAL THINKING: LESSONS FROM THE PAST HELP US TODAY

by Robert A. Lark, Ph.D.

I have often expressed to my graduate students the importance of understanding that law and psychology function on differing patterns of critical thinking. For example, psychologists use hypotheses testing, behavior sampling, statistics, and probability theory to help us formulate our thinking and decision making. The legal profession uses the gathering of evidence, ideas, or arguments then evaluating those concepts into strengths and weaknesses, weighing relevant rules and case law into decision making. These varying paths of critical thinking are akin to the two rails supporting a train, both necessary tracks need to move the train, neither more important than the other. However, in the court room, the process belongs to law, not the behavioral sciences.

One story out of his history of psychology from the late 1890's into the early 1900s brought differing of thinking into the forefront. Hugo Münsterberg, who earned his Ph.D. under the tutelage of Wilhelm Wundt from Leipzig, Germany, founded the first behavioral science laboratory program. Münsterberg soon left Leipzig for Harvard where he continued his research under mentorship from William James. Münsterberg's first interaction with the legal process did not go well. A local psychologist and expert reached out to the two Harvard scholars for help. Münsterberg did not prepare himself (he did not see the defendant) but opined and the results would be as expected, the defendant was found guilty and soon executed. In 1908, he published his first work on his studies, *On the Witness Stand*.¹ Later, one of Münsterberg's students joined in the controversy. The student, Marston, had created a method of lie detection which he provided testimony in the landmark *Frye v. U.S.* (1923) 293 F. 1013.

The insistence on one model of critical thinking was soon matched by the other train rail, the critical thinking of law. A noted professor of law, Dean John Henry Wigmore, published a satirical piece on April 1, 1908 entitled, "Professor Münsterberg and the Psychology of Testimony being a Report of the Case of *Cokestone v Münsterberg*."² Given the April fool's date of publication, one can imagine the excoriating satire that prevailed (it is worth the read). The real issue for Wigmore was not Münsterberg's assertion that there are exact and precise methods of ascertaining

and measuring, and that these methods of critical thinking were fully accepted. It was Münsterberg's assertion that legal profession had rejected or ignored the importance of these modalities of critical and that the rejecting of the differing critical thinking modalities constituted neglect by the legal professionals.

The satirical piece was Wigmore's way of returning honor to the legal profession. The thrust of Wigmore's cross-examination (in the satirical piece) was to focus on Münsterberg's model of generalizability of data from studies toward a specific case at hand; how does the verifiable law of behavioral science describe, in fact, the witness at hand. It was rather helpful to Wigmore that he had authored a major treatise on evidence.³ Münsterberg seemed unfazed by it all and continued in what may be best described as self-promotion. However, Münsterberg – Wigmore story has importance today.

One presumption made by Münsterberg was to infer that the critical thinking from the behavioral sciences needed to be adopted by all professions. Not a wise position to hold. The behavioral sciences can offer information to the triers when that information can be brought to the specifics of the trial matter at hand. For example, we can of help is in the area of competency to stand trial (CST).

CST evaluations are plentiful, courts order an estimated 25,634 to 51,500 CST evaluations yearly.⁴ While incompetency itself is a rare human behavior, its appearance in the courtroom or in the trial are disruptive to an overwhelmed courtroom process. Forensic psychologists often turn to the use of checklist to help speed the process of decision making. These checklists, also referred to as structured professional judgements (SPJ), are helpful, but their science show that they are at high risk for poor reliability.⁵ The forensic psychologist needs to be able to transfer the information from the checklist directly to the defendant's sufficient present ability to consult with attorney and to do so with a reasonable degree of rational understanding.

The generalizing of information from the SPJ to the defendant may be difficult if that SPJ was primar-

3 Wigmore, J.H., *Evidence in Trials at Common Law*.

4 Gowensmith, N. & King, C. M. (2020) "Resolution or Resignation: The Role of Forensic Mental Health Professionals Amidst the Competency Services Crises." AP-LS Newsletter, February 2020

5 *Ibid*.

1 Hugo Münsterberg, *On the Witness Stand* (1908).

2 1909 3 Illinois LR 399.

ily designed to predict a probability of placement to a known group, not to a specific level of competence itself. Switching from use of a SPJ to a measure of cognitive processing may not provide the courts with any greater level of decision making, as transferring a known score on an IQ measure, to a determination of rational understanding, can be difficult as IQ scores may not provide sufficient individual specificity to the trier of facts decision making. Also, a mere presence of an acute disturbance of psychopathology (not to be confused with being a psychopath) may not be sufficient as the expert must demonstrate that this acute disturbance in *this* individual, facing *these* charges, *in light of existing* evidence, anticipating the substantial effort of a *particular* attorney with a *relationship of known characteristics*, results in the defendant being unable to rationally assist the attorney or to comprehend the nature of the proceedings and their likely outcome.⁶

Across the country, roughly 20-40% of individuals determined incompetent are then referred to competence-restoration services.⁷ The volume of individuals entering the courtroom who may experience CST evaluation is growing and the need for the need itself is not understood in full. The process of determination – to restoration – to courtroom is time consuming, slowing the outcome of trials. This creates a lengthy waitlist for CST evaluations and restoration, burdening the courts, the defendants, and the public. A recent meta-analysis reported the median length of stay for restoration was 147 days.⁸

Another area of an interaction between law and behavioral science is the determination of not guilty by reason of insanity (NGRI). As with CST evaluations, the forensic behavioral scientist must be able to transfer measurement data (i.e., tests developed via normative standardization across levels of age/gender and location) to the specific defendant. The traditional NGRI standard (*M’Naghten*) rests heavily upon cognitive impairment (disease, knowing, nature, quality, and wrongfulness).

The forensic behavioral scientist may be able to measure distinct attributes of acute psychopathology, brain impairments or even intellectual disability. Transferring that scientific finding to the specific defendant at the exact moment of the alleged criminal act may not be that simple. What a clinical psychologist considers relevant to a “mental disease or defect” for clinical purposes may be parallel to what the jury must consider. Extrapolating the clinical spe-

cifics of a delusional disorder to specific alleged criminal acts is more tedious.

The public view of violence asserts that those with mental illnesses are responsible for most violent crimes. And, while people with mental illnesses are three to four times more likely to be violent than those who are not, the majority of people with mental illnesses are not violent and will never be violent. It has been estimated that if we cured schizophrenia, bipolar disorder, and major depression, overall violence would only go down about 4 percent.⁹ And, it has been estimated that if we remove the risk associated with mental illness and gunshot wounds over the last ten years, 95 percent of that reduction would be from suicide, the other five percent would from homicides.¹⁰ And, if determined NGRI, the restoration process has its shortcomings. The process of CST or NGRI restoration is limited, creating a further burden upon local facilities to house the mentally ill. In Los Angeles County alone, it was estimated that one in three inmates at the jail was diagnosed with a mental health disorder.¹¹ That would put about 5000 psychiatric patients into detention, rather than treatment facilities that could provide care and restoration.

I think the lessons from Münsterberg and Wigmore serve us today. When we can take our science or clinical thinking and apply them to questions of law, we provide strength to the rail of justice. We strengthen the legal process when we interact, rather than remain parallel. The interaction or intersection of the process of critical thinking with law to that of the behavioral sciences strengthens the rail of justice and fairness by supporting, rather than isolating our thinking. Translating clinical models to legal models takes thought. And, the satirical cross-examination of Münsterberg provides a continued lesson to be prepared to answer questions about our science and process of discovery. Opining “the lawyer alone is obdurate”¹² is not a wise position to take as it fosters the notion that one rail of justice is enough when the strength rests upon the two rails of critical thinking, the law and the behavioral sciences. Such opining also can make for a nasty cross-examination.

Robert A. Lark, Ph.D., is a Professor Emeritus of Forensic Psychology and a forensic neuropsychologist. He has authored numerous scientific papers and serves on numerous professional boards.



6 Golding, S. & Roesch, R. (1988) “Competency for adjudication: An international analysis.” In D. N. Weisstub (Ed). *Law and mental health: International Perspectives* (Vol.4, pp 73-109).

7 Gowensmith, op cit.

8 Pirelli, G. & Zapf, P. (2020). “An Attempted Meta-Analysis of the Competency Restoration Research: Important Findings for Future Directions.” *Journal of Forensic Psychology*, Vol. 20, No.2, 134-162.

9 Beckett, Lois. (2014). “Myth vs. Fact: Violence and Mental Health.” Condensed Interview of Keith Swanson, Ph.D. *ProPublica*, June 10th.

10 *Ibid*.

11 “Psychiatric patients need hospital beds, not jail cells.” Opinion article, *Los Angeles Times*, February 2, 2019.

12 Münsterberg, op cit.

OPPOSING COUNSEL: RICHARD D. McCUNE

by Devin Teixeira

Richard McCune did not grow up thinking he would be a consumer lawyer – or a lawyer at all. He obtained his real estate license in Massachusetts when he turned 18 and paid his way through college selling real estate. He moved to Riverside from Massachusetts in 1980, when his father accepted the position of provost of what is now La Sierra University, previously La Sierra campus of Loma Linda University. His mother was a college professor in education who also joined Loma Linda University. Richard graduated from Loma Linda University with a business management degree and a love of sports, playing on the basketball team for the La Sierra campus of Loma Linda University. His other sports passion was golf.

Following college and a couple of business jobs (and lots of golf), Richard decided to go to law school with the intention to combine business and law. The law school Richard wanted to attend was never in doubt. His parents had both obtained their graduate degrees from the University of Southern California (USC), the school of choice in the McCune household. He was accepted by USC law school and graduated in 1987.

Following law school, Richard decided to pursue his passion for golf and turned professional, playing on the golf mini tours in California. To pay his way while trying to make a living playing golf, he got a part-time job at Kinkle Rodiger & Spriggs in Riverside and was exposed to litigation and being a trial lawyer for the first time. It soon became apparent to him that golf was not going to provide him with a living, and he began working full-time as a trial lawyer with the Kinkle Rodiger & Spriggs insurance defense firm.

While he enjoyed litigation, he felt his calling was more for the side of the underdog consumer than the insurance companies he was defending. So, after three years of insurance defense litigation, Richard joined esteemed plaintiff lawyer Douglas Welebir in his Redlands firm, and began representing plaintiffs in personal injury cases. One case changed the trajectory of Richard's career. A 27-year-old engineer was a back-seat occupant of a SUV and became a quadriplegic after it rolled over when the driver became distracted by a bee in the car and simply corrected after first leaving the roadway. Richard sued the manufacturer and became immersed in the engineering and the rush to market vehicles that were top-heavy and



Richard D. McCune

easily rolled over. After dozens of depositions, working with experts, conducting rollover tests, and reviewing thousands of pages of documents, the case settled shortly before trial for an amount of money that provided the client with the means to be fully independent and live a productive life without worrying about money. Also important, because of the litigation with Richard's client and other litigation, the manufacturer changed the design of the vehicle to make it have a lower center of gravity, effectively saving many lives. Richard had

found his calling. Product liability litigators were part investigator, part business, part engineer, and could make a huge difference in people's lives.

For the next ten years, Richard focused on product liability cases involving almost all the major car and boat manufacturers. Defects included rollover propensity, defective seatbelts, defective seats, lack of roof strength, and many others. His practice exposed him to product class actions. He filed the first sudden acceleration litigation case against Toyota, and then became part of the leadership of the case that settled for over \$1 billion. Richard was co-lead of a case against Hyundai/Kia that settled for over \$210 million. With the experience gained in product class actions, he filed a class case against Wells Fargo bank that went to trial with a \$203 million verdict. He has filed cases against most of the major banks and has been involved in over \$1 billion in settlements in those cases.

The combination of product liability experience and class action experience resulted in Richard partnering with Stephen Larson, a former judge of the United States District Court for the Central District of California. Together they represented the states of Arizona and Oklahoma in the Volkswagen diesel fraud litigation, which settled for \$40 million for the state of Arizona and \$8 million for the state of Oklahoma.

For the last few years, Richard has been balancing his practice of law in major cases with the business side of growing the practice. His firm, McCune Wright Arevalo, LLP, has grown from 5 lawyers to 20 lawyers, with offices in Ontario, San Bernardino, Palm Desert, Irvine, Illinois, and New Jersey. The practice areas have grown to include mass tort, nursing home abuse, antitrust litigation, and contingency commercial litigation, along with the main stays of personal injury, class action, and product liability.

But, while the majority of the firm's cases are in Los Angeles or other cities across the country, and the firm now has three offices outside the Inland Empire, the firm has retained its Inland Empire culture and there it remains firmly rooted. That is because Richard's roots are so deep in the Inland Empire and he cares so deeply about it. Richard takes the good-natured ribbings of the big-city

lawyers about the "empire" he is from, but will always defend that the Inland Empire has some of the best lawyers, judges and people you will find, and so he is proud to be an Inland Empire lawyer.

Devin Texeira is a marketing manager with McCune Wright Arevalo, LLP.



POLY AGAIN WINS THE MOCK TRIAL COMPETITION IN RIVERSIDE COUNTY UNFORTUNATELY, THE STATE COMPETITION WAS CANCELLED

by John Wahlin

The championship round of the Riverside County mock trial competition brought a new participant, Valley View High School from Moreno Valley, to face traditional finalist Poly High School from Riverside. In an extremely close round, Poly repeated as champion, winning its 8th championship in the last 10 years. The Poly team, however, was denied the opportunity to compete for the state title as the competition was cancelled due to the novel Coronavirus.

Former Superior Court Judge Michelle Levine presided over the County's final round of the Mock Trial, in which the defendant was charged with murder. Scoring the final were Assistant District Attorney Michelle Paradise, Public Defender Steven Harmon, RCBA President Jack Clarke, Presiding Judge of the Superior Court John Vineyard, and defense attorney Virginia Blumenthal. Twenty-six teams from throughout Riverside County participated in the first four rounds of competition. The highest scoring eight teams then continued the competition in the "Elite 8" single elimination tournament. The pairing of the Elite 8 teams included Poly vs. Riverside John W. North High School; Riverside Martin Luther King, Jr. High School vs. Riverside Ramona High School; Riverside Notre

Dame High School vs. Murrieta Valley High School; and Riverside Arlington High School vs. Valley View.

In the "Final Four" semifinal round, Valley View High School defeated Notre Dame High School and Poly High School defeated Martin Luther King setting up the final between Poly and Valley View.

Individual awards for outstanding performances were announced at the awards ceremony. First, second, and third place awards were presented in attorney and witness categories. Internships with the District Attorney, Public Defender, and the Superior Court were awarded to the top trial and pre-trial lawyers.

As always, it is the many volunteers from the legal community that drive the success of the program. Without coaches, judges, and scoring attorneys there would be no program. Thank you for all who participated in this outstanding program. For more information concerning volunteer opportunities for the 2021 season, please contact the RCBA.

John Wahlin is a partner with the firm of Best Best & Krieger, LLP and is the chair of the RCBA Mock Trial Steering Committee.



First Place – Poly High School, Riverside



Second Place – Valley View High School, Moreno Valley

JUDICIAL PROFILE: HON. DOROTHY McLAUGHLIN

by Betty Fracisco

Riverside's Most Well Rounded Judge

Judge Dorothy McLaughlin has to be the most well traveled judge in Riverside County, at least as far as her work experience goes. She was born and raised in Pittsburgh, Pennsylvania, the oldest daughter of two lawyers. Her father was the first in his family to graduate from a four-year college and both he and her mother felt strongly about good educations for Judge McLaughlin and her younger twin sisters. Judge McLaughlin played lacrosse and was quite an accomplished violinist, even playing with the community orchestra. She graduated from a private all-girls' school and moved on to Brown University in Providence, where she majored in history.

While at Brown, Judge McLaughlin was the news editor for the College Hill Independent, Brown's weekly paper. She also worked on SAPE, Sexual Assault Peer Education, which involved visiting local schools which put on skits on the topic. She took a year off between her junior and senior years at Brown to work in Pittsburgh for Summerbridge, an academic enrichment program for middle school students. This experience awakened an interest in teaching.

After graduating from Brown in 1996, Judge McLaughlin spent the summer with a Summerbridge program in Hong Kong before moving to Switzerland to teach ninth and eleventh grade in the American school. After two years, she was still vacillating between teaching and journalism as a career, so she moved to San Francisco where, after working the summer for Summerbridge, she interned at the *San Francisco Guardian*, taught English at Heald College, and taught writing for Upward Bound.

At this point, although she had never exhibited a desire to follow in her parents' footsteps, she decided that she could combine her love of teaching and journalism in a career in the law. She attended Northwestern Law School in Chicago. During law school she interned for a district court judge and for the U.S. Attorney's office, which impressed her. After graduation from Northwestern, she returned to San Francisco, took the



Hon. Dorothy McLaughlin

California bar exam and clerked at Cooley Godward (now Cooley) for the summer.

Seeking experience in various aspects of litigation, Judge McLaughlin first moved to Anchorage to clerk for the Alaska Supreme Court. Because Alaska has no court of appeal for civil matters, she gained valuable experience in all cases appealed from the lower courts. Following this internship, she did a federal clerkship in Memphis with Judge Ronald Gilman in the Sixth Circuit. This gave her the opportunity to read appellate briefs and

hear many appellate arguments, important to her overall development as a lawyer and future life as a judge.

To obtain some hands-on litigation experience, Judge McLaughlin returned to San Francisco in 2004, accepting an offer from Cooley to be an associate, which she did for a year before transitioning to litigation boutique law firm, Kecker and Van Nest. It was during this time that she met her husband, who was doing post doctoral work in biology at Berkeley. When he received an offer to teach at UC Riverside in 2007, she found a position at the U.S. Attorney's Office for the Central District of California in Riverside, and they have been in Riverside ever since. She had aspired to work at the U.S. Attorney's Office for some time, and for the next five years she was able to work on a wide variety of cases, from drug trafficking to financial fraud and attempted murder, eventually becoming the Deputy Chief of the office. In 2011, her mentor and friend, Sheri Pym, became a U.S. Magistrate Judge in Riverside, and Judge McLaughlin transitioned from the U.S. Attorney's Office to the federal court in 2012 to be Judge Pym's clerk. In this role, she worked on habeas corpus matters, appeals in Social Security cases, discovery disputes, and pro per section 1983 cases (excessive force).

Judge McLaughlin served the court for two years, and she loved the work, but she missed being a litigator, so she took a position with Best Best & Krieger, working in the education group under the tutelage of Jack Clarke and Cathy Holmes. She worked on special education disputes, and other cases involving school districts, loving this new area of the law. In 2018, she decided to apply for the judiciary. She was torn, because she loved her job, but she was also curious, and it seemed like a

good time to apply. She had no preconceived notions about what being a judge would involve. In June 2018, she was appointed to the Riverside County Superior Court by Governor Jerry Brown. She was assigned to family court, one area of the law in which she had no experience. Her current caseload includes dissolutions and cases involving division of property/custody. She has enjoyed the challenge and finds the work both interesting and challenging.

The life and times of Judge Dorothy McLaughlin have been anything but static. She has practiced in many disciplines and lived in many areas, but for the past nearly 13 years she has been part of the Riverside community. Her husband is a professor and runs a lab at UCR. She has two children, ages 10 and 7, with whom she spends time working on art projects and cooking, in addition to supporting them in activities like Girl Scouts and AYSO soccer. Their family also enjoys camping and hiking.

Judge McLaughlin believes her current job is her favorite job. She is glad she was able to do all the things she has done as a lawyer, learning something new and gaining valuable experience in every job and area of practice. In fact, she believes that this job gives insight back to that first legal job in Alaska, to putting every-

thing “on the record.” She often thinks of that job in this job.

Betty Fracisco is an attorney at Garrett & Jensen in Riverside and a member of the RCBA Publications Committee.



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, 2020.

Daniel L. Epp – Law Offices of Daniel L. Epp, Palm Springs

Jose Resendez (A) – Doctors On Liens Inc, Sherman Oaks

(A) – Designates Affiliate Members



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 Yang at (951) 682-1015 or lisa@riversidecountybar.com.

CLASSIFIEDS

Office Space – RCBA Building

4129 Main Street, Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Office suites available. Contact Charlene Nelson at the RCBA, (951) 682-1015 or rcba@riversidecountybar.com.

Office Space – Downtown Riverside

Riverside Legal & Professional Center. Downtown Riverside walking distance to Courthouse. Private Executive Suite offices, virtual offices and conference rooms rental available. We offer a state of the art phone system, professional receptionist and free parking for tenants and clients. Accessible from the 91, 60 and 215 freeways. (951) 782-8089.

Legal Malpractice, Ethics

Available for Referrals, Co-Counsel, Consultations. Legal Malpractice Certified Specialist Joel G. Selik by the CA State Bar Board of Legal Specialization. California and Nevada. Also available for referral, pro hac vice for Nevada cases. Contact Joel@SelikLaw.com, 760-479-1515.

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Small Personal Injury firm desires attorney for associate position. May lead to future ownership! (Senior attorneys a few years from retirement.) Desire self-starter, prefer 5 years of experience, but will interview others with passion for the profession. Salary negotiable. Percentage bonuses available. Gas card after probation. Must be able to work with church associations. Please send resume to w.kennedy@lawyerswhofight.com. If desire, call lead attorney, William Kennedy, directly at (951) 533-1295.

Seeking Civil Litigation/Premises Liability Attorney

Seeking attorney to join our Civil Litigation/Premises Liability team. Potential candidates must possess a strong background in litigation matters (at least 3 years of civil litigation, premises liability and insurance defense experience). The following are requirements for this position: excellent written and oral communication skills, excellent organizational and interpersonal skills, acute attention to detail and ability to multi-task and must have initiative, be able to act decisively, work independently and exercise excellent and ethical judgment. We offer excellent benefits and competitive compensation package based on experience. Please send resumes to vb@varnerbrandt.com.

Seeking Business Litigation Attorney

Available opportunity in our Riverside office for a business litigation attorney to join our business and employment litigation team. Potential candidates must possess a strong background in litigation matters (at least 3 years of business litigation experience). We offer excellent benefits and competitive compensation package based on experience. Please send resumes to vb@varnerbrandt.com.

Seeking Corporate Transactional Attorney

Available opportunity in our Riverside office for an experienced corporate transactional attorney to join our highly successful corporate/real estate transactional team. Potential candidates must have a minimum of three years of business and transactional law practice experience (practice areas include: mergers and acquisitions, commercial contracts, real estate development, conversions and business formation). We offer excellent benefits and competitive compensation package based on experience. Please send resumes to vb@varnerbrandt.com.

Seeking Legal Assistant - Business/Corporate

An exciting opportunity is available in our downtown Riverside office for an experienced legal assistant/secretary with comprehensive transactional knowledge and top-notch technical, communication and administrative skills. Job duties include working with our transactional attorneys, document preparation, maintaining and processing client information, and managing the progression of matters. Familiarity with complex business transactions and associated documentation is required. This position requires excellent technical, administrative, communication and organizational skills, attention to detail and the ability to work well independently and with others in a team oriented and demanding office environment. A high degree of proficiency with Microsoft Word, Outlook, Excel and document management systems strongly preferred. Only candidates with a minimum of 3 years of recent law firm experience will be considered. We offer great benefits and competitive compensation based on experience. Please send resumes to vb@varnerbrandt.com.

Conference Rooms Available

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

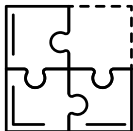




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