

RIVERSIDE LAWYER

July/August 2022 • Volume 72 Number 7

MAGAZINE



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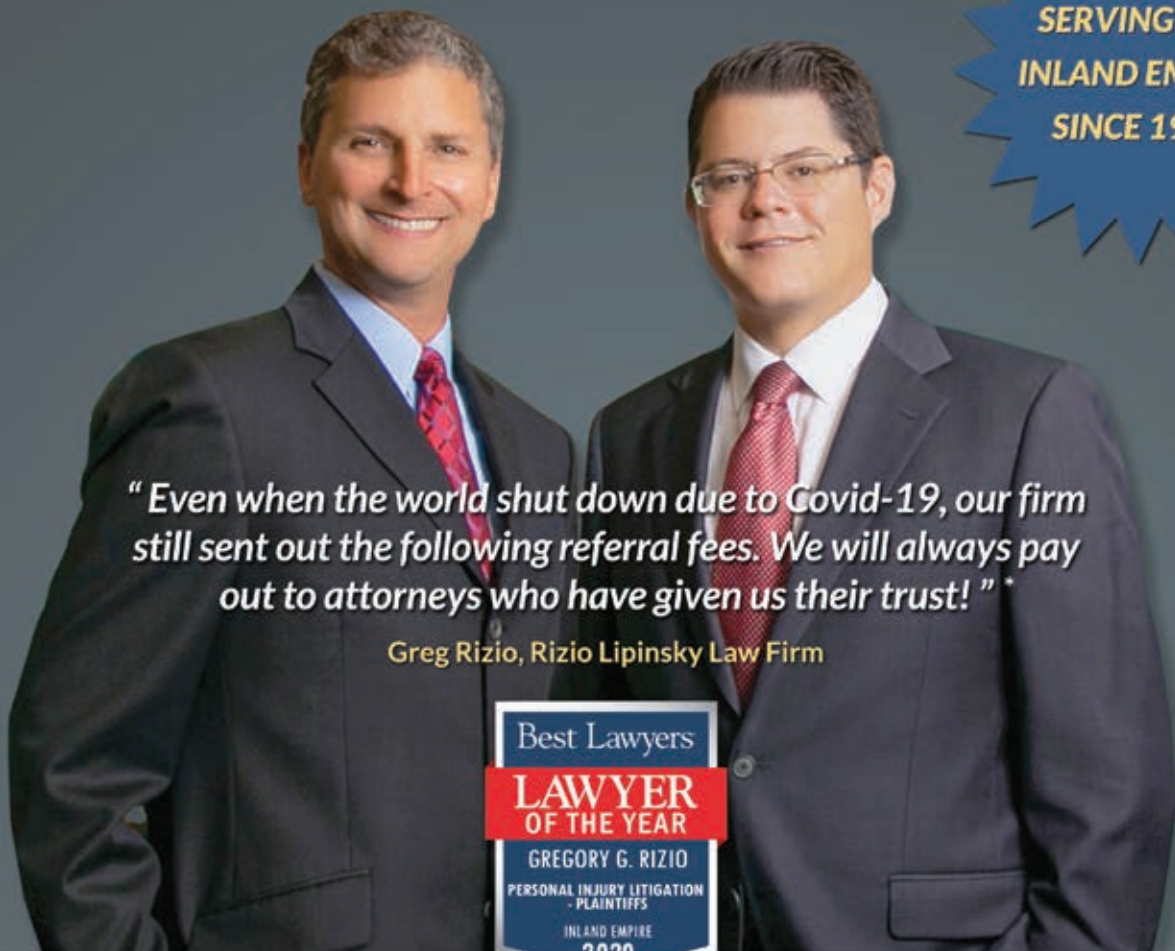


The Official Publication of the Riverside County Bar Association



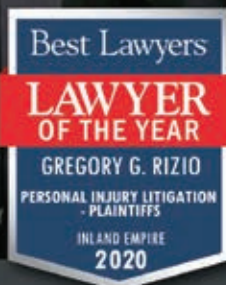
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RIVERSIDE LAWYER

MAGAZINE

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RCBA Board of Directors

(September 1, 2022 - August 31, 2023)

President – Lori Myers	Directors-at-Large – Erica Alfaro
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On the cover: *Declaration of Independence* is a 12-by-18-foot painting by American artist John Trumbull depicting the presentation of the draft of the Declaration of Independence to Congress. It was placed in the United States Capitol rotunda in 1826. Please see the full story beginning on page 14.

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 \$30.00 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

July

- 11 Civil Litigation Roundtable with Hon. Craig Riemer**
Noon, Zoom
MCLE
- 28 Barristers Happy Hour Social**
5:15 p.m.
Kalaveras Cantina Urbana
- 29 Federal Bar Association Inland Empire Chapter**
Co-sponsored by the RCBA
22nd Annual Constitutional Law Forum
Noon, Zoom
Speaker: Erwin Chemerinsky

August

- 2 RCBA Blood Drive**
10:00 a.m. – 3:00 p.m.
LifeStream Bloodmobile
Directly behind RCBA Building
For appointments call –
800.879.4484 or visit
lsblooddrive.org/mrba
- 8 Civil Litigation Roundtable with Hon. Craig Riemer**
Noon, Zoom
MCLE
- 10 Juvenile Law Section**
12:15, Zoom
Joint Meeting with the Public Defender's Office
Speakers: Mitchell Davis & Catherine Spinelli
Topic: "LPS Conservatorships and Mental Health Issues in Youths and the Intersection with Dependency Law"
MCLE

Save the Date

Annual RCBA Installation of Officers Dinner

September 22, 2022

Mission Inn – Grand Parisian Ballroom

Social Hour – 5:30 p.m.

Dinner – 6:30 p.m.

EVENTS SUBJECT TO CHANGE.

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



NOTICE

Notice is hereby given that the RCBA Board of Directors has scheduled a "business meeting" to allow members an opportunity to address the proposed budget for 2023.

The budget will be available after August 15.

If you would like a copy of the budget, a copy will be available at the RCBA office.

Thursday, August 18 at 5:00 p.m.
3750 University Ave. #125 • Riverside



President's Message

by Neil Okazaki

In 1894, Grover Cleveland was president of the United States. Coca-Cola was sold in bottles for the first time. And the powerhouse Yale Bulldogs national championship football team finished the season with a 16–0 record, outscoring its opponents throughout the season by a margin of 485 to 13.

Riverside was a growing and prosperous city due to the establishment of the citrus industry. There were half a million citrus trees in California and half were in Riverside. A *Los Angeles Herald* article on January 1, 1894¹ describes Riverside as follows:

The Italians boastfully say: “See Naples and then Die!” Riversiders may paraphrase this by inviting citizens of the world to “See Riverside and then live.” Certainly, no visitor of taste from less favored spots can look upon this semi-tropic paradise without some longing for a home amid its orange groves....To visit Southern California without seeing Riverside would be like visiting Italy and passing by the Eternal city.²

Something else happened in 1894 in the community of about 7,000 residents. It was reported that the Riverside County Bar Association was formed. Back then, dues were just 50 cents a month.

The RCBA has done a lot of great things and had thousands of extraordinary people in

its membership throughout its 128-year history. It remains the backbone of our local legal community with programs and activities such as the following:

- A variety of legal entities: Lawyer Referral Service, Riverside Legal Aid, Fee Arbitration, Dispute Resolution Service, Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.
- Monthly membership meetings with keynote speakers and participation in the many committees and sections.
- The *Riverside Lawyer* magazine to update on State Bar matters, ABA issues, local court issues, and other interesting legal topics.
- Social gatherings such as the installation dinner, joint Barristers socials, Good Citizenship Awards ceremonies for Riverside County high schools, and other special activities.

Jay Reeves -- attorney, consultant, and author of “The Most Powerful Attorney in the World” -- describes nine benefits of being a part of a local bar association:³

1. To see old friends and make new ones.
2. To make a difference.
3. To do pro bono work.
4. To get referrals.
5. To get out of your office.
6. To educate the public and each other on emerging issues.
7. To welcome new blood.
8. To improve your professional reputation.
9. To have fun.

Any of those reasons would be good enough to be active in the RCBA. But Jay gave us nine. Personally, I enjoy the chance to get to know other attorneys and judges, and the opportunity to hold up our profession for the noble aims it can achieve. I hope you will all consider whether there are more ways you can get more involved next year in the many good things we do.

And the RCBA is not just about good things. It is also about good people. And on September 22, 2022, at the Mission Inn, we will honor Lori Myers as she takes over as our next president. For almost two decades, Lori has been a highly regarded criminal defense attorney and now offers a live online program called The Warrior Attorney Academy to guide other attorneys to effectively represent clients. I know great things will come from her presidency to further the engagement of our members. Lori will keep the RCBA vibrant and vital while finding innovative ways to better our organization.

No matter how time-consuming my service as president has been, this legal community has already been worth that investment of time. It has been a privilege and honor to have been given the opportunity to lead the board of directors this year and to collaborate with so many remarkable people in our extended RCBA family.

1 To give some context to how the RCBA, starting in 1894, is a pioneer of Riverside: The first wing of the current Mission Inn building was opened in 1903. The Historic Courthouse was completed in 1904.

2 Mark Plaisted, “The City of Riverside, A Stately Queen Embowered in Orange Groves,” *Los Angeles Herald*, Vol. 41, No. 72, 1 January 1894, found online at <https://cdnc.ucr.edu/?a=d&d=LAH18940101.2.101&e=-----en--20--1--txt-txIN-----1>.

3 Jay Reeves, 9 Reasons to Get Active in Your Local Bar, Lawyers Mutual Byte of Prevention Blog, February 15, 2019, found online at <https://www.lawyersmutualinc.com/blog/9-reasons-to-get-active-in-your-local-bar>.

I conclude this final President's Column the same as I started my first column in September. Amy Poehler once said, "Find a group of people who challenge and inspire you, spend a lot of time with them, and it will change your life forever." Your RCBA Board of Directors is that kind of extraordinary group of individuals, and it has been an honor for me to have had the opportunity to work with them. Lori Myers, Kelly Moran, Mark Easter, Megan Demshki, Erica Alfaro, Aaron Chandler, Goushia Farook, Elisabeth Lord, Sophia Choi, and

Michael Ortiz did more than show up to meetings. They demonstrated visionary leadership during this past year. Together, they contributed to our success and made sure the RCBA continues to advance our important mission to serve our members, our communities, and our legal system. After 128 years, I can tell you that the RCBA remains in good hands and well-positioned to go another 128 years or more.

Neil Okazaki is an assistant city attorney for the City of Riverside.



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BARRISTERS PRESIDENT'S MESSAGE

by Michael Ortiz



I recently read *The Good Earth*, a fiction novel by Pearl S. Buck. *The Good Earth* tells the story of Wang Lung, a Chinese peasant and farmer in the early 1900s. The story follows Wang Lung from his wedding day as a humble, young-adult through his death as wealthy landlord and grandfather. Wang Lung endures the many joys and sorrows of peasant farm-life, including back-breaking work, draught, flooding, famine, and robber hordes. Yet even in his most trying times, the “good earth” provides Wang Lung with security, sustenance, and purpose. To me, *The Good Earth* is a story about foundations and fundamentals.

The “good earth” was the foundation upon which Wang Lung established his family. Beginning in his rural, earthen home among his farm, he eventually purchased and moved his family into a great house within the local city walls. The “good earth” was fundamental to Wang Lung’s ultimate prosperity. In Wang Lung’s most difficult times, he falls back to work the earth, tilling his soil, planting his seed, and harvesting his crops. It is a great story, and I often asked myself while reading it, “what is my ‘good earth’?” What is foundational and fundamental to my life?

I thought of two examples: my profession as a lawyer and my friends and family. I have admittedly done my fair share of complaining about being a lawyer, but in truth the legal profession and practice of law is a foundation of my life. I depend on my work to earn a living and provide for my family. It is hard work, to be sure, but it provides security, stability, and sustenance. Apart from that, being a lawyer

adds pride, meaning, and purpose to my life and I consider it a foundation of who I am.

Likewise, family and friends are fundamental. A study on the longest-living populations found that strong social networks are a common factor in long lives. I’ve found that surrounding myself with supportive, positive, and inspiring people has allowed me to not only endure the ups and downs of life but grow through them as well. As adults, maintaining relationships with family and friends takes work, but to reap the harvests resulting from a strong social network you must sow those relationships.

So, what does an old fiction novel have to do with the Barristers? In part, the book made me realize just how foundational and fundamental the Barristers has been to me. The Barristers combines two of the most important aspects of my life: my practice of law and my social network and community.

It is no secret that the COVID-19 pandemic has decreased participation in many organizations, Barristers included. Understandably, people are thinking twice about every social gathering they attend. On the surface it might seem like the Barristers is just happy hours, some scattered CLE, and a handful of hours of pro bono. But I contend the Barristers provides much more than the sum of its events.

The friends I have made through the Barristers are like family. I know Barristers that have gotten jobs and clients from fellow Barristers. I have met numerous attorneys that have served as informal mentors to me, or have helped me work on new, difficult cases. These are lawyers I look up to as inspiration, even if they don’t know it themselves. Being involved with the Barristers has made me strive to be a better lawyer and person overall.

So, I hope to inspire anyone just getting involved, or thinking of getting involved, to participate as much as you can. Sowing the garden of your profession, your network, and your personal development takes a lot of time and energy. But if you work on these foundations and fundamentals, I promise you will reap worthy harvests.

Thank you to everyone that has made my Barristers experience so meaningful. Thank you to my current board of directors, to the RCBA board, Charlene, Lisa, and everyone that works behind the scenes at the RCBA to ensure the operational fluidity and longevity of our organizations.

We have one last Barristers event this term!

Happy Hour @ 5:15 p.m. on July 28 at Kalaveras Cantina Urbana.

Stay up to date on future Barristers events by following our Instagram and Facebook accounts or visiting our website RCBABarristers.com.

Facebook: [Facebook.com/RCBABarristers/](https://www.facebook.com/RCBABarristers/)

Instagram: @RCBABarristers

Finally, I am always available to answer questions. You can email me directly or the Barristers Gmail account at RCBABarristers@gmail.com.

*Michael Ortiz practices estate planning and administration at Ortiz Law.
Email: Mike@MikeOrtizLaw.com*



THE LATEST AT THE RIVERSIDE FEDERAL COURTHOUSE

by Honorable Sheri Pym

As we plod through the third year of the pandemic, there are plenty of changes and happenings at the George E. Brown, Jr. Federal Building, including new judges. The most recent addition is District Judge Sunshine Suzanne Sykes, who was sworn in on June 21, 2022. Judge Sykes comes to us from the Riverside County Superior Court, where she had served as a judge since 2013. Judge Sykes graduated from Stanford Law School in 2001. Before taking the bench she worked as a staff attorney at California Indian Legal Service, a contract attorney with the Juvenile Defense Panel in Riverside County, and Deputy County Counsel for Riverside County. Judge Sykes is a member of the Navajo Nation and is the first Native American to serve as a District Judge in California.

Judge Sykes joins Judge Jesus Bernal as the only two District Judges in the Eastern Division, following Judge John Holcomb's transfer to the Southern Division. But we hope to soon, and for the first time, have a third District Judge in this division, with Magistrate Judge Kiya Kato's nomination for a District Judge position currently pending before the United States Senate. For now, Judge Kato remains one of three Magistrate Judges in Riverside, along with Magistrate Judges Shashi Kewalramani and Sheri Pym. The District Court Clerk's Office in Riverside continues to be led by Deputy in Charge Dominic Estrada.

The Bankruptcy Court side of the building also welcomed a new judge, with the appointment of Bankruptcy Judge Magdalena Reyes Bordeaux on January 18, 2022. Judge Reyes Bordeaux received her J.D. in 1997 from UCLA School of Law. She practiced bankruptcy law for more than 20 years, and served in a number of other positions, including as an adjunct professor at Loyola Law School. In the years immediately prior to her appointment as a Bankruptcy Judge, Judge Reyes Bordeaux was a senior supervising staff attorney at Public Counsel, where she supervised and managed Public Counsel's Debtor Assistance Project. Judge Reyes Bordeaux is the first Latina Bankruptcy Judge in the Central District of California.

Judge Reyes Bordeaux's appointment brings the number of Bankruptcy Judges in the Eastern Division back up to four, including her Riverside Bankruptcy Judge colleagues Wayne Johnson, Mark Houle, and Scott Yun. Longtime Operations Manager Debra Eudy retired in December 2021. She has been succeeded by the new

Operations Manager of the Riverside Bankruptcy Court Clerk's Office, Melissa English.

The COVID-19 pandemic brought changes to the federal courthouse like it did everywhere else. These included substantial increases in employees working remotely and judges holding hearings and settlement conferences by video or telephone. Although the courthouse was at times largely closed to non-employees for in person matters, it is now fully open again. Many hearings are still being held by video, but in person appearances are on the rise. Whether masking is required depends on local COVID-19 case levels and the orders of the particular judge presiding.

Because electronic filing requirements and IT ground-work were in place before the pandemic, the federal courts were able to continue their work largely uninterrupted, with a couple notable exceptions. In the District Court, the Eastern Division's civil filings rose 6.7% from 2,431 in 2019 to 2,595 in 2020, but then fell by 18.9% to 2,104 cases in 2021. The pandemic's effect on criminal cases was more apparent. The Eastern Division's criminal filings first plummeted 42% from 1,075 in 2019 to only 624 in 2020, and then skyrocketed to 1,984 in 2021, more than triple the cases filed in 2020. While grand jury proceedings and jury trials were suspended for some months due to the pandemic, both have resumed, with 24 trials held in the Riverside District Court in 2021.

In the Bankruptcy Court, Eastern Division filings stood at 11,606 in 2019. The 2019 numbers reflected a 3.9% increase over 2018 numbers. The COVID-19 pandemic has had a dramatic effect on bankruptcy filings throughout the country. Bankruptcy filings have been at historic lows during the pandemic, and the Eastern Division filings reflect the national trend. In 2020, bankruptcy filings in Riverside fell to 8,465 cases, a 27.1% drop from 2019. Riverside bankruptcy filings in 2021 fell even further, to 6,676 cases, another 21.1% drop. The downward trend continues into 2022, with filings approximately 32% behind the 2021 filings through May.

One thing that has not changed due to the pandemic is cases filed in the Eastern Division being reassigned to other divisions due to the disproportionately low number of Eastern Division judges. For example, not including civil cases referred to Magistrate Judges and not including criminal inter-district transfers, some 48% of civil cases and 43% of criminal cases were reassigned from the

Eastern Division to the Western Division in 2020. With Judge Holcomb's appointment in September 2020, the number of Riverside District Judges increased to two, and things improved. Even so, 26% of civil cases and 37% of criminal cases filed in the Eastern Division were still re-assigned to the Western Division in 2021.

The Court does, however, have a program that allows attorneys whose civil case has been transferred to Los Angeles an opportunity to bring it back to Riverside if they wish. Under General Order No. 18-11, parties may consent to proceed before any Magistrate Judge on the Voluntary Consent List found on the Court's website. And they may generally consent in any case, whether it has been transferred to Los Angeles or not. The Court's Direct Assignment program also allows parties to consent to proceed before a Magistrate Judge. In addition to allowing for cases to remain in the Eastern Division, parties who have utilized the programs note the ability to have their civil cases heard more quickly as another significant benefit. For more information about both of these programs, please see General Order Nos. 12-02 and 18-11.

Amid the challenges brought by the pandemic, one bright spot has been the continuation of the District Court's CASA (Conviction and Sentence Alternatives) and

STAR (Substance Abuse Treatment and Reentry) drug court programs. CASA and STAR variously provide an opportunity for criminal defendants with substance abuse problems to avoid incurring a conviction, reduce their sentence, or reduce their term of post-prison supervision if they successfully complete the program. The programs include drug testing, counseling, and intensive supervision by and interaction with a team of judges, probation and pretrial officers, prosecutors, public defenders, and drug counselors. It requires a substantial commitment from everyone involved, but we have been gratified to see a significant number of participants persevere through the pandemic and graduate.

Indeed, perseverance may be the common theme of the past few years. Despite the pandemic's many challenges, the federal courts' staff has continued to demonstrate their resilience and commitment to public service. I want to particularly recognize and express appreciation for their hard work, which is so essential to maintaining our justice system and keeping our courts open.

Honorable Sheri Pym serves as a magistrate judge in the Eastern Division of the United States Court, Central Division.



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THE FUTURE OF MIRANDA “RIGHTS”

by Allan Fong

June 23, 2022 marked a historic day for United States Constitutional law, as Justice Alito’s majority opinion in *Dobbs v. Jackson Women’s Health Organization* overturned the former constitutional right to abortion established in *Roe v. Wade*. The *Dobbs* decision overshadowed another one of Justice Alito’s opinions published that day, *Vega v. Tekoh*, which tackles the question of whether a plaintiff may state a claim for relief against a law enforcement officer under Section 1983 based on an officer’s failure to provide the warnings prescribed in *Miranda v. Arizona*.¹ The 6-3 opinion found that a person’s *Miranda* rights are not Fifth Amendment rights. Rather, the Court concluded that *Miranda* merely imposed a set of prophylactic rules that are “constitutionally based.” This thin distinction led the court to conclude that a violation of *Miranda* rules does not provide a basis for a Section 1983 claim.

The underlying facts of *Vega v. Tekoh* take place in neighboring Los Angeles County, where Terence Tekoh was employed at a hospital as a nursing assistant. A patient accused Mr. Tekoh of sexual assault and the allegation was reported to the Los Angeles Sheriff’s Department. Deputy Carlos Vega responded and questioned Mr. Tekoh without advising him of his *Miranda* rights. From here, the details of each person’s account diverge.

Mr. Tekoh states that Deputy Vega took Mr. Tekoh to an MRI reading room, shut the door and stood in front of it, blocking Mr. Tekoh from exiting. Deputy Vega then accused Mr. Tekoh of sexual assault, which Mr. Tekoh denied. After over half an hour of questioning, Deputy Vega (falsely) told Mr. Tekoh that the assault had been captured on video, so he might as well confess. Mr. Tekoh did not confess and asked to speak to a lawyer. But Deputy Vega ignored the request. After some time, Mr. Tekoh grew frustrated and tried to leave the room. Deputy Vega then rushed at Mr. Tekoh, put his hand on his gun, and threatened Mr. Tekoh and his family, using racial slurs to get his point across. Then, Deputy Vega grabbed a pen and paper, put them in front of Mr. Tekoh, and told him to write what the patient said he did. When Mr. Tekoh hesitated, Deputy Vega put his hand on his gun and said he was not joking. According to Mr. Tekoh, Deputy Vega then dictated the content of the written confession and a frightened Mr. Tekoh acquiesced, and wrote the statement down.

Deputy Vega’s account of what took place is entirely different. Deputy Vega states that when he first arrived,

he asked Mr. Tekoh what had happened with the patient, and Mr. Tekoh said, “I made a mistake.” Mr. Tekoh asked if he could talk to Deputy Vega in private, away from his co-workers. After the two went into the MRI reading room, Deputy Vega handed Mr. Tekoh a sheet of paper and said, “Can you write what happened while I get my sergeant and we can ask you a couple of questions?” According to Deputy Vega, Mr. Tekoh then wrote the confession without further prompting. Another officer, Sergeant Stangeland, arrived soon after, joining Deputy Vega in the room with Mr. Tekoh. According to Sergeant Stangeland, Mr. Tekoh said he was willing to speak with the officers. Deputy Vega then questioned Mr. Tekoh in a conversational tone, and Mr. Tekoh admitted to touching the patient inappropriately. Sergeant Stangeland testified that Mr. Tekoh’s demeanor was “that of a man who was contrite, who truly, you know, regretted what he had done.”²

Mr. Tekoh was arrested and charged with unlawful sexual penetration. Mr. Tekoh’s first criminal trial resulted in a mistrial after a witness revealed evidence that had not been disclosed to the defense. During the retrial, Mr. Tekoh’s confession was introduced as evidence of his guilt. In response, Dr. Iris Blandon-Gitlin testified as an expert on coerced confessions. The jury returned a verdict of not guilty.

After his acquittal, Mr. Tekoh filed a civil action under 42 U.S.C. § 1983, seeking damages for alleged violations of his constitutional rights, namely that Deputy Vega violated Mr. Tekoh’s Fifth Amendment right against self-incrimination. Section 1983 states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .³

The question presented to the U.S. Supreme Court was then whether the rights prescribed by *Miranda v. Arizona* qualify as rights secured by the Fifth Amendment of the U.S. Constitution. And the answer, according to six Justices, is a resounding “No.” The majority concludes that *Miranda* rights are “constitutionally based,” as described

1 *Miranda v. Arizona*, 384 U.S. 436 (1966)

2 *Tekoh v. Cnty. of Los Angeles*, 985 F.3d 713 (9th Cir. 2021)

3 42 U.S.C. § 1983

in the controlling precedent, *Dickerson v. United States*.⁴ However, the majority distinguishes that they are merely prophylactic rules used to establish procedural safeguards to protect one's Fifth Amendment rights. According to this logic, a violation of *Miranda* "rights" is not tantamount to a violation of one's Fifth Amendment rights. Therefore, a violation of these rules and thus no remedy is available under Section 1983.

Justice Kagan wrote the dissent, in which she laments:

Today, the Court strips individuals of the ability to seek a remedy for violations of the right recognized in Miranda. The majority observes that defendants may still seek "the suppression at trial of statements obtained" in violation of Miranda's procedures. But sometimes, such a statement will not be suppressed. And sometimes, as a result, a defendant will be wrongly convicted and spend years in prison. He may succeed, on appeal or in habeas, in getting the conviction reversed. But then, what remedy does he have for all the harm he has suffered? The point of § 1983 is to provide such redress—because a remedy "is a vital component of any scheme for vindicating cherished constitutional guarantees." (citations omitted)

Although the rules prescribed by *Miranda v. Arizona* remain in effect regarding the potential admissibility of confession evidence at trial, the Supreme Court has rejected the notion that a plaintiff may seek civil remedies upon violation, due to the rules' "prophylactic" nature. One might suppose that in greater context, we might be grateful that these "rights" still have any effect at all.

Allan Fong is a deputy public defender with Riverside County. He graduated from the USC Gould School of Law in May 2021, where he served as a board member of the Southern California Review of Law and Social Justice. Any opinions in this article are his personal opinions only.



⁴ *Dickerson v. United States*, 530 U.S. 428, at 431 (2000)



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NEW LEGISLATION EXPANDS BANKRUPTCY RELIEF

by Honorable Wayne Johnson

Bankruptcy law provides relief for people burdened by significant debts. The history of debt forgiveness spans thousands of years reaching back into the past at least as far as the Mosaic law. Debt forgiveness every seven years and every fifty years appear in Bible passages such as Deuteronomy 15 and Leviticus 25. And while the modern Bankruptcy Code in America is considerably more complex than the ancient versions, it still provides considerable relief for “honest but unfortunate” debtors.

A few weeks ago, Congress passed legislation (nearly unanimously) that opened the door a bit wider for individuals seeking bankruptcy relief. In early April, the United States Senate unanimously approved “The Bankruptcy Threshold Adjustment and Technical Corrections Act” (S. 3823) and, two months later, the House of Representatives did likewise on a vote of 392-21. President Biden signed the legislation on June 21, 2022 and its provisions became effective immediately.

Among other things, the legislation reinstated a higher debt limit (\$7.5 million) for debtors seeking to reorganize in subchapter V of chapter 11. This change will expand bankruptcy relief for troubled businesses seeking to survive in challenging times. Another aspect of the legislation makes an important change to consumer bankruptcy law. The new law will help people file bankruptcy cases by broadening the availability of chapter 13.

The vast majority of individuals who seek bankruptcy protection do so under chapter 7, which provides an opportunity to discharge most debts in exchange for surrendering non-exempt property. Given the extensive exemptions available in California, most debtors can file chapter 7 cases knowing that all their assets will be exempt. Therefore, chapter 7 is the remedy of choice and, indeed, about 90% of all bankruptcy cases filed in the Central District of California are chapter 7 cases.

However, delinquent homeowners cannot save their residences in chapter 7. Congress did not design it to help prevent the loss of homes. Borrowers who fall behind in paying their residential mortgages sometimes file chapter 7 cases to delay foreclosure sales, but chapter 7 will not prevent the sales. Chapter 7 only delays foreclosures.

Thankfully, Congress crafted chapter 13 to help unwind defaults and avoid foreclosure sales. In a typical chapter 13 case, a homeowner arrives at the bankruptcy court on the eve of a foreclosure sale after having missed making mortgage payments for a year or two. The provisions of chapter 13 allow the homeowner to propose a three to five-year plan to pay off the accrued arrearage. If approved by the court, most chapter 13 debtors will spend the next five years under the supervision of the court and a chapter 13 trustee curing those missed payments from the past while also resuming paying all the regular monthly mortgage payments that come due during the five-year period (and beyond). For borrowers who have sufficient income and discipline, chapter 13 provides a valuable opportunity to save a home. Chapter 13 can also provide breathing room for homeowners who seek to solve their foreclosure problem by selling or refinancing their homes. In any such scenarios, the recent legislation signed by President Biden will help.

For somewhat mysterious political reasons, chapter 13 is not available to everyone. Congress created chapter 13 with debt limits and allowed borrowers to invoke chapter 13 as long as their secured and unsecured debts did not exceed certain limits. Until June, the limits for unsecured and secured debts were (approximately) \$465,000 and \$1.4 million, respectively. Borrowers whose debts exceeded these numbers were ineligible for chapter 13 and, instead, were forced to seek refuge in a chapter 11 case where (for the most part) no debt limits exist. However, chapter 11 cases are far more cumbersome and extensive than chapter 13 cases and, as a result, considerably more expensive. Whereas legal fees in a typical chapter 13 case average about \$5,000, even a simple chapter 11 case can easily cost five to ten times as much.

Thus, the chapter 13 debt limits had a harmful impact on debtors who exceeded the limits. For example, chapter 13 offered little help in places like San Francisco where the median sales price of a single-family home exceeds \$1.6 million. Similarly, the \$1.4 million limit for secured debts impaired the ability of borrowers to seek chapter 13 protection if they lived in other counties with high home values such as Santa

Barbara, Orange County, Ventura and Los Angeles. The old limit for secured debts forced debtors in such places away from chapter 13 and into chapter 11 cases.

Likewise, the \$465,000 limit on unsecured debts created problems for some potential chapter 13 debtors. America depends on small business owners who provide extensive opportunities for employment and economic growth. But it is not hard for them to incur hundreds of thousands of dollars in unsecured debts for supplies from vendors, leasehold obligations to landlords, bank lines of credit and liability from lawsuits. Therefore, the old unsecured chapter 13 debt limit pushed some business owners into chapter 11 and away from chapter 13.

Starting in June, however, Congress eliminated many of these problems. The recent legislation changed the debt limits for chapter 13 eligibility in a favorable manner. First, the act raised the overall debt limit to \$2.75 million. Second, Congress entirely eliminated the separate limits for unsecured and secured debts. A debtor may now file a chapter 13 case with \$2.75 million in secured debt or \$2.75 million in unsecured

debt or some combination thereof. As long as the total amount of debt does not exceed \$2.75 million, debtors may file chapter 13 cases.

These changes to the debt limits became effective on June 21, the date of enactment, and will remain in effect for two years. Again, for mysterious political reasons, Congress created a sunset provision that will eliminate these new changes in two years. Absent further action by Congress, chapter 13 eligibility will revert back to the old limits in June of 2024.

However, I suspect the new single limit of \$2.75 million will endure nonetheless. Predictions of the future are inherently suspect (especially when contemplating future Congressional action), but the new debt limit has too many benefits to remain temporary and it is difficult to find reasons to oppose making it permanent. It would not surprise me if Congress eventually takes steps to make it permanent.

Honorable Wayne Johnson serves as a bankruptcy judge in the Riverside Division of the United States Bankruptcy Court for the Central District of California.



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TRUMBULL'S *DECLARATION OF INDEPENDENCE*

by Abram S. Feuerstein

Is Thomas Jefferson standing on John Adams' foot?

That is the most common question visitors ask nearby guides when they gaze at John Trumbull's 12 x 18 foot *The Declaration of Independence, July 4, 1776*, housed in the Rotunda of the U.S. Capitol.¹ And, it kind of looks that way -- and may even be a valid question given the pair's strong philosophical differences. But smoke and dirt, and a retouching of the painting that elongated the founders' feet, likely explain the optical illusion.²

In any event, Trumbull (1756-1843) had a seriousness of purpose in painting *The Declaration* and it is hard if not impossible to imagine that he would have added such a whimsical touch. Trumbull had dedicated his career to painting history and, specifically, to recording the great events of the American Revolution.³ And for years, he worked at getting *The Declaration* as accurate as possible.

Defying his blue-blood family's expectations,⁴ the one-eyed,⁵ Harvard educated Trumbull rejected his father's dictates that he choose a career either in the law or the ministry.⁶ Instead, Trumbull pursued his artistic passions. As a teen, he had been inspired by the work of the early American artist, John Singleton Copley⁷ and later, as the Revolution was ending, Trumbull traveled to London to study under that other early great American painter, Benjamin West.⁸ West, in turn, assigned his new student to the tutelage of another West protégé in London, Gilbert Stuart.⁹ However, Trumbull, who had served for a year in the Revolution as an aide-de-camp to General Washington, aroused the suspicions of the British authorities and was arrested for treason. He spent several long winter months in Bridewell prison.¹⁰ Ultimately, through the interventions of Copley, West, and Sir Edmund Burke, he was released, and he returned to

1 David McCullough, "An Icon's Secret: How John Trumbull's revered depiction of July 4, 1776, mixes fiction and fact," *Wall Street Journal*, June 30, 2007, retrieved at <https://www.wsj.com/articles/SB118315984315553633> ("McCullough").

2 McCullough; see also, Olivia B. Waxman, "This Painting is Probably How You Imagine the Original Fourth of July. Here's What's Wrong With It," *Time*, July 3, 2018, retrieved at <https://time.com/5323460/declaration-of-independence-john-trumbull/> ("Waxman").

3 Irma B. Jaffe, *John Trumbull: Patriot-Artist of the American Revolution* (New York Graphic Society 1975) ("Jaffe"), p. 251. See also, Helen A. Cooper, *John Trumbull: The Hand and Spirit of a Painter* (Yale University Art Gallery 1982) ("Cooper"), p. 7, quoting Trumbull's words: "The great object of my wishes . . . is to take up the History of Our Country, and paint the principal Events particularly of the late War."

4 Trumbull's father had been the Royal Governor of Connecticut and after 1776, the governor of the state. His mother's lineage traced to the Mayflower. Jaffe, pp. 5-8, 20-23.

5 At the age of 5 or 6, Trumbull fell down a staircase and lost the sight in his left eye. Jaffe, p. 9.

6 Jaffe, p. 9.

7 Jaffe, p. 11.

8 Jaffe, p. 46.

9 Jaffe, p. 46. Stuart of course became a famous portraitist. Copies of his George Washington portraits today adorn numerous museums while his unfinished 1796 Athenaeum portrait of Washington served as the image engraved on the \$1.00 bill.

10 Jaffe, pp. 47-52.

America.¹¹ But as soon as the war ended, he sailed back to London and presented himself again to Benjamin West.¹²

For the next couple of years, Trumbull refined his skills, studying anatomy in the morning, painting all day, and attending classes at the Royal Academy after dinner.¹³ He was exposed to great history paintings composed by European artists. Trumbull's own work started to win the admiration of critics and fellow painters. He mingled in society, and befriended such overseas Americans as Benjamin Franklin, Abigail and John Adams, and Thomas Jefferson.

A Painting is Born

In 1786, Jefferson, serving as the American Ambassador to France, invited Trumbull to stay with him in Paris. During their time together, Trumbull explained to Jefferson his plans to paint a series of famous Revolution battle scenes as well as the Saratoga and Yorktown surrenders.¹⁴ Jefferson then suggested to Trumbull that he include *The Declaration* in Trumbull's history series. He sketched for Trumbull the Philadelphia Assembly Room where Congress had convened, and related to Trumbull a firsthand account of the event.¹⁵ Writing in his autobiography published more than 50 years later, Trumbull recollected that "with the assistance of (Jefferson's) information and advice," he began the composition of *The Declaration*.¹⁶

Notwithstanding the July 4th subtitle Trumbull gave his work, what Trumbull actually depicts in *The Declaration* is not the signing of the document, but its presentation to Congress by the five-member drafting committee of Adams, Roger Sherman of Connecticut, Robert Livingston of New York, Jefferson, and Franklin.¹⁷ And, the event did not take place on July 4, 1776, but several days earlier on June 28, 1776,¹⁸ when Jefferson gave a draft of his Declaration to Continental Congress President John Hancock.

Of note, Trumbull had several choices to make for his composition. Should he include all five committee members presenting the document, or just Jefferson? Should he paint only the handful of individuals present in the room on June 28, or add in all of the Declaration's supporters? What about those opposed to the Declaration, should they be included? Having vowed to preserve the actual likenesses of the representatives, how should he handle situations where in the decade since 1776 a representative had died and no authentic image of their likeness was available?¹⁹

Heeding advice from Adams in London and Jefferson in Paris, Trumbull decided he would strive to include as faithfully as possible the likenesses of as many of the congressional representatives as he could, whether or not they had signed the Declaration. Starting in 1787, he painted the background first, leaving sufficient pockets of space on his canvas to fill in the faces and figures of the representatives.²⁰

Then the real work began. During the summer of 1787, Trumbull painted Adams from life as Adams was departing from

11 Jaffe, p. 51-54.

12 Jaffe, p. 56.

13 Cooper, p. 7.

14 Jaffe, p. 104.

15 Cooper, p. 76.

16 Jaffe, p. 104.

17 Cooper, p. 76.

18 McCullough.

19 See generally, Jaffe, p. 104, Cooper, pp. 76-77.

20 Jaffe, pp. 106-7.

London to America, noting Adams “had the powder combed out of his hair. Its color and natural curl were beautiful, and I took the opportunity to paint his portrait.”²¹ In Paris, he then painted Jefferson onto the canvas, later regarding it as one of the best of his portraits.²² Back in the United States in 1790, Trumbull then schlepped his canvas and paints up and down the East Coast to capture the images of other representatives, maybe a Hopkins here, a Rutledge there.²³ A few years later his travels to Boston yielded portraits of John Hancock and Samuel Adams.²⁴

Describing the painting to Jefferson in 1817, Trumbull recounted his efforts:

*The picture will contain Portraits of at least Forty Seven Members: -- for the faithful resemblance of Thirty Six I am responsible, as they were done by myself from the Life, being all who survived in the year 1791. Of the remainder, Nine are from pictures done by others: -- One Gen. Whipple of New Hampshire is from Memory: and one Mr. Ben: Harrison of Virginia is from description, aided by memory.*²⁵

Trumbull continued to work on the painting through 1819 – incredibly, thirty-three years after it was conceived -- when Trumbull added the portrait of Thomas Nelson, Jr., to complete the first, smaller version of the Declaration (which Trumbull later donated with many other works to establish the Yale University Art Gallery).²⁶

In 1817, Trumbull, who had been elected President of the American Academy of Fine Arts,²⁷ set up his nearly finished painting in the Capitol rotunda in an effort to obtain a commission to decorate the building with his history paintings. He succeeded, and Congress passed a resolution authorizing President Madison to employ Trumbull “to compose and execute four paintings commemorative of the most important events of the American Revolution, to be placed when finished, in the Capitol of the United States.”²⁸ After meeting with Madison, it was agreed that Trumbull would receive the sum of \$32,000 (approximately \$750,000 in today’s inflated dollars), or \$8,000 for each of the four paintings: *The Surrender of General Burgoyne at Saratoga*, *The Surrender of Lord Cornwallis at Yorktown*, *The Declaration*, and *the Resignation of General Washington*.²⁹

Copying directly from his smaller, Yale painting, Trumbull completed the Capitol version of *The Declaration*, with its life-sized figures, in 1818. He then took the painting on a tour of cities that included New York, Boston, Baltimore, and Philadelphia, where it was displayed at Independence Hall.³⁰ Thousands visited the painting and paid 25 cents to see it.³¹ After the tour, Trumbull delivered the paint-

21 Cooper, p. 78.

22 *Id.*

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.* Trumbull, short of money, donated his paintings to Yale in the early 1830s in exchange for an annual annuity of \$1,000. The donation established the first American college art gallery. Trumbull and his wife are buried under the building, with the tombstone describing Trumbull as “The Patriot-Artist and the friend of Washington.” Cooper, p. 17, 19; Jaffe, p. 288-89.

27 Trumbull held that post for 19 years. Cooper, p. 15.

28 Cooper, p. 15; Jaffe, pp. 236-37.

29 *Id.*

30 Cooper, p. 78.

31 *Id.* Indeed, approximately 21,000 people visited the touring painting, and paid an aggregate amount of \$4,215. Jaffe, p. 244-45. By contrast, pre-Covid19 pandemic, nearly 2-3 million people annually streamed past the painting in the Rotunda. See McCullough.

ing to Congress in 1819. But the building had not been completed and *The Declaration* would not be displayed until 1826, fifty years after the events it depicted.³²

Nothing But A ‘Shin Piece’

The painting met praise, but it also had its critics. Some questioned its historical accuracy.³³ Others noted that it lacked the dynamic quality that existed in the smaller, Yale version. One harsh criticism came from Virginia representative John Randolph. Although he earlier had lauded the small *Declaration* and, indeed, had voted for the resolution employing Trumbull,³⁴ he now asserted that the Capitol painting should be called the “Shin-piece, for surely never was there before such a collection of legs submitted to the eyes of man.”³⁵

To a large extent Randolph’s criticism seems unfair. In reality, the leg count in the picture is limited. As Trumbull biographer Irma Jaffe observes, “the artist, obviously aware of the pictorial problem of what to do about legs in a painting of forty-seven figures, had solved it adroitly by the strategic placing of tables with long hanging cloths which effectively concealed most of his figures’ legs.”³⁶

On the other hand, the shin criticism may be warranted but should be understood in the context of the painting. After all, although certain battles were pivotal and one can only wonder with awe at the undaunted courage of the men who survived Valley Forge, the defining event of the American Revolution was relatively boring and lacked pictorial drama -- the presentation and signing of a piece of paper.

No matter how hard Trumbull might try -- and he did try hard by centering the action on the Committee of Five and drawing the viewer’s attention to Adams at the canvas center, and to Jefferson, taller than the others and wearing a red garment -- in the end the painting still only portrays a group of ordinarily dressed men, most sitting on plain Windsor chairs in a relatively undistinguished room as they watch several standing men hand a piece of paper across a desk to another sitting man. No spilled blood. No grand gestures. No mythological references. No religious imagery. But all very enlightened.

And that is precisely the point. As Trumbull wrote, the founding fathers were not “an Assembly of men raving of visionary theories.”³⁷ Notwithstanding the approach of the British, and at risk to their lives and everything they owned, in a sober, reasoned, and dignified moment, they issued their declaration setting forth the animating vision of a new nation, but one bound up in the traditions of the past. It was by freezing that moment in time on canvas, a moment that has become not only engraved on our currency and postage stamps but etched into the collective American mind, that Trumbull’s *Declaration* achieved greatness.

Abram S. Feuerstein is employed as an Assistant United States Trustee by the Department of Justice. The mission of the United States Trustee Program is to help protect the integrity of the bankruptcy system for all its stakeholders and constituents. The views, if any, expressed in the article belong solely to the author and do not represent in any way the views of the United States Trustee, the United States Trustee Program, or the U.S. Department of Justice.



32 Cooper, p. 78; Jaffe, p. 248.

33 See e.g., Cooper, p. 78 (citing to an anonymous critic calling himself “Detector” who wrote: “It may be a very pretty picture, but is certainly no representation of the Declaration of Independence”).

34 Jaffe, p. 215.

35 Jaffe, p. 260.

36 Jaffe, p. 260. In turn, Cooper cites an observation from historian Gary Wills who believed that Randolph’s gripe had less to do with the actual number of legs and more to do with the artist’s depiction of the representatives wearing contemporary stockings and knee britches that accentuate the figures’ calves, thereby diminishing the significance of the event. Cooper, p. 81.

37 Jaffe, p. 261.

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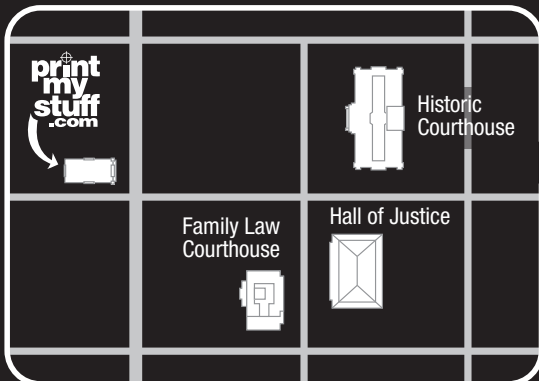
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MEDIATION IN THE CENTRAL DISTRICT

by Jennifer Cummings

Beginning in March 2020, many court proceedings held in cases pending in the United States District Court for the Central District of California began to move online. Status conferences, hearings, arraignments, sentencing, bench trials, and other events that would once have required an in-person appearance became proceedings that frequently occurred by video. While many hearings and trials are now again being held in person, the option of holding certain proceedings by video remains available, giving the court additional tools to process cases efficiently while providing access to justice in the safest way possible.

Court ordered mediation in the Central District also abruptly turned into an online-only experience in March 2020. Central District Local Rule 16-15 requires the parties in every civil case to participate in one of three alternative dispute resolution (ADR) options:

ADR Procedure No. 1 is a settlement conference before the assigned district or magistrate judge;

ADR Procedure No. 2 is a mediation with a member of the Court's Mediation Panel; and

ADR Procedure No. 3 is a mediation with a private mediator.

Most of the court's judges participate in the ADR Program under General Order No. 11-10, which presumptively limits the ADR options available to the parties to two: ADR Procedure No. 2, mediation with a panel mediator or ADR Procedure No. 3, mediation with a private mediator. In most civil cases, therefore, the parties are required to participate in some form of mediation. And every year, more of those cases are referred to the court's mediation panel than to private mediation.

The court's mediation panel consists entirely of volunteers—highly qualified and experienced attorneys and full-time mediators who have agreed to donate their time to assist the court in settling its cases. However, while the court's panel mediators have significant experience attending mediations both as advocates and as mediators, prior to March 2020 very little of that experience was online. Mediation before 2020 was largely an in-person occasion, for which at least some of the participants had to travel, across town if not across the country. Yet within days of the closing of the locations where mediations had typically been held, the court's panel mediators had begun to figure out how to keep providing pro bono mediation services by video. Suddenly, these mediators were not just

volunteering their time to mediate cases, but to become conversant in various videoconferencing options, to lead training sessions (formally or informally) for their fellow panelists, and even to provide IT support to the lawyers and litigants likewise experiencing video mediation for the first time.

Throughout this period, the pace of referrals to the court's mediation panel never decreased. Between March 2020 and June 2022, the court's panel mediators held over 1,500 mediations in Central District cases—the vast majority of which were conducted by video, most by mediators with little prior experience in mediating cases online. Now, the court has a panel of mediators who are extremely well-versed in conducting mediations by video.

So how is the ADR program in the Central District currently working? Procedurally, much like it always has. The parties in every civil case must indicate which of the available ADR options they prefer at the time of filing their Federal Rule of Civil Procedure 26(f) Report, either by including their choice of procedure in that report or by filing an available court form (the ADR-01). In or with its scheduling order, the court will then refer the case to one of the available ADR options—though it might not be the one that the parties requested, so do not count on always getting what you asked for!

If a case is ordered to ADR Procedure No. 2, the parties are directed to select a mediator from the list of available panel mediators within 21 days of the referral. As of June 2022, there were 212 panel mediators to choose from, with expertise in dozens of specialized areas of law. Profiles of these mediators are provided on the District Court's website (www.cacd.uscourts.gov/attorneys/adr/list-panel-mediators). The parties must agree to a mediator, contact the mediator to get the mediator's consent to take the case, and try to set a date for the mediation. After choosing a mediator, the parties must notify the court of the selection by filing a completed Form ADR-02.

If the parties do not stipulate to a mediator within 21 days of the referral, an automated email reminder is sent regarding the need to select a mediator. If the parties still have not stipulated to a mediator within seven days of the reminder email, and have not communicated with the ADR Program Office to request additional time to make their selection, the process of recruiting and assigning a volunteer mediator from the court's mediation panel will begin. The current practice is to assign a mediator

to a case as soon as possible even though the mediation deadline may be a year or more in the future. The parties should have the option of mediating early—and should be thinking about and planning for mediation from the beginning even if it won't take place right away.

Once a mediator has been selected, either by the parties or by the ADR Program Office, a formal assignment is made by filing a Notice of Assignment of Panel Mediator (Form ADR-11). From that point, the assigned mediator will appear on the docket as a party who receives electronic notice of everything filed in the case.

In each case a panel mediator agrees to take on, the mediator agrees to provide all preparation time and the first three hours of a mediation session on a pro bono basis. (If the parties agree to go beyond three hours, the mediator can charge for the extra time.) Once assigned, the mediator will reach out to counsel to ensure that a date has been chosen and to begin the process of convening the mediation. The mediation must be completed by the deadline set by the assigned judge, and neither the mediator nor the ADR Program Office can grant extensions of that deadline. When the mediation has been scheduled, the mediator files notice of that date.

Mediators are asked to have all individuals present at the mediation sign a confidentiality agreement. This, too,

is something that becomes more complicated when done remotely, now likely to be done in advance, in counterparts, and returned by email. After the mediation, mediators are asked to file a report with the court detailing the outcome.

Currently, most mediations in panel cases are still being conducted by video, though the mediator and the parties can agree otherwise. Courthouse space is once again available to panel mediators to reserve. The ADR Program Office hosted its first onsite, in-person mediation in more than two years in April 2022.

The efforts of the volunteer mediators of the court's mediation panel over the last two and a half years have been invaluable. With little fanfare, they reinvented the standard logistics of conducting court-ordered mediations, while continuing to provide high-quality, pro bono mediation services and complying with existing procedural rules and deadlines set by the Court. The judges, staff, lawyers, and litigants of the Central District are grateful for their work and look forward to their continuing assistance.

Jennifer (Jenna) Cummings is the Managing Attorney of the Legal Services Unit, U.S. District Court for the Central District of California, and manages the Court's ADR Program.



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JUDICIAL PROFILE: UNITED STATES BANKRUPTCY COURT HONORABLE MAGDALENA REYES BORDEAUX

by Michael Gouveia

On January 18, 2022, Magdalena Reyes Bordeaux was appointed to the United States Bankruptcy Court, Riverside Division and fills the position of retired bankruptcy judge Meredith R. Jury. She also made history by being the first Latina bankruptcy judge in the Central District of California.

What was your first job?

When I was 12 years old, I saw a job opening for a newspaper carrier position. I enthusiastically applied since there were few jobs available to me at that age. At the time, I did not realize I was the only girl who applied, but more girls applied after me. I look back now and realize it was a great opportunity to get some life skills. Since I also had to collect monthly dues, I had the opportunity to speak to people of all ages and backgrounds in my community. And I learned to speak up, to negotiate, and to persuade—valuable skills that would serve me well throughout my personal and professional life.

What did you learn from your parents?

I was raised by a loving, hardworking, and dedicated single mom who was and continues to be my greatest role model. The most important things I learned from her was to treat people with respect, to always do the right (even when it's hard), and to never give up. If something did not go her way, she always seemed to find another way to make things work. I hope to one day make her half as proud of me as I have been of her my whole life.

What does she say now with her daughter a Federal Bankruptcy Judge?

She is happy for me, but she also expects me to remember that I am here to serve the public. She has never been a person who is impressed with titles, so she expects me to do my part in making the courts accessible, efficient, fair, and just for everyone appearing before me.

What did you learn at Public Counsel?

I learned the breadth of challenges that so many of our clients face from economic hardship, language barriers, and feelings of stress and anxiety when appearing before the court. As the supervising attorney for Public Counsel's Debtor Assistance Project, I provided counsel and advice at monthly reaffirmation hearings, and I witnessed first-hand how intimidating this process could be for self-represented litigants. Walking up to the podium in a court proceeding could be a scary process for many parties, including new attorneys, and this understanding helps me make informed decisions on access to justice procedures and protocols.

I also learned the importance of being courteous, patient, and empathetic. I still remember how much it meant to my former clients that I took the time to actively listen. Many of them just wanted an opportunity to tell their story and to be heard—and I will never forget that.

Lastly, I was fortunate to work with some of the most brilliant attorneys and pro bono volunteers in the country who saw it as their duty to help make the legal system fair and just for everyone.

I see from your bio on the court's website you have also worked for bankruptcy firms. What did you learn there?

At Public Counsel, I could spend weeks on a motion because I did not have to worry about billing the client. Although there were pressures on my time, I did not have to bill my time. At a bankruptcy



Hon. Magdalena Reyes Bordeaux

firm, I had to be more mindful of time and the bottom line so I understand the economic pressures bankruptcy attorneys face and how challenging that can be, especially now.

Who influenced you as a lawyer?

I have been fortunate to have many mentors throughout my legal career. However, two bankruptcy judges who mentored me very early in my legal career were former Chief Bankruptcy Judge Maureen Tighe and former Chief Bankruptcy Judge Vincent P. Zurzolo.

I first met Judge Tighe 22 years ago when she was the U.S. Trustee for the Central District of California. Two years out of law school, I was privileged to work with her on a committee that dealt with bankruptcy petition preparer fraud in the bankruptcy courts. Soon thereafter, she was appointed

to the bankruptcy bench. Judge Tighe is an amazing person and an incredible role model to me and to so many others.

Judge Vincent Zurzolo is another person that influenced me in my legal career. When I met him, he was actively involved in access to justice issues, and I had the opportunity to work with him on many initiatives through my work at Public Counsel and on the Debtor Assistance Project Committee. He encouraged me to write articles on issues such as the reaffirmation agreement process and to apply to be a 9th Circuit Lawyer Representative. At the time, I did not know what a 9th Circuit Lawyer Representative was or what they did, but I took his advice and applied. Today, some of my closest friends and mentors were people I met through my work on the 9th Circuit Conference Executive Committee.

I am now very excited to work under the leadership of Chief Bankruptcy Judge Theodor Albert and alongside my colleagues, Mark Houle, Scott Yun, and Wayne Johnson, as well as with the Riverside Bar and Riverside Community.

What are your goals as you take to the bankruptcy bench?

To serve. I look forward to working hard every day to ensure that everyone appearing before my court is treated fairly, compassionately, and most importantly feels heard and understands my rulings.

I sense a theme here with Access to Justice and I remember seeing a picture of you being sworn in under a sign that read "Equal Justice Under the Law" at the Riverside Bankruptcy Court.

Yes, that was an incredible day. I had come to Riverside to be sworn in and the ceremony took place in the courtyard of the United States Bankruptcy Court, Riverside Division. When it came time to take the oath, a sign outside the courtyard read "Equality of Justice Under the Law."

It was amazing!

It was a reminder of the tremendous honor bestowed on me, as well as the responsibility of ensuring that I do my best every day to live up to this ideal.

Thank you Judge Reyes Bordeaux for taking the time for this interview.

Michael Gouveia is a Riverside bankruptcy lawyer who helps "Mom and Pops" deal with their debts through bankruptcy. Contact him at mgo29@att.net.



OPPOSING COUNSEL: TRACY WILKISON

by Jerry Yang

Some kids dream of growing up to become baseball players or movie stars— others dream of being the president of the United States. But for as long as she can remember, Tracy Wilkison knew she wanted to be an attorney. That is somewhat unexpected because Tracy never had anyone in her family who was an attorney — both her parents were schoolteachers, and her younger sister also became a teacher. Whatever the reason, Tracy pursued her dream, became an attorney and eventually, the United States attorney for the Central District of California, the head federal law enforcement officer for the nation's most populous district, spanning seven counties, including Riverside and San Bernardino counties.

As a federal prosecutor, Tracy has handled some of the highest stakes litigation in the Department of Justice. In 2016, Tracy headed the DOJ team that handled the litigation against Apple to unlock the San Bernardino shooter's phone. Two years later, she supervised the prosecution of the North Korean government agents' hack into Sony Pictures.

These successes took place a long ways from Queensbury, in upstate New York, where Tracy grew up. Her mother was an elementary school teacher and her father was a middle school guidance counselor. When she told her parents that she wanted to be an attorney, her father introduced her to the only attorney their family personally knew, his family law attorney. Tracy grew up in modest conditions. To help make ends meet, she took on a number of jobs during the summer and after school. She worked at McDonald's flipping burgers, as well as a lifeguard, then camp counselor, waitress — she even worked as a maid at a motel one summer cleaning rooms.

Growing up in a small town, when the time came for college, Tracy knew she wanted to go somewhere exciting, so she picked the largest school in the area, the University of Maryland. Thinking back now, Tracy thinks her worldview was pretty narrow back then as she did not even consider any schools west of the Mississippi River. But the University of Maryland did not disappoint her goals of going to a large school. When she got there, she was impressed — there were over 30,000 other students with incredible diversity, big brick buildings, and many opportunities to learn — just what she wanted.

During the summer between sophomore and junior year, Tracy found her true calling. That summer, she interned at the local prosecutor's office, the Maryland State's Attorney's Office. Although the internship consisted primarily of being stuck in a small interior office inputting data with other interns, Tracy discovered that if she roamed the halls and chitchatted with the prosecutors, they would be eager to share their experiences with her and take her to court. So she went to hearing after hearing, and realized that her real passion was to be in the courtroom and become a prosecutor. She was impressed with their dedication to achieving justice for victims and the way they understood that their actions had a very real impact on the defendants' lives and the community.



Tracy Wilkison

To make that dream come true, Tracy graduated a semester early with a bachelor's degree in history and worked as a paralegal at a law firm in Washington D.C.

In the fall of 1993, Tracy started at Harvard Law School and not surprisingly, was surrounded by brilliant classmates. She externed her first-year summer at the United States Attorney's Office in Boston. There, she was staffed with the Strikeforce, a section then devoted to fighting organized crime. She enjoyed the experience so much that she went back and did another term for her fall semester. She also joined the Harvard Defenders, a student-practice clinic that provides pro-bono representation to low-income defendants.

After law school, Tracy clerked for United States District Judge Franklin Van Antwerpen. Judge Van Antwerpen knew she had an interest in criminal law, so he let her assist in many criminal matters.

Because the United States Attorney's Offices required three years of experience at the time, Tracy joined Quinn Emmanuel, which was then starting up its white-collar practice. There, she was able to get a relatively large amount of experience as a junior associate in their new practice. Just as importantly, at a bar function, Tracy met Beverly Reid O'Connell, a former federal prosecutor who later became a United States District Court judge, and Jacquelyn Nguyen, another former federal prosecutor who is now a Ninth Circuit Court of Appeals judge. They served as Tracy's mentors and one day, they told Tracy that the United States Attorney's Office in Los Angeles was hiring. On September 13, 1999, Tracy became an Assistant United States Attorney.

For the first couple of years, Tracy was in the General Crimes section cutting her teeth on being a prosecutor. Her second trial had a profound impact on her. She tried seven defendants who smuggled aliens into the United States. Once here, they demanded more money and took the aliens hostage. When payment didn't come, they beat up the men to within an inch of their lives, gang-raped the women, poured bleach on all of them, and dumped them in the desert. Tracy took great pains to earn the victims' trust and convicted the defendants.

After a few years in the Narcotics section prosecuting large-scale drug cases, Tracy became a deputy chief in the General Crimes section, where she delighted in training new AUSAs. She then moved to the Cyber Crimes section, where she investigated and prosecuted hacking, ransomware, sextortion, and trade secret cases. She was eventually promoted to deputy chief and then chief of that section. In 2016, Tracy joined the upper management at the office and in 2021, became the United States Attorney. She left the office in late June 2022, and is now a senior managing director at FTI Consulting in Los Angeles where she advises clients regarding cybersecurity matters.

Jerry C. Yang serves as an Assistant United States Attorney. The views, if any, expressed in the article belong solely to the author and do not represent in any way the views of the United States Attorney, or the United States Department of Justice.








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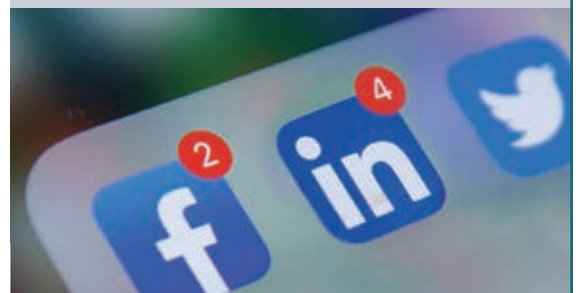
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RCBA PAST PRESIDENT: HERBERT LEROY “TOMMY” THOMPSON

by Bruce Todd

This year will mark the 60th anniversary of the passing of one of the legends of the local legal community. Herbert Leroy “H.L.” Thompson, known to most as “Tommy”, was one of the founders of Thompson & Colegate which, along with Best Best & Krieger, is one of the pioneering law firms in the Inland Empire. Thompson & Colegate (known in the community as “T&C”) celebrated its 100th anniversary back in 2015.

Thompson served as president of the Riverside County Bar Association back in 1924. Since that time, T & C has had four other members of its firm serve as RCBA presidents (George Sarau '29, James Wortz '64, James Ward '73, and Geoffrey Hopper '94).

Born in Ellisburg, PA on January 25, 1885, Thompson had the misfortune of having his father John burned to death when he was three days old. During his younger years, he worked at miscellaneous jobs including the handling of structural steel, working in the mines, washing dishes, working in a bowling alley, serving as an orderly in a hospital, and demonstrating the use of Fels Naphtha soap.

Thompson attended the University of Michigan Law School and graduated in 1911 with an LLB degree. It was about this time that he met Richard North, the son of John W. North, the latter of whom was the founder of Riverside. Based upon this meeting, Thompson decided that year to move to Riverside where he purportedly had a plan to raise chickens. Instead, he met H.L. Carnaham on his first day in Riverside. Carnaham was a prominent attorney in Riverside who would one day become Lt. Governor of California.

Thompson was hired that first day to work in Carnaham's law office. He was admitted to the California State Bar in September of 1911 and was assigned bar #1619. He eventually left the firm in 1912 to start his own office. He married Margaret Hosp of Riverside on November 4, 1913. The couple never had any children.

On January 1, 1915, Thompson was hired by District Attorney Lyman Evans to become Riverside's first deputy district attorney. In old copies of the *Riverside Daily Press*, some of Thompson's exploits as a deputy district attorney are described.

In the January 6, 1915 issue of that newspaper, it was noted that Thompson won his first case as a public prosecutor in the Corona branch of the court. He was able to obtain a conviction against W.P. Thompson (no relation), described as a “blind pigger” who was selling booze at a camp in Tin Can Canyon which was an offshoot of Temescal Canyon.

The paper further reported in its February 18, 1915 edition, that Thompson was prosecuting Charles McCormick and Halbert



Herbert L. Thompson

Stansell for the killing of Mike Dacouma on January 17, in Arlington. Apparently, alleged criminals were brought to trial much quicker in those days.

On April 21, 1915, it was reported that he had obtained a conviction against Joe Ross (aka Dan Sullivan) for picking a man's pocket in Corona on Thanksgiving Day. Meting out early old west justice, the jury took just three minutes to convict Ross.

After Thompson had worked for the DA's office for just six months, the *Riverside Daily Press* reported on June 14, 1915 that Thompson had decided to leave to become a partner in the Law Office of Craig, Sarau & Thompson. Hugh H. Craig, who had been practicing in Riverside since 1906, was later appointed to the bench in 1916, and the

firm then became Sarau & Thompson.

Thompson seems to have done many types of legal work during his tenure with the firm. For example, on September 30, 1921, the *Riverside Daily Press* reported that he was a defending a company which was being sued by two women who were injured when a bus struck their vehicle.

During that same year, it was also reported that Thompson had attended the 12th Annual Meeting of the California State Bar Association which was held on October 20-22 at the Mission Inn.

Sarau & Thompson lasted for thirty years. During that time, a branch office was opened in 1936 with Roy Colegate in charge. Colegate was eventually made a partner in 1943 and the firm became Sarau, Thompson & Colegate. George Sarau ultimately departed from the firm in 1945 and it then became Thompson & Colegate on July 1, 1945.

This lawyer who was known by most people as Tommy, earned numerous accolades during his prestigious legal career. He served on the Board of Governors for the California State Bar in 1939. In 1951, he became a Fellow in the prestigious American College of Trial Lawyers. During his later years in Riverside, he and his wife Margaret lived in a scenic home overlooking the Victoria Country Club. He enjoyed golf, fishing, and playing cards.

Tommy passed away on November 8, 1962. When they learned of his demise, the judges of Riverside County Court signed an order which was entered into the minutes of open court on that date, and expressed their feelings of great loss which they had suffered with his passing. It was noted that they had lost “an outstanding citizen, an able lawyer and a good friend”. The minutes were ordered to be sent to his wife.

Bruce Todd is a member of the RCBA History Committee, a former member of the RCBA Publications Committee, and is now happily enjoying the life of retirement.



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MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective July 30, 2022.

Aaron Agramon – Law Student, Riverside

Elsa M. Avila – Solo Practitioner, Los Angeles

David M. Canty – Law Offices of David Canty, Rancho Cucamonga

Isa Crystal – Riverside County Dept. of Child Support Services, Indio

Cory A. DeLellis – Law Offices of Cory A. DeLellis, San Diego

David Ibarra – Law Student, Yucaipa

Allen M. Johncox – Moore Family Law Group, Corona

Sandra A. Lattouf – Cardenas Markets LLC, Ontario

Xingshuo Liu – DLA Piper LLP (U.S.), Los Angeles

Michael J. Mermelstein – FEM Law Group, Huntington Beach

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