

# RIVERSIDE LAWYER

January 2023 • Volume 73 Number 1

MAGAZINE

## IN THIS ISSUE

**Veterans Treatment Courts and Military Sexual Trauma:  
What We Can Do For Victims**

**Mental Health and Criminal Law: Ever Changing, Forever Evolving**

**Keeping An Open Mind About CARE Court**

**More Than Evidence: From a Volunteer Working in Public Defense**

**Safeguarding Against the Civil Death Penalty**

**The How and Why of Criminal Defense Investigations**

**Opposing Counsel: Allan M. Fong  
and His Road to Public Defense**

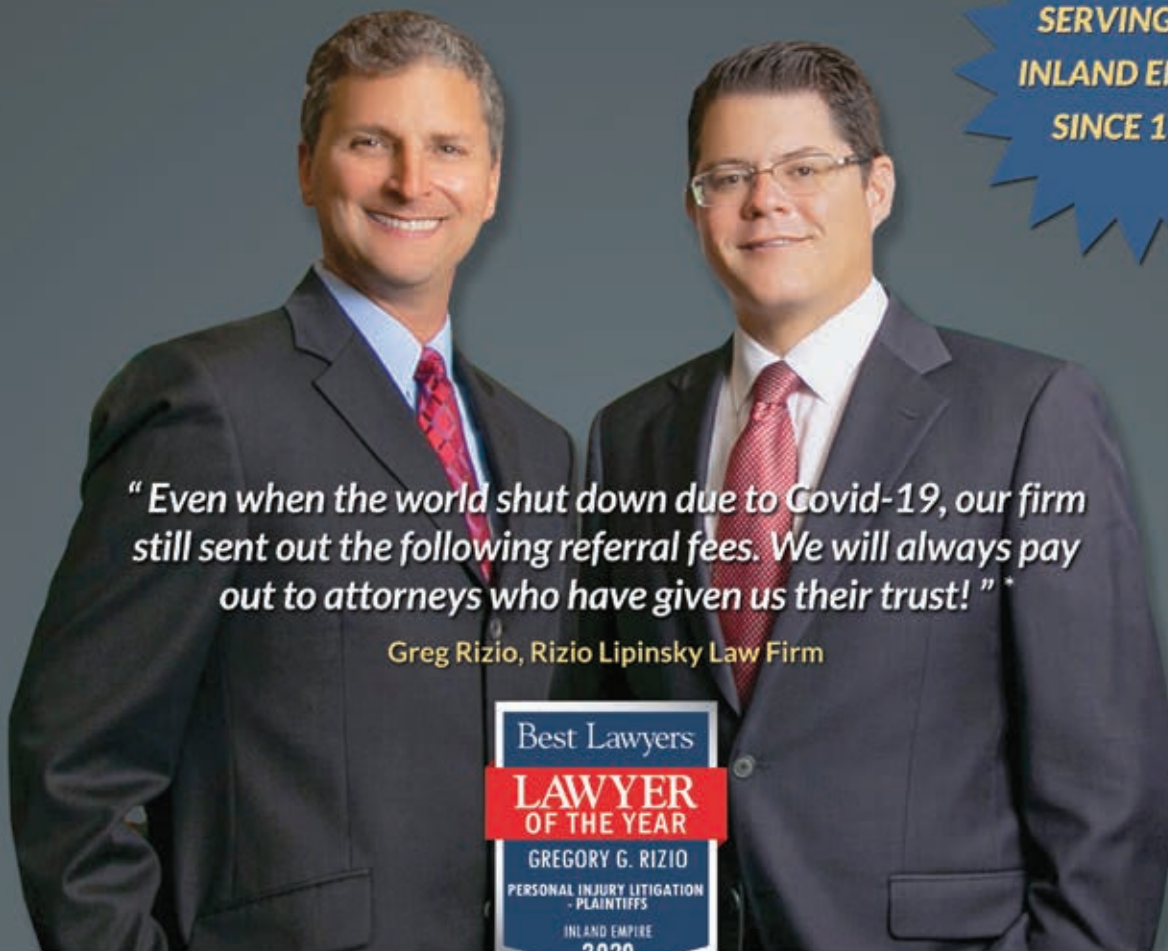


The Official Publication of the Riverside County Bar Association



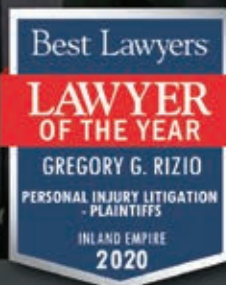
**RIZIO LIPINSKY**  
PERSONAL INJURY & EMPLOYMENT LAWYERS

**SERVING THE  
INLAND EMPIRE  
SINCE 1995**



*“Even when the world shut down due to Covid-19, our firm still sent out the following referral fees. We will always pay out to attorneys who have given us their trust!” \**

Greg Rizio, Rizio Lipinsky Law Firm



**ACTUAL REFERRAL AMOUNTS PAID DURING COVID-19:\*\***

**\$246,667 PAID      \$241,548 PAID**

**\$65,000 PAID      \$56,250 PAID**

**\$41,667 PAID**

**888.292.8888**

WITH OFFICES IN  
SAN BERNARDINO, RIVERSIDE, AND ORANGE COUNTY

\*All referrals consistent with California State Bar Rules of Professional Conduct.  
\*\*These results do not constitute a guarantee, warranty, or prediction regarding the outcome of future cases.

## Publications Committee

Sophia Choi  
Melissa Cushman  
Megan Demshki  
DW Duke  
Abram Feuerstein  
Stefanie Field  
Allan Fong  
Alexandra Fong  
Betty Fracisco  
Andrew Gilliland  
Amy Guldner

Boyd Jensen  
Megan Kilmer  
Robyn Lewis  
Juanita Mantz  
Charlene Nelson  
Wade Pyun  
David Rivera  
Nesa Targhibi  
Gabriel White  
Lisa Yang

**Editor** ..... Jacqueline Carey-Wilson  
**Copy Editor** ..... Juanita Mantz  
**Design and Production** ..... PrintMyStuff.com (PIP Riverside)  
**Cover Design** .... PrintMyStuff.com, Shutterstock.com, AdrianoK

## Officers of the Bar Association

**President**  
Lori Myers  
(949) 300-3596  
loriamyers@me.com

**President-Elect**  
Kelly Moran  
(951) 955-6300  
kmoran@rivco.org

**Vice President**  
Mark A. Easter  
(951) 686-1450  
Mark.Easter@bbkllaw.com

**Chief Financial Officer**  
Megan G. Demshki  
(951) 534-4006  
megan@aitkenlaw.com

**Secretary**  
Elisabeth A. Lord  
(951) 338-5344  
elisabeth@lordfamilylaw.com

**Past President**  
Neil Okazaki  
(951) 739-4987  
neil.okazaki@coronaca.com

### Directors-at-Large

Erica Alfaro  
(951) 656-8313  
erialfaro@gmail.com

Heather Green  
(951) 682-5110  
hgreen@blumenthallawoffices.com

Goushia Farook  
(951) 684-9000  
goushia@brattonraza.com

Chris Johnson  
(951) 695-8700  
cjohnson@rhllaw.com

### Executive Director

Charlene Nelson  
(951) 682-1015  
charlene@riversidecountybar.com

## Officers of the Barristers Association

**President**  
Lauren Vogt  
(951) 781-6500  
lvogt@riziolawfirm.com

**Treasurer**  
Kevin Collins

**President-Elect**  
David Rivera

**Members-at-Large**  
Alejandro Barraza  
Ankit Bhakta  
Summer DeVore  
Sandra Lattouf  
Sharon Ramirez

**Secretary**  
Priscilla George

**Past President**  
Michael Ortiz

Riverside County Bar Association  
4129 Main Street, Suite 100  
Riverside, California 92501

Telephone  
951-682-1015

Facsimile  
951-682-0106

Internet  
www.riversidecountybar.com

E-mail  
rcba@riversidecountybar.com

# RIVERSIDE LAWYER

MAGAZINE

## C O N T E N T S

### Columns:

3..... **President's Message** by Lori Myers

### COVER STORIES:

5..... **Veterans Treatment Courts and Military Sexual Trauma: What We Can Do For Victims**  
by Judge Mark Johnson

7..... **Mental Health and Criminal Law: Ever Changing, Forever Evolving**  
by Alejandro Barraza

11..... **Keeping An Open Mind About CARE Court**  
by Monica Nguyen

13..... **More Than Evidence: From a Volunteer Working in Public Defense**  
by Lauren Bosserman

17..... **Safeguarding Against the Civil Death Penalty**  
by Andrea J. Garcia

19..... **The How and Why of Criminal Defense Investigations**  
by Doug Mazzacua

### Features:

14..... **Past, Present, Future: How The Law Offices of Justin H. King are Keeping the King Family's Nearly 100-Year-Old Legal Legacy Alive in the Inland Empire**  
by George Cohaff

20..... **In Memoriam: Brian Boles**  
by Juanita E. Mantz

22..... **In Memoriam: Don Bartell**  
by Lara Gressley

24..... **Opposing Counsel: Allan M. Fong and His Road to Public Defense**  
by Juanita E. Mantz

26..... **Judicial Profile: Honorable Mona Nemat Brings to the Bench Perseverance, Resilience, and a Dedication to Public Service**  
by Laura Crane

### Press Releases:

12..... **Heiting and Irwin Associate Jean-Simon Serrano Named CAOIE President**

### Departments:

Calendar ..... 2  
Membership ..... 28

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 6<sup>th</sup> 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

## January

### 9 Civil Litigation Roundtable with Hon. Craig Riemer

Noon - Zoom - MCLE

### 10 Civil Litigation Section

Noon - Zoom

Speaker: Mike Wakshull

Topic: "Implicit Bias"

MCLE – 1 hour Implicit Bias

### 11 Criminal Law Section Meeting

Noon - Zoom

Speaker: Andrew Stein, Esq. &

Joseph A. Markus, Esq.

Topic: "Litigating SB1437/1172.6 cases - Past, Present & Future"

MCLE

### 13 MCLE Marathon

RCBA Building, Gabbert Gallery

Check-in 9:30 a.m.

10:00 a.m. - 12:00 p.m. (Legal Ethics, 2 hours),

Speaker: Art Barsegyan

12:20 p.m. - 1:20 p.m. (Competence Issues, 1 hr),

Speakers: Jim Heiting and Mike Razo

1:30 p.m. - 2:30 p.m. (Elimination of Bias, 1 hr),

Speaker: Brian Unitt

For more info please see [riversidecountybar.com](http://riversidecountybar.com)

### 17 Family Law Section

Noon - Gabbert Gallery, RCBA Building

Speaker & Topic - TBA

MCLE

### 18 Estate Planning, Probate & Elder Law Section

Noon - Gabbert Gallery, RCBA Building

Topic: "The Public Administrator Just Got OSC'd Into Your Probate Matter... Now What?"

Speakers: Natasha Rangel, Assistant Public

Administrator and Jeremiah Raxter, Counsel for Public Administrator

MCLE

### 20 General Membership Meeting

Noon, RCBA Building, Gabbert Gallery

Speaker: UCR Professor Clifford Trafzer

Title: A revisit of "Tell them Willy Boy is Here"

Please see page 24 for more information.

### 26 Mock Trial – Round 1

Hall of Justice, Southwest Courthouse,

Indio Courthouse

### 31 Mock Trial – Round 2

Hall of Justice

## EVENTS SUBJECT TO CHANGE.

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





## President's Message

by Lori Myers

As we embark on a new year, I know many of us are setting goals that we want to accomplish in 2023. A solid piece of advice I received years ago and continue to adhere to, is “follow your passion.” I strongly agree with this advice. When you incorporate things in your life that you are passionate about you create an environment that increases your ability to live feeling more fulfilled and sometimes give even more of yourself because you actually enjoy what you are doing and see the rewards are worth the active daily grind of work and effort you put into it.

After 18 years of practicing law, I couldn't imagine doing this kind of work if I wasn't passionate about it. I have met many lawyers that say they could never practice in criminal defense and yet, I find myself making those same statements about people who practice in other areas of law that I am not even remotely interested in. I have found that whenever you're looking for a lawyer to help you, no matter what area of law – if you find a lawyer that is passionate about their area of practice, you are probably on the right track by having that lawyer in your corner.

As your president, I wanted to take this opportunity to touch on the area of law that I have dedicated the last 18 years to — criminal defense, primarily in Riverside County.

In 2005, I started in this area of the law at the Law Offices of the Riverside County Public Defender and eventually went into private practice and working on the conflicts panel since 2007. I have been passionate about being a defense attorney since day one and still have that same level of passion about the duty, responsibility, and role of a criminal defense lawyer within the criminal justice system today.

Early in my career, I learned this false rumor that defendants in custody would say about defense attorneys, which was that they thought that being a criminal defense attorney was training for becoming a deputy district attorney. It was interesting to me how many

clients thought defense attorneys were forced to work on this side and that it wasn't a choice. So, now I make a point to tell my clients that I choose to be on the side of defense.

When I meet my clients, I am generally meeting them during one of the worst periods of their life. Some of my clients get arrested and go through the entire system all the way to trial, being confined to the jail. Limited on when they can see and speak with their loved ones, usually eating unpleasant food, housed in a cage, and learning that the rules of survival in a jail are different from the rules of survival outside of jail. Meanwhile, having to educate themselves on the complexities of the criminal justice system and how to navigate their case through it. Some of the questions they will be confronted with are when to accept an offer to settle, when to make a counter offer to settle, when to reject an offer to settle, and what are the risks of going to trial. Then there is the ultimate decision when to decide to go to trial — there is no turning back and your client has made the decision to put their future in the hands of a judge and jury and of course, you — the lawyer.

Clients are people and as such, people experience fear, anger, sadness, and loneliness while they are in jail and have to find a way to deal with those emotions while they work with their lawyer and prepare their case.

The primary goal of the criminal justice system is to ensure public safety by reducing crime, punishing offenders, and upholding the rule of law. It seeks to deter crime, rehabilitate offenders, hopefully and when possible protect innocent people from becoming victims of crime.

It also seeks to provide justice and fairness to victims, their families, and the community. The main points of the criminal justice system are to reduce crime, ensure public safety, and support victims while working out appropriate punishments to offenders and providing them with the necessary rehabilitation and services, when possible.

There are so many factors to consider when you are guiding your client through the criminal justice system — staying up to date with the laws that are also changing each year. Your relationships and communication with opposing counsel, usually the deputy district attorneys and sometimes the attorney general's office. You learn that the entire process can be overwhelming for the lawyers, judges, and most certainly for the defendants and victims. You also learn that the families of the defendants and victims go through the process as well — they want to stay informed, understand what is going on, and support their loved ones no matter what side they are on.

I do my best not to take for granted the trust my client places in me, my duty to work to be a better lawyer each and every year, my obligation to stay informed as to the current laws and changes in the laws, and how blessed I am to have created a life helping others get through some of the worst periods in their life with a little grace and dignity. If punishment is necessary, it is also important to help my clients find that level of acceptance. More importantly, if my clients are innocent – then I need to be prepared to be the best advocate in that courtroom in trial, so my client can obtain a not guilty verdict they are entitled to receive. Thankfully, after almost two decades of being a trial attorney, I have also had the pleasure to watch the residents/jurors of Riverside County take time out of their lives to sit as jurors and return verdicts of not guilty when the facts warrant it. Many people have regained their freedom because their lawyers and the jurors fulfilled their duties in the trenches of the courtroom.

I hope my colleagues have found their area of law that brings out the passion inside of them. It only makes you a better lawyer, leader, and someone your clients can count on in their time of need no matter what side you are on.

*Lori Myers is a local private criminal defense attorney and founder of the Warrior Attorney Academy©.*





*Our family has been providing justice to Inland Empire residents for more than 50 years! It's in our DNA.*

## REFERRAL TO A TRUSTED INLAND EMPIRE INJURY FIRM IS JUST A CALL AWAY

We would be honored to serve you and your client. We are known for obtaining great results, as well as for our unmatched client care and satisfaction.

What's more, we painstakingly track all referrals to ensure prompt and reliable payments to all referring attorneys.\*

CONTACT US AT:

**(909) 297-5001**

[www.justinkinglaw.com](http://www.justinkinglaw.com)

### RECENT REFERRAL FEE PAYMENTS:\*

**\$270,562.70**  
paid Jan 2021

**\$100,000.00**  
paid Jun 2022

**\$30,000.00**  
paid Jul 2020

**\$29,135.50**  
paid Oct 2021

**\$26,400.00**  
paid Dec 2021



8301 Utica Ave, Suite 101  
Rancho Cucamonga, CA 91730

\*All referrals consistent with California State Bar Rules of Professional Conduct. These results do not constitute a guarantee, warranty or prediction regarding the outcome of future cases.

# VETERANS TREATMENT COURTS AND MILITARY SEXUAL TRAUMA: WHAT WE CAN DO FOR VICTIMS

by Judge Mark Johnson

Sexual violence is pervasive in our active duty military. Since 2008, the Department of Defense (DoD) has prepared its *Annual Report on Sexual Assault in the Military*.

In Fiscal Year 2016, DoD received 6,172 reports of sexual assault. Yet according to the 2016 *Annual Report*, only 40% of victims were reporting their assaults. DoD estimated the actual number that year at 14,900.

While the military, around that time, was claiming success in the fight, *reported* sexual assaults rose almost 10% in 2017, to 6,796. Include the 60% who do not report and over 16,000 service men and women were victims.

Reported sexual assaults rose another 15% in 2018 to 7,623. They rose again in 2019 to 7,825. After decreasing by nine cases in 2020, the number of reports increased to a staggering 8,866 in 2021. This was documented in the *Annual Report* for FY2021, released September 1, 2022.

I want to believe that the increases reflect a system that is becoming more supportive of victims, that more servicemembers are reporting because they feel secure coming forward. But in the 2021 *Annual Report*, the Pentagon revised its earlier estimate of how many victims report, stating that the true number is 20%. Applying this new percentage, DoD concluded that roughly 35,875 active-duty service members were forced into unwanted sexual contact in FY2021. Approximately 19,250 were female and 16,600 were male. An estimated 8.4% of all female soldiers and 1.5% of male soldiers reported they were the victims of such incidents.

I served 28 years in the active and reserve Army, retiring as a Colonel in 2013. For eight years, I have presided over the Riverside County Veterans Treatment Court. Judge Randall Stamen now serves in the position. Serving in this role allows us to see firsthand the damage caused by military sexual trauma.

I was the judge in the case of “Carla” — not her real name — who stood before me charged with felony thefts. Carla was an Army veteran. Inspired by her father, she enlisted at 18. “My dad was a Vietnam vet and believed in

service,” she said. “He came to my graduation from basic training. He was so proud of me. I was so proud to wear the uniform.”

She was 19 when a staff sergeant in her military police unit raped her. She reported it to her commander, who believed his noncommissioned officer when he claimed the sex was consensual. The sergeant was not prosecuted.

Ostracized, Carla began drinking heavily to relieve her depression. Her job performance fell. Eight months later, she was discharged from the Army for unsatisfactory performance. Carla’s case is not unique. A third of victims who come forward are discharged early; on average, seven months after they report a sexual assault.

Standing before me in court, Carla looked tired and beaten. If I hadn’t known she was 35, I would have guessed her to be 50. Bitter from her military experience and suffering from PTSD, she had turned to methamphetamine, a common form of self-medication. I placed her on probation, where she was treated for drug abuse, depression, and PTSD.

Our military exists for one reason only: to fight and win the nation’s wars. Because of the importance of maintaining discipline, military commanders have incredibly broad power in administering discipline. Commanders make the decision whether to prosecute sexual violence.

There is a misconception that leaders like Carla’s do not care about sexual assault. The overwhelming majority actually *do* support prosecution. Just not against one of theirs. Members of a military unit share dangers. They become close.

So, who does the commander believe in a credibility contest where there is no physical evidence supporting the allegation? A 19-year-old Private assigned to his unit for a month? Or the 30-year-old sergeant who guarded the commander’s flank in a war zone?

There is a built-in conflict of interest in almost every case of sexual assault in the military.

Our state courts cannot fix the active military. The answer to this scourge lies with Congress and the Department of Defense. For years, New York Senator Kirsten Gillibrand has championed the *Military Justice Improvement Act*. The Act would attack military sexual violence by removing prosecution authority over sexual assault cases from commanders. Her efforts were rewarded with the release of the FY2023 *National Defense Authorization Act* (NDAA) on December 7, 2022. The NDAA stripped commanders of all remaining judicial functions and prosecutorial duties for covered offenses, including sexual assault. Prosecutorial authority is given to military prosecutors outside the chain of command.

What we can treat in our Veterans Treatment Court are mental health conditions resulting from Military Sexual Trauma (MST).

MST refers to sexual assault or sexual harassment that occurs during military service. It is not a mental health diagnosis. What we treat in court are the conditions resulting from MST, such as PTSD, depression, and substance abuse. If you plan on working with veterans, know going in that you will deal with a great many veterans with mental health and addiction problems resulting from MST.

We provide a supportive environment where MST victims are believed. We do not consider whether there was a military prosecution or an allegation that was found to be true. I agree with Senator Gillibrand. The military has always been ill-equipped to provide justice in cases of sexual assault.

The last time I talked to Carla, she was 18 months sober. She was doing much better and had a year of sobriety. She laughed and smiled, but she always seemed sad.

In 1986, I defended a soldier charged with rape at a court-martial. At sentencing, the prosecutor said something I never forgot: "There is a reason why the maximum punishment for rape is life, far more severe than for other crimes of violence. It is because rape destroys a woman's soul." He was right. It destroys men's, too. The best we can do in Riverside County is our best to heal the damage.

*Honorable Mark Johnson is a judge on the California Superior Court in Riverside County. He presided over the Riverside County Veterans Court for five years, supervising the recovery of combat veterans suffering from post-traumatic stress disorder and other mental health issues. He is a retired colonel of the United States Army Reserve, an Iraq War veteran, and a graduate of the United States Army War College.*





# CAMS

CALIFORNIA ARBITRATION & MEDIATION SERVICES

PREPARATION · PERSPECTIVE · PATIENCE · PERSISTENCE

## (951) 226-1776

PREMIUM ADR SERVICE



Don Cripe



Sohella S. Azizi



Susan Nauss Exon, LL.M.



Charles (Chas) Schoemaker



Delilah Knox-Rios, CFLS



Thomas C. Watts, III, LL.M.



Luis E. Lopez



# MENTAL HEALTH AND CRIMINAL LAW: EVER CHANGING, FOREVER EVOLVING

by Alejandro Barraza

Many of us wake up every day aspiring to make a positive, significant, or life-altering difference in someone's life. California Penal Code section 1001.36, Mental Health Diversion, reminds every one of us who touches the criminal justice system, including the District Attorney's Office and Defense Bar, that we should not aspire and instead understand it is our job to be that difference.

Mental Health Diversion recognizes that some individuals fall outside the criminal legal framework when it is determined that the alleged misconduct was the result of a legitimate mental health issue rather than malicious intent to commit a crime. Effective January 1, 2019, it provided that the court may, after considering the positions of the defense and prosecution, grant pretrial diversion to a defendant charged with certain felony or misdemeanor charges if the defendant met the enumerated criteria. Unfortunately, this impactful law has been severely underutilized, and it has struggled to meet its goal of increasing diversion of individuals with mental disorders, mitigate trans-institutionalization, protect the public, and reunite families. Fortunately, effective next month, our California legislature has changed the eligibility criteria California Penal Code section 1001.36 in such a way that we can meet these very attainable goals.

## The Past: Fear, Misunderstanding, Shame, and a Failure to Address by Everyone Involved

Mental health is misunderstood in our community, households, and criminal justice system. There is a clear stigma that is perpetuated with movies depicting people with mental health disorders as dangerous, bad, and unpredictable. These films echo superstitions and stigmas, deep-rooted in varied cultures and beliefs, that mental illness is otherworldly. As an attorney who has spoken to hundreds of clients with mental health diagnoses, every single time I hear a client describe their conduct and, with a tone of shame, fear, and misunderstanding, end with "I am not crazy," it resoundingly stings. Two feet away from me may be a client too young to fully understand what is happening or old enough to have spent decades avoiding the conversation about their mental health. They may come from a violent home or an environment that is not treatment conducive, or may be feeling symptoms during our conversations. I once had a client with a diagnosis of PTSD, now deceased, who could not stop hearing the rustling of leaves. This cli-

ent was a victim of a violent assault in his front lawn, and, as he sat two feet away from me, was actively managing his symptoms.

Most people with a mental disorder do not engage in serious criminal behavior and are more likely to be victims of violence than perpetrators. The strongest association between mental disorder and violent conduct is self-harm, mainly by gun.<sup>1</sup> Yet, when this vulnerable group of people touches our criminal justice system, tragic outcomes follow. First, people with serious mental illness cycle repeatedly through our courts and correctional facilities. According to Stanford Justice Advocacy Project's 2019 study, more than 30% of the state's prison and 23% of its jail populations have a mental illness.<sup>2</sup> This study found that the number of prisoners with mental illness in California continues to climb and is expected to grow, that the severity of psychiatric symptoms among California prisoners continues to climb, and that defendants with mental illness receive longer sentences.

Second, trans-institutionalization, whereby hospitals are replaced with local jail facilities, as the location of first resort for holding mentally ill people, is on the rise. Between 2009 and 2016, the Los Angeles Sheriff's Department (LASD) reported seeing a 60% increase in its mentally ill population.<sup>3</sup> Incarcerating the mentally ill creates a batch of problems. Jails are often not set up to provide effective mental health treatment, it is not the best treatment option for the mentally ill, it costs more, and they may need to be housed alone, which, in turn, leads to bed shortages.

Finally, mentally ill people are mistreated pre- and post-incarceration mistreatment. People living with mental illness are 16 times more likely to be killed while interacting with police than those who don't have a history of mental illness. In 2020, former Vice President Joe Biden, at a town hall meeting during his 2020 presidential campaign, stated

- 1 Jeffrey W. Swanson, "Mental Illness and Reduction of Gun Violence and Suicide: Bring Epidemiologic Research to Policy." (2015): "Data from the CDC's National Violent Death Reporting System showed that substantial proportion of suicide victims had identified mental health problems (21% to 44%)."
- 2 Stanford Justice Advocacy Project, *Confronting California's Continuing Prison Crisis: The Prevalence And Severity Of Mental Illness Among California Prisoners On The Rise* <<https://law.stanford.edu/wp-content/uploads/2017/05/Stanford-Report-FINAL.pdf>>
- 3 Pop. 17,049: Welcome to America's Largest Jail. September 2016. (<http://www.cnn.com/2016/09/22/us/lisa-ling-this-is-life-lacounty-jail-by-the-numbers/index.html>).

that it was “really, really important” that psychologists and social workers join police on calls involving mentally ill people “to de-escalate the circumstance, to deal with talking them down.”<sup>4</sup> Also in 2020, the Los Angeles City Council voted to create an unarmed crisis response team to handle nonviolent calls, including those prompted by mental health, substance abuse and suicide threats.<sup>5</sup> Solutions like these help to avert a downward spiral: pleading guilty to a criminal offense often affects a mentally ill person’s prospects for future employment and housing. With no housing or employment, we are left a poor and homeless symptomatic person who may return to criminal justice system with a citation for theft, assault, or worse.

## Today: A Response, Penal Code Section 1001.36 Mental Health Diversion

In 2019, the California Legislature tackled this complex problem with an ever-expanding list of moving parts by enacting Penal Code section 1001.36, Mental Health Diversion. Mental Health Diversion allows criminal defendants with a mental health disorder to receive treatment without going to jail or prison. Mental Health Diversion attempts to meet this goal by increasing diversion of individuals with mental disorders to mitigate the individuals’ entry and reentry into the criminal justice system, while protecting public safety, allowing local discretion and flexibility for counties in the development and implementation of diversion for individuals with mental disorders across a continuum of care settings; and, providing diversion that meets the unique mental health treatment and support needs of individuals with mental disorders. (Pen. Code § 1001.35.)

On January 1, 2020, the Committee of the Revision of the Penal Code (“Committee”) was established within the Law Review Commission to study the Penal Code, including Mental Health Diversion, and recommend statutory reforms. In December of 2021, the Committee released its second annual report with seven unanimous recommendations, all of which build on research and testimony from expert witnesses who addressed the Committee.<sup>6</sup> One of the Committee’s recommendations was to strengthen Mental Health Diversion. Specifically, the Committee recommended that the law be changed to simplify the procedural process for obtaining diversion by presuming that a defendant’s diagnosed “mental disorder” has a connection to their offense. Citing a recent study that analyzed the Los Angeles County jail mental health population to identify

4 <https://www.presidency.ucsb.edu/documents/remarks-town-hall-meeting-with-george-stephanopoulos-abc-news-the-national-constitution>

5 <https://www.cbsnews.com/losangeles/news/la-city-council-to-vote-wednesday-on-using-unarmed-crisis-teams-for-nonviolent-911-calls/>

6 *Annual Report and Recommendations 2021*, Committee on Revision of the Penal Code <[http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2021.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf)> [as of Jun. 23, 2022]

those who would be eligible for diversion based on legal and clinical factors, the Committee argued that Mental Health Diversion could be used much more frequently. The study found that an estimated 60.8% of the jail mental health population (about 3,368) would be appropriate candidates for diversion, and 7.5% (414) would be potentially appropriate candidates for diversion.<sup>7</sup> Yet, only a few hundred people were using the law.<sup>8</sup> Further, the bill’s sponsor, American Civil Liberties Union, explained that the substantial underutilization was in part because of its stringent eligibility requirements that fail to mirror other diversion statutes, including California Veteran and Regional Center diversion laws.

## Tomorrow: Modified Section 1001.36 Beginning January of 2023

Senate Bill 1223 changes the eligibility requirements for a defendant to be considered for mental health diversion by removing the requirement that the court make a determination that the defendant suffers from a mental disorder and instead requires that the defendant have been diagnosed with a mental disorder within the past five years. This bill would also create a rebuttable presumption that the defendant’s mental disorder was a significant factor in the commission of the offense unless there is clear and convincing evidence that it was not. This bill seeks to separate out the current eligibility factors based on the defendant’s mental disorder from the factors the court shall consider when determining whether the defendant is suitable for diversion – i.e. the defendant’s symptoms of the mental disorder would respond to mental health treatment and the defendant will not pose an unreasonable risk to public safety if treated in the community. In making a determination on the suitability factors, the bill retains the court’s discretion to grant or deny mental health diversion to a person who is otherwise eligible. The bill also states that mental health diversion for misdemeanors shall be no longer than one year.

Thank you for reading. Mental Health Diversion or any other diversion or treatment program in Riverside County would not be possible without the absolutely amazing Riverside University Health Systems Behavioral Health and their entire team. We are extremely fortunate to have them, they have helped save many lives, provided a brighter future for our county, and set an extremely high standard.

*Alejandro Barraza, Esq., is the founder and managing partner at Barraza Law, APC, and the 2022-23 president of the Asian Pacific American Lawyers of the Inland Empire (APALIE).*



7 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8383839/>

8 [http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2021.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2021.pdf)



# WHAT'S YOUR NEW YEAR'S RESOLUTION?

Still not sure what your 2023 resolution should be? How about improving your legal career by staying up to date with the Inland Empire's only local legal news source – Follow Our Courts? By subscribing for free, you get complete access to unbiased news on local cases, commentary, legislation and courthouse happenings that affect your work every day, making you more prepared for anything your clients or opposing counsel throw at you.

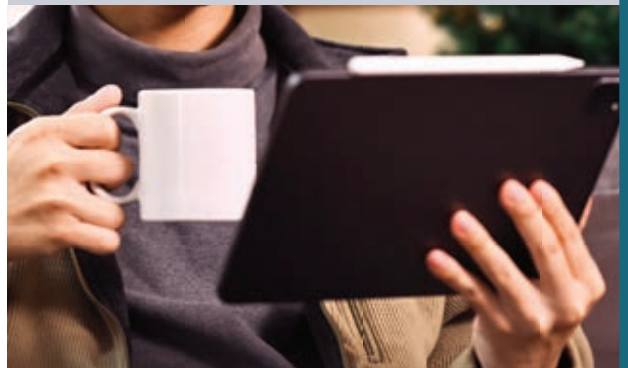
## Ring in the new year with Follow Our Courts

Start 2023 off right by positioning yourself for success. Once subscribed, you can access our searchable database of:

- Case coverage
- Industry news
- Legislation
- Features

Search our database of more than 300 judges for recent and appellate rulings as you prepare for trial.

We welcome letters to the editor and commentary submissions from professionals across the Inland Empire. Email Executive Editor Toni Momberger at [tcm@followourcourts.com](mailto:tcm@followourcourts.com) to submit your commentary today.



To receive updates from Follow Our Courts as soon as they're available, join the discussion on Facebook, LinkedIn and Twitter today!



[FollowOurCourts.com](http://FollowOurCourts.com)

**FOLLOWOUR  
COURTS**

This free resource for all Inland Empire attorneys is brought to you by McCune Law Group, McCune Wright Arevalo Vercoski Weck Brandt, APC.



# California Desert Trial Academy College of Law

## Top Ten Reasons to Attend CDTA College of Law

1. **Our Distance Learning Option** allows you to obtain your J.D. while completing most of your studies from the convenience of home. "Attend" CDTA in real time, enjoy 24/7 access to all classes online and solidify the week's learning in person with our Saturday writing classes.
2. **LexisNexis is included in your tuition.** Learn how to research and apply case authority with the same tools you will use in your law practice.
3. **ExamSoft is included in your tuition.** All practice, midterm and final exams are given on the same software program the State Bar uses for your bar exams. Repeated exposure to ExamSoft means you will tackle the bar with confidence!
4. **AdaptiBar is included in your tuition.** Practice thousands of actual bar multiple choice questions on the premier MBE program designed to prepare you to conquer 50% of the bar exam.
5. **Fleming's Fundamentals of Law** course reviews *are included in your tuition.* Substantive video reviews and outlines condense every bar tested subject into a straightforward and understandable format you will find invaluable as you prepare for exams.
6. **Snacks and Drinks** are provided at all CDTA classes and events at no charge to you. Never underestimate the power of a little sustenance to get you through a long day!
7. **Saturday Enrichment Program.** Legal essay writing is unlike any other form of writing. Practicing essays and MBE questions under simulated exam conditions means you walk into the bar exam with the confidence you need to pass.
8. **Student Support** is invaluable to your success. Our students have found that together they can accomplish what might be impossible alone. You will thrive as you establish lifelong bonds with your classmates.
9. **Weekly "Barrister" Luncheons** are provided by CDTA. This allows students, attorneys and judicial officers the opportunity to network and connect while enjoying a meal during the Saturday Classes noon break.
10. **We Commit to Keeping You in School!** It often feels as if law school is an exercise in exclusion, not inclusion. Not at CDTA. We will help you overcome any obstacle.

And...**all of your Casebooks** are included with your tuition!!!

**"Educating, Training and Developing Extraordinary Legal Advocates"**

California Desert Trial Academy, College of Law

45-290 Fargo Street • Indio, CA 92201 • CDTALaw.com • (760) 342-0900

**Classes commence the first Tuesday after Labor Day**

**Apply Now!**

"The method of instruction at this law school for the Juris Doctor (J.D.) degree program is principally in physical classroom facilities."

"Students enrolled in the J.D. Degree program at this law school who successfully complete the first year of law study must pass the First-Year Law Students' Examination required by business and Professions Code Sec. 6060(h) and Rule VIII of the Rules Regulating Admission to Practice Law in California as part of the requirements to qualify to take the California Bar Examination. A student who passes the First-Year Law Students' Examination within three (3) administrations of the examination after first becoming eligible to take it will receive credit for all legal studies completed to the time the examination is passed. A student who does not pass the examination within three (3) administrations of the examination after first becoming eligible to take it must be promptly disqualified from the law school's J.D. Degree program. If the dismissed student subsequently passes the examination, the student is eligible for re-enrollment in this law school's J.D. Degree program but will receive credit for only one year of legal study."

"Study at, or graduation from, this law school may not qualify a student to take the bar examination or to satisfy the requirements for admission to practice in jurisdictions other than California. A student intending to seek admission to practice law in a jurisdiction other than California should contact the admitting authority in that jurisdiction for information regarding the legal education requirements in that jurisdiction for admission to the practice of law."

# KEEPING AN OPEN MIND ABOUT CARE COURT

by *Monica Nguyen*

When I was asked to write this article for the magazine, a particular client came to mind. I once represented a young man in criminal court who was suffering from schizophrenia. He didn't understand his own disease because it was so new to him. He left his parents' home in a psychotic state and began living on the streets. He was charged with misdemeanor offenses connected to his mental illness and homelessness.

My client appeared in court one day looking disheveled and disoriented. A colleague of mine told me that she saw my client walking dangerously close to cars in the street on her way to court that morning. She told me that she watched him in terror thinking that he was going to be hit by a passing car.

I shared her fear. My client didn't seem capable of caring for himself. I asked a courtroom deputy to speak with my client to determine whether he met criteria for a three-day commitment to a local psychiatric hospital. The deputy did so and decided that my client did not meet those criteria. I asked him why and he told me that my client knew how to take care of himself.

After my client's cases were called, he wandered off back into the streets. Shortly after, my client was arrested on a serious felony related to him fighting with another homeless man. He was found incompetent to proceed with his cases and given mental health treatment at the state hospital. When his mental health had stabilized, he was brought back to court to handle his cases and he plead guilty to the felony charge. But that client likely would not have that felony on his record if he had received appropriate mental health treatment on the day he was wandering through the streets before court. That's because he should have been receiving intensive mental health service at the time that he was on the streets, fighting to survive.

Unfortunately, at that time, I didn't have the ability to help the client the way I wanted to. His thoughts were too disorganized to understand that he needed mental health treatment and he didn't meet criteria for a three-day stay at the hospital. What was needed was an option to fill the gap between voluntary treatment and involuntary hospitalization, and there wasn't one at the time. Since that time, however, CARE Court has been developed to fill that gap.

## CARE Court

On September 14, 2022, Governor Gavin Newsom signed the Community Assistance, Recovery, and Empowerment Court Program into law, thereby creating CARE Courts in California. CARE Court is designed to provide mental health treatment for those citizens suffering from severe mental illness, but who do not qualify for an involuntary commitment. The program specifically aims to assist unhoused patients.

CARE Court is different from other court-ordered rehabilitation programs because it is involuntary outpatient treatment and patients may be introduced to the court by a third party. This feature allows friends and family to alert the court to a person in need. The program will operate in a civil court where a judge will order a qualifying patient to comply with mental health treatment. The local department of mental health will then decide what treatment will assist the patient and will provide the recommended treatment. The hope is that the court's intervention in the patient's life will spark motivation to engage in and comply with mental health treatment.

Critics of the program highlight the compulsory nature of the treatment, insufficient funding, and poor infrastructure as flaws in the program's design. Some also question whether compulsory outpatient mental health treatment, like that envisioned in CARE Court, is effective.

Over twenty years ago, the California Senate enlisted the RAND Corporation to research whether involuntary outpatient treatment is effective at improving the lives of Californians with severe mental illness.<sup>1</sup> RAND's research showed that intensive involuntary outpatient treatment had improved outcomes for the patients. These improved outcomes included increased medication compliance, reduced victimization, and reduced arrests.

Alternatively, a 2013 study in England and Wales showed that compulsory supervision of outpatient patients did not improve outcomes.<sup>2</sup> Likewise, in 2017, another study showed that involuntary outpatient treat-

1 See [https://www.rand.org/pubs/research\\_briefs/RB4537.html](https://www.rand.org/pubs/research_briefs/RB4537.html)

2 See <https://eprints.soton.ac.uk/351338/1/Burns%2520et%2520a1%2520community%2520treatment.%2520Lancet%25202013.381%25201627-33.pdf>

ment did not improve outcomes, but did decrease a patient's likelihood of being victimized.<sup>3</sup>

It's fair to say that there isn't clear and reproducible evidence to show that compulsory outpatient treatment is guaranteed to be successful. Despite this lack of evidence, the implementation of CARE Court will move California toward increasing the number of patients in compulsory outpatient treatment.

## Making CARE Court a Success in Riverside County

The success of the patients in CARE Court depends on the accessibility of the treatment, the knowledge of the stakeholders, and the accountability of the treatment providers. Treatment providers should meet patients in the places where they live to make treatment more accessible.

The most successful programs in Riverside Superior Court are sophisticated programs managed by knowledgeable people. The attorneys and judges in these courtrooms are experienced in working with people suffering from mental illness. These professionals understand the treatment necessary for the success of the patients and how to use the law to meet the needs of the patients. Likewise, CARE Court should be managed by similarly knowledgeable stakeholders.

3 See <https://pubmed.ncbi.nlm.nih.gov/28303578/>

A critical feature of CARE Court is accountability of the treatment providers. If the court finds that the treatment providers are not providing court-ordered treatment, the judge may impose a fine of up to \$1,000 per day. Holding treatment providers accountable for their role in the program is unique and should motivate the providers to be diligent in their efforts to treat the patients.

## Closing

Riverside County is one of seven counties that must begin a CARE Court by October 1, 2023. We have less than a year to get this program from nothing to something that can change the landscape of our community.

If this program works as it is intended, we may see fewer citizens sleeping on our streets and more people in recovery. This may prevent crimes associated with homelessness and ease overcrowding in our jails. CARE Court can give families peace of mind in knowing that their sick loved ones are receiving mental health care. Most importantly, it can restore citizens to a state of mind that allows them to live a full and stable life. I hope to watch this program improve the quality of life for Riverside County's citizens.

*Monica Nguyen is a deputy public defender for Riverside County and specializes in incompetency and mental health law.*



# HEITING AND IRWIN ASSOCIATE JEAN-SIMON SERRANO NAMED CAOIE PRESIDENT

## Press Release

Riverside, CA - December 7, 2022 - Jean-Simon Serrano, associate at prestigious Inland Empire personal injury firm Heiting and Irwin, was installed as President of the Consumer Attorneys of Inland Empire (CAOIE) at the December Board meeting. The Consumer Attorneys of California (CAOC) has a membership that includes some of the most renowned and prominent personal injury lawyers in the nation.

After serving on the CAOIE Board for five years, Mr. Serrano was honored with being named the organization's president.

"This is the premier trial attorney association in the Inland Empire, and I'm proud to serve my local and legal communities," he said. "Over the past couple of years, the trial lawyer associates of California have been able to effectuate real change for Californians including changes to the laws governing medical malpractice (MICRA) as well as an increase in the required minimum coverage for auto insurance policies. It's exciting to be a part of the

group effectuating these changes and I look forward to helping make other progress to help and protect consumers."

Mr. Serrano has had a busy couple of years, recovering millions of dollars for his clients since 2020 alone.

Mr. Serrano is an experienced trial attorney who has been with the firm since 2007. Previously a president of the Riverside County Bar Association as well as the Riverside County Barristers Association, he's become one of the top plaintiff attorneys in the Inland Empire.

In addition, he's been honored by several prestigious legal ranking services for his work on behalf of his clients. He's been a Super Lawyers' Rising Star several times and named a Top 10 Attorney by the National Academy of Personal Injury Attorneys. He was even honored by the University of LaVerne College of law as one of their three "Distinguished Alumni" in 2017.

# MORE THAN EVIDENCE: FROM A VOLUNTEER WORKING IN PUBLIC DEFENSE

by Lauren Bosserman

Today, I saw a photo of a dead child and her mother—a DUI accident.<sup>1</sup> Last week, it was the image of a suspect shot by a cop. Before that it was a harrowing audio file—another suspect, shot and killed by the police. I stand on pins and needles waiting to come across evidence like this, wincing away and squinting my eyes as I land on sudden images appearing in the long scroll of seemingly never-ending documents. Unfortunately, these files don't come with trigger warnings.

This is the line of work I have found myself in as a volunteer who scans through case files in the Law Offices of the Public Defender. I have realized, while many times downplaying it, that it is not an easy one.

A box of papers now sits in my office this week. Each file within the box represents a death resulting from a drunk driver. Earlier that morning, it was a car with a bumper sticker that I happened to notice and read: "MADD-Mothers Against Drunk Driving." My drive home late that night from a movie, wincing again, this time as I drive through intersections hoping my fate doesn't come to those of the images I can't get out of my head. It all connects when you work in the field of criminal justice whether you like it or not. The countless cases, they creep in.

Compartmentalizing. That is what some of us say we do in response. I've found myself rationalizing that the work I do isn't the most traumatic of all the professions. I tell myself, well, there are medical workers, there are first responders, there are those who are actually on the scenes of tragedies. Still, this doesn't take away from the fact that an office job in criminal defense is both mentally and emotionally hard. No matter how far away you are from the crime scene, reading what was once reality, but is now reduced down to text and images that cannot help, but sticks with you beyond the 9 to 5 working hours.

So, instead of downplaying or compartmentalizing the too often brutal subject matter of my work, I've arrived at two points. The first is that there has to be some kind of built-in, evolutionary repulsion to death. We are built to survive, to repel death and anything

reminding us of it. My nearly phobic reaction to these images has to be natural, I tell myself, because with all that is good in living and being alive, an avoidable DUI accident, or an officer-involved shooting, or the millions of other tragic ways a beautiful life can end up in a courtroom, these are the outcomes we are hopefully wired to avoid. The second is how can we realistically cease to empathize with other humans?

Criminal cases are not just cases.

Evidence is not just evidence.

Those boxes

of folders

of files and images

of DUIs in my office,

are not just paper.

They are all representative of a reality. It's a reality that is uncomfortable, emotional, heart wrenching at times. These were people who were once leading normal lives like myself, but with sudden, tragic, and undeserved endings. I find it impossible to look upon evidence and not spend some of my own time grieving the circumstances of their story that is one of many in my workday. Because ultimately, these are not just stories, not just evidence, but an individual's, a family's, a community's—reality. So, I have decided to be honest with myself. The work isn't easy, because I am a human just like all of the victim's I read about stored behind a digital manila folder, tucked somewhere in a county database with thousands of others.

That's hard.

---

*Lauren Bosserman, a Riverside-raised U.C.L.A. graduate with a background in political science, is dedicated to public service and improving public institutions. Over the past year, she has put this to work, serving in the Law Offices of the Public Defender through data analysis and police misconduct accountability as an AmeriCorps VISTA—a national service year program that aims to uplift organizations. She hopes to continue this vein of work, advocating and aiding public institutions to better serve everyday people in their communities. The opinions expressed in this article are her opinions only.*



---

<sup>1</sup> A DUI refers to driving under the influence.

# PAST, PRESENT, FUTURE: HOW THE LAW OFFICES OF JUSTIN H. KING ARE KEEPING THE KING FAMILY'S NEARLY 100-YEAR-OLD LEGAL LEGACY ALIVE IN THE INLAND EMPIRE

*by George Cohaff*

"My dad had advised me against opening my law firm when I did," recalls plaintiff's attorney Justin H. King. "When I called to tell him I'd notified my boss I was going to launch my own practice, I remember there was just a long, long silence. Finally, he said 'Ok, son. If that's what you want to do, I will help in any way I can.'" That exchange took place in 2016, and King has never looked back.

One look at the King family history frankly made the path Justin King took, if not predictable, then certainly not surprising. After all, a love for the law, and an entrepreneurial willingness to try something new, seemed to be coded into his DNA by his mother, his father, and before them, his grandfather.

## **Family History Sparks Love of the Law**

"Both of my parents were lawyers," King says. "My mom was a District Attorney. Then she worked for a time as a civil litigator, practicing with my dad. She then became a deputy public defender, before being appointed to the San Bernardino County Superior Court in 2012 by Governor Jerry Brown." Hon. Pamela King retired in 2021, after ten years on the bench.

King's father also spent his life in various fields within the legal community in San Bernardino. For many years, Jeffrey King practiced plaintiff's personal injury, at Garza, Jury, and King. He then split his time between plaintiff's work and defending local cities in dangerous condition cases. He was appointed to the bench when Justin was in junior high school. Governor Gray Davis elevated him to the Court of Appeal, Fourth Appellate District, in 2003. After spending 20 years on the bench, and 18 years in private practice, he spent the last years of his career as an arbitrator with JAMS.

"My parents loved practicing law and it was a significant bond between the two of them. Almost every night in the kitchen they would be discussing their cases," King says.

There's little doubt that growing up with parents who were both immersed in the Southern California legal community would have an impact on Justin King.

However, his family's dedication to seeing justice served began nearly 100 years earlier.

John Lewis King was the first lawyer in the King family. In the late 1800s, his mother's family moved to Rancho Cucamonga and purchased land for citrus farming. John Lewis King was born in 1909 and grew up on the family citrus farm. After graduating from law school at USC, he joined the San Bernardino County District Attorney's office. Five years later, he joined the prominent San Bernardino law firm of Duckworth, Harrison & Mussell, which would ultimately become Duckworth, Harrison, and King.

Events leading to World War II called John Lewis King to service. From 1942-1945 he served honorably in the U.S. Army and was discharged as a Major at the end of the war. He returned to the practice of law. Five years after returning to the family's citrus farm, his son, Jeffrey King, was born.

In 1953, John Lewis King became the first attorney from San Bernardino County to be inducted into the American College of Trial Lawyers. Tragically, on October 19, 1967, the renowned trial attorney suffered a cerebral hemorrhage while giving a closing argument in trial. He passed away the next day.

## **The Torch is Passed**

Justin, the youngest of his parents' three children can't remember the exact moment he decided he wanted to follow in his family's footsteps into a career in law. "My parents never pushed any of us into the law. They always encouraged us to follow our interests, as long as what we were doing was productive and engaging for us," King says.

However, he admits that coming from a family of lawyers certainly didn't dissuade him from pursuing the same career path. "My brothers and I spent a lot of time at our dad's office when we were little. The people at his office were like a second family, and they treated us very well. As I got older, and my dad was a trial judge in Rancho Cucamonga, I would go watch the trials. I saw some of the best plaintiff's lawyers in the area try cases. I recall a trial



where the plaintiff had become paraplegic, as the result of a tire blowout. I saw the plaintiff's lawyer take on the tire manufacturer, which was a huge corporation, and win."

The case was significant to a teenage King as he realized that the "client had his whole future in the trust of his lawyer. That is an awesome responsibility, and it made me want to become a plaintiff's lawyer," he says.

As such, after graduating from UC Hastings, King took his first job as an associate working on plaintiff class actions in the Bay Area. Though he admits to learning much about class actions, his junior status in the firm didn't provide much opportunity for the type of hands-on client work he'd been inspired by as a teen.

Aiming to get the courtroom experience he'd loved watching as a teen, he moved to an insurance defense firm representing insurance companies in personal injury claims. Within a few years, he'd learned all the tactics that insurance companies employ to limit their exposure. Then King headed back home to Rancho Cucamonga.

Eager to finally begin representing injured victims, King joined the Law Offices of Bill Shapiro as an associate attorney. "Bill was very much a mentor to me and many others. He is incredibly generous in spending time with young lawyers—showing them not only how to practice law, but how to run a law firm as a business. I absorbed everything I could from him, and when I decided to launch my firm, he was extraordinarily gracious."

In 2016, King opened the Law Offices of Justin H. King in the city his family had called home for more than a century. Soon after, King was delighted to receive from Shapiro, a recording of his grandfather, John Lewis King, participating in a mock trial, where he was defending his client against plaintiff's lawyer Marvin Lewis.

"I still have the CD and I still listen to it from time to time. He was good. The facts were all against him and he did an excellent job of picking the plaintiff's case apart and flipping facts back onto the plaintiff to minimize his truck driver client's liability."



*Oliver King, Jonathan King, Hon. Jeffrey King, Hon. Pamela King, Justin King*

## Blazing a New Trail with His Brothers at His Side

Two years ago, Justin King was joined at his practice by his brother Oliver. In 2022, his brother Jon joined the practice. Today, the three attorney brothers work as a unified team at the Law Offices of Justin H. King.

"We are all very different, and we get along extremely well," Justin says. "We value one another's strengths and work together as a cohesive team for the benefit of our clients."

Justin also keeps the lessons he learned from his father, and the stories he's heard about his grandfather at the forefront of his mind and his practice. "My grandfather died when my dad was in high school. But my father said my grandfather was always working. He would sometimes end up in Los Angeles County when he was supposed to be driving home from work. Allegedly, he would get so wrapped up in thinking about his cases, he would drive past all the exits to Rancho Cucamonga."

"That resonates with me. Being a lawyer feels so natural to me. I cannot imagine doing anything else. It's not just a job to me. It's who I am," he says.

His father's example is also with King every day. "My dad really internalized all of his cases and cared deeply about his clients. I feel the same way. This is not a numbers game for us. We want every client to leave our office feeling like they were heard and treated fairly both by our firm and the legal system. Each client is provided with my cell phone number in case they need anything or have questions," King says.

King also tries to focus as much on the law applicable to his cases as he does on the facts of his cases, a strategy he credits his father with instilling in him. "My dad was deeply knowledgeable about many areas of the law since he'd seen it from so many angles. He always encouraged me to focus on the law as much as the facts. I am mindful of this advice daily. A lawyer can do a tremendous amount of good for their case by knowing the law better than their opponent," King says.

But the youngest King attorney has also implemented strategies he's arrived at on his own. "My parents never explicitly told me how to succeed as a lawyer. They both showed by example that you succeed by creating a reputation for excellence and honesty."

To that end, King is determined to tell the entire story of each client's suffering. "We don't need to try to run up medical bills and leverage those for a settlement. We are here to tell the story of each case. And each case comes down to 1 or 2 key factual issues, and 1 or 2 major injuries that will stay with the client on a long-term basis and diminish their daily life."

Furthermore, King is no fan of months-long back-and-forth dialogue with adjusters. "We file most of our cases and retain experts on most of our cases. We settle very few cases before filing," he explained.

"Unless there are policy limits issues, most pre-filing negotiation is a waste of time, in my opinion. Discovery, expert depositions, and the threat of trial tend to produce far better outcomes than haggling with an adjuster for months and months. When we put our clients' faces in front of the defense, they can judge credibility, and see for themselves why our clients deserve the maximum compensation."

## The Future Burns Brightly

In addition to representing victims of vehicular accidents, Justin, Oliver, and Jon also represent victims of insurance bad faith, which Justin explains is a natural byproduct of working with injured victims. "The two

practices dovetail, and the experience I gained early in my career makes it a good fit for our firm," he says.

The brothers are also taking on more class action lawsuits, including a case impacting thousands of Californians which is in the certification stage. The defendant is a large insurance company that has, what King calls "an extreme financial injustice committed against many Californians that are without means. We look forward to holding the insurance company accountable for their actions."

Indeed, Justin is looking forward to many more years of delivering justice for those injured or otherwise harmed as the result of another's negligence or wrongdoing, just as his mother, father, and grandfather did.

Although the death of his father in 2022 was a devastating loss, it also marks a watershed moment for the brothers now carrying on the family legacy. "Whether we are working to right a financial wrong for thousands of people or looking to get the compensation that injured victims need, our dad would tell us to keep persisting, to keep working hard, and to deliver justice to as many people as we can. That's our plan for the future."

*George Cohaff is a writer specializing in the legal industry.*



ONE FOCUS.  
ONE PRACTICE.  
**IMMIGRATION LAW.**

OFFICES IN ARIZONA, CALIFORNIA, UTAH AND IDAHO

*In Immigration Law, the stakes are always high. It's your business. It's your family. Results matter and you deserve a firm that can deliver. **We are that firm.***



**KELLY S. O'REILLY**

Founding Partner - Former District Adjudications Officer for the U.S. Immigration and Naturalization Service in Los Angeles and Orange County

**W&O'**

**WILNER & O'REILLY**  
IMMIGRATION LAWYERS  
WWW.WILNEROREILLY.COM

**(951) 787-0010**

3550 VINE STREET, STE 208 RIVERSIDE, CA 92507

# SAFEGUARDING AGAINST THE CIVIL DEATH PENALTY

by Andrea J. Garcia

Foreign born persons account for over one-quarter of California's population, comprising a third of the labor force.<sup>1</sup> There are 2.2 million undocumented immigrants<sup>2</sup> and nearly 3 million lawful permanent residents ("LPR") reside in California.<sup>3</sup> One out of every two children lives in a household headed by at least one foreign-born person.<sup>4</sup>

In immigrant rich California, the court, the defense, and the prosecution have distinct duties safeguarding foreign born defendants from accidentally pleading to the civil death penalty: removal.<sup>5</sup>

## The Court

In the late 1970s, the legislature enacted Penal Code section 1016.5.<sup>6</sup> The original text required a court prior to accepting a guilty plea for simple possession of marijuana, to warn only the LPR defendant that such a conviction may result in deportation.<sup>7</sup>

Yet, the legislature adopted a broad warning of possible consequences. The court is not required to dispense with any certainty the worst will come, such as "you will get deported."<sup>8</sup> The court cannot undergo the necessary investigation and research giving rise to accurate "legal advice" because dispensing strategic advice is not the province of the court.<sup>9</sup>

1 Fact Sheet Immigrants in California, American Immigration Council, 2020, Retrieved at <https://www.americanimmigrationcouncil.org/research/immigrants-in-california>.

2 American Immigration Council, *supra*.

3 Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2022, Department of Homeland Security, 2022, Retrieved at [https://www.dhs.gov/sites/default/files/2022-10/2022\\_0920\\_plcy\\_lawful\\_permentent\\_resident\\_population\\_estimate\\_2022\\_0.pdf](https://www.dhs.gov/sites/default/files/2022-10/2022_0920_plcy_lawful_permentent_resident_population_estimate_2022_0.pdf).

4 Pen. Code §1016.2, subd. (g).

5 *Martinez-Cedillo v. Sessions*, 896 F.3d 979 (9th Cir. 2019) (civil law makes a particularly apt comparison to [permanent family separation due to removal]: parental rights adjudicated in civil child neglect proceedings implicate serious due process concerns, and courts have sometimes referred to terminating parental rights as a civil death penalty.)

6 *People v. Guzman*, 116 Cal. App. 3d 186 (1981); *People v. Gontiz*, 58 Cal.App.4th 1309 (1997); citing *The Right of the Alien to be Informed of Deportation Consequences Before Entering a Plea of Guilty or Nolo Contendere* (1983) 21 San Diego L.Rev. 195, 216.

7 Sen. Bill No. 276 (1977-1978 Reg. Sess.) as introduced Feb. 9, 1977.

8 Transcript of Oral Argument, pp.10-12, *Padilla v. Kentucky*, 559 U.S. 356 (2010). Retrieved at <https://www.oyez.org/cases/2009/08-651>, discussing the Court admonishment as a salutary practice in at least half the states and that the attorney's role is distinct from the Court.

9 *Id.* at p. 12, "[A]ll manners of strategic types of advice that counsel give are no province of the district court"

In fact, the court cannot investigate because the legislature prohibited the court from requiring defendant to disclose their status.<sup>10</sup>

Omission of the generic admonishment for pleas after 1978, coupled with prejudice demonstrated by the movant, mandates a vacatur.<sup>11</sup>

Lastly, the court must provide a reasonable amount of time for defense to investigate and defend against adverse consequences via negotiations with the prosecution.<sup>12</sup>

## The Defense

Despite the court's admonishment of possible consequences, the defense must strategically recommend whether the client should take the plea.<sup>13</sup> Also, the defense must vigorously defend against consequences by plea bargaining or even trial, when consistent with client's goals.<sup>14</sup> Sometimes, presenting factors in consideration to the prosecution may be warranted, such as: permanent family separation, indefinite immigration detention, client's willingness to enter treatment upfront, paying back restitution or waiving credits to get a shorter imposed sentence on paper.<sup>15</sup>

Grounds for deficient performance can be the following: failure to conduct competent investigation of the facts, failure to research the law, failure to advise, failure to defend against the consequences, providing misadvice, and failure to move to withdraw a plea prior to sentencing where it was done on misunderstanding of the law.<sup>16</sup>

10 Pen. Code §1016.5, subd. (d).

11 Pen. Code §1016.5, subd. (b).

12 Pen. Code §1016.5, subd. (d).

13 *People v. Vivar*, 11 Cal.5th 510 (2021)(the admonishment in Vivar's plea form did not mitigate the prejudice from counsel's deficient immigration advice, the form only stated that deportation was a possibility); *People v. Lopez*, 66 Cal.App.5th 561 (2021)(plea withdrawn where defense counsel specifically recalled reading the multiple page plea form with client, but did no research nor consult with an expert but relied on the plea form as the written record); *People v. Patterson*, 2 Cal.5th 885 (2017)(reviewing plea form with client does not satisfy defense counsel's duty of competence); *Padilla v. Kentucky*, 559 U.S. 356 (2010)(Kentucky and most states provide notice of possible consequences) n. 15.; *People v. Soriano*, 194 Cal. App. 3d 1470 (1987)(before counsel undertakes to act at all they will make a rational and informed decision on strategy and tactics founded on adequate investigation and preparation and not merely rely on the Tahl form advisement).

14 Pen. Code §1016.3, subd. (a).

15 California Sentences and Immigration, ILRC, November 2020, Retrieved at <https://www.ilrc.org/california-sentences-and-immigration>.

16 *Post-Conviction Relief for Immigrants*, Tooby, Retrieved at <https://nortontooby.com/node/15023>.

Even asking “are you a U.S. citizen” instead of “where were you born,” could result in deficient investigation.<sup>17</sup> Counsel cannot remain silent. Where the consequences are not clear, defense counsel must explain what potential consequences lurk based on research, not conjecture.

Competent investigation requires diligent efforts to ascertain the client’s immigration status, prior immigration and criminal history, family ties, mental health history and potential immigration relief.<sup>18</sup> Creating an intake is best practice. Counsel must understand it is not the underlying conduct which triggers statutory removal consequences, but whether the statutory definition of the offense falls within the federally defined category of crimes using the categorical approach.<sup>19</sup>

Counsel must work with the client to set realistic immigration goals while taking care to prevent the client’s immigration status from sabotaging the client’s most important criminal goals.<sup>20</sup> Counsel may work with an expert in crimmigration law.

## The Prosecution

Prosecutors must meaningfully consider immigration consequences and approve alternative charges or sentencing schemes where appropriate without implicit bias.<sup>21</sup> Prosecutors need not offer an immigration neutral disposition.

The prosecution only considers reasonable alternate pleas with some factual relation as proposed by the defense. If there was any constraint on consideration, a plea may not be factually impossible.<sup>22</sup> Yet, reasonably related immigration neutral bargains do not require an element-by-element factual basis, a prima facie factual basis is sufficient.<sup>23</sup> Strict interpretation of “legal fiction” has been frowned up where it would

stifle or discourage creative dispositions in our trial courts, especially where it stems from a desire to reach a fair and equitable result, such as intended by the legislature in creating Penal Code section 1016.3(b).<sup>24</sup>

Immigration-neutral alternatives include where the noncitizen pleads to a similar offense or to an offense the defendant may have committed during the course of conduct which led to the charge.<sup>25</sup> For example Penal Code section 372.5 allows a defendant, upon request of defense who is charged with a drug offense, ranging from infractions to felonies, to plead instead to the amended public nuisance statute at the same offense level as the original charge.<sup>26</sup>

Reasonable plea bargaining for the avoidance of immigration consequences alleviates the burden on prosecution to prove their case in exchange for a bargain which avoids the noncitizen pleading away their status.<sup>27</sup>

The criminal justice system cannot safeguard foreign born defendants by solely focusing on the criminal consequences. Duties of the *actors* in the criminal justice system safeguard noncitizens from the civil death penalty.

*Andrea J. Garcia is an expert in crimmigration law based on 15 years of experience in California and throughout the United States in both private and government practice.*



<sup>24</sup> *Richardson* at 367.

<sup>25</sup> *People v. West*, 3 Cal.3d 595 (1979).

<sup>26</sup> Fact Sheet on Expanded PC § 372.5, effective 1/1/2023, Retrieved at <https://www.ilrc.org/fact-sheet-penal-code-%C2%A7-3725-effective-jan-1-2023>.

<sup>27</sup> *People v. Holmes*, 32 Cal. 4th at 441([i]n striking a plea bargain, it is not necessary for the trial court to be convinced of the defendant’s guilt, rather, defense counsel may advise acceptance of a plea agreement based in part on defense investigation.

### MCLE MARATHON

In-Person at RCBA Building

**Friday, January 13, 2023**  
**10 a.m. to 2:30 p.m.**

**MCLE Credit:**  
**4 Hours Total**

(1 hour Competence Issues,  
2 Hours Legal Ethics,  
1 Hour Elimination of Bias)

*You may attend all or only the  
session(s) in which you need credits.  
Contact RCBA for program schedule.*

**RSVP to RCBA office  
by January 10**

*Cost (includes Lunch):*  
RCBA Members \$40  
Non-Members \$100

*Regardless of whether you eat lunch  
or do not need all the credits,  
the fee will remain the same.*

### Compliance Group 3 (N-Z)

Compliance Period: 2/1/20 – 1/31/23  
Deadline to Report: February 1, 2023

*For compliance groups who must  
report for the period ending on  
January 31, 2023, and thereafter.*

➤ Special Requirements:  
• At least four hours of  
Legal Ethics

• At least one hour on  
Competence Issues

• At least two hours dealing  
with Elimination of Bias.  
Of the two hours, *at least  
one hour must focus on  
**Implicit Bias** and the  
promotion of bias-  
reducing strategies.*

Compliance information  
is available on the  
State Bar’s website.

<sup>17</sup> *Padilla*, 559 U.S. 356 (Mr. Padilla informed defense counsel he believed he was a U.S. citizen).

<sup>18</sup> *Id.*; (see also California Criminal Procedure, Continuing Education of the Bar, Mehr & Martinez).

<sup>19</sup> *Mellouli v. Lynch*, 575 U.S. 798, 805 (2015).

<sup>20</sup> Criminal Defense of Immigrants, 2018, Tooby & Brady, Continuing Education of the California Bar, Chapter 1, Concepts, Terms and Definitions.

<sup>21</sup> PC §1016.3(b); PC §745

<sup>22</sup> *People v. Richardson*, 65 Cal.App.5th 360, 372 (2021), unpublished.

<sup>23</sup> *Id.* at 372; *People v. Holmes*, 32 Cal.4th 432, 441 (2004).

# THE HOW AND WHY OF CRIMINAL DEFENSE INVESTIGATIONS

by Doug Mazzacua

There are few professions which require a more diverse array of hard and soft skills than that of the criminal defense investigator. Our clients come from a wide range of social and demographic backgrounds, and there is a solid chance that a new client has never had a positive experience when interacting with a representative of “the system.” We have clients who range from the innocent and wrongfully accused to those who have credibly confessed to crimes for which mountains of evidence exist, and everything in between.

Criminal defense investigators in the modern era must have a solid understanding of police procedures and forensic crime scene investigations. They must also be well versed in DNA, computer and cell phone forensics, skip tracing techniques, firearms and other weapons, and the symptoms and effects of mental health problems and psychiatric disorders. Well-honed written and verbal communication skills, and the ability to make sound judgment calls in novel situations, are also essential.

A client who professes innocence is entitled to a thorough investigation of alibis and any other evidence which can either disprove the charges or cast doubt upon the accusations. All too often, once a law enforcement agency decides that a person is guilty of a crime, the focus of their investigation switches to building a case for prosecution, at the expense of seeking evidence that could disprove the prosecution’s hypothesis.

Keeping an open mind and not leaping to conclusions is crucial. Once a belief has been formed, cognitive bias renders other possibilities invisible to the human mind. Is there a credible alibi? Do the prosecution’s witnesses have a motive to lie? Do credible alternative theories exist which would point to innocence, rather than guilt? It is the Defense Investigator’s job to find out.

As important as this portion of the job might be, the defense investigator’s work does not end, or even necessarily begin, with the investigation of these facts. There are times when a client may be responsible for some crimes, but not all of those alleged. Even when the accusations appear to be true, there are often mitigating factors which lessen the client’s culpability, or which show that the client did not have the necessary mental state or intent to warrant the degree of punishment the prosecution is seeking.

In the most serious of cases—when the prosecution is seeking a death sentence - it is not only the client’s liberty, but his or her ability to continue breathing that is at stake. In these cases, the investigation does not end with a search for exculpatory evidence. Instead, the scope of the investigation expands to any and all factors and events which can help the jury to understand how our client came to the point where twelve strangers are tasked with deciding if the client deserves to have his or her life terminated at the hands of the State.

When a human being’s life culminates with the commission of a horrific crime, the aftermath is usually one of remorse, regret, and profound emotional pain. None of us are

born with the desire to injure or destroy, but we have all been hurt and damaged to one degree or another. Those of us who have been loved, cared for, and encouraged our entire lives usually do not grow up to commit terrible crimes.

There is a common, but erroneous, belief that permeates a large portion of our society – the belief that it is impossible to empathize with both the victim and the perpetrator of a horrible act. Nothing could be further from the truth. The most shocking of cases, when fully understood, can be seen as a tragedy for everyone involved – the victim, the victim’s family and loved ones, and the family and loved ones of the defendant, as well as the defendant himself.

Although defense investigators are not lawyers, we also have to understand the legal implications of decisions that we make. We must understand and respect the rights of victims and witnesses as well as our clients, and must never take any action that could contaminate or destroy evidence. It is also necessary to understand the elements of the charges involved to make sure that the focus of our investigation is pertinent and relevant.

Beyond the nuts and bolts of the technical abilities required, perhaps the most important skill that the Defense Investigator needs to cultivate is empathy for others. We come into contact with people from all different sorts of backgrounds, experiences, and circumstances, and we must learn to see the world through their eyes and understand from within the context of their belief systems.

Many of the people we interview do not understand the U.S. legal system, or even U.S. culture itself – and if we do not understand how they view the world, we will never establish the level of communication necessary to elicit from them what they know. The attitudes and beliefs of people from different cultures and subcultures remain a mystery until you understand the context in which those attitudes and beliefs were formed.

The life of a criminal defense investigator is never dull, and the lessons learned are never ending. It is difficult to imagine a job that offers more opportunities to learn and understand the customs, ideas and motivations of such a wide array of people, to stay on the cutting edge of scientific and technological innovations, and to gain critical insights into the functioning of the human mind.

*Doug Mazzacua has over thirty years of experience in the legal field with twelve years of experience working on death penalty cases. He is also a Judicial Council certified court interpreter (Spanish) with extensive training in computer information systems, linguistics and investigations. He has been with the Riverside County Law Offices of the Public Defender since 2007, where he is currently an Investigator III in the Complex Litigation Unit.*



# IN MEMORIAM: BRIAN BOLES

by Juanita E. Mantz

*“Now darkness only stays the  
nighttime.*

*In the morning it will fade away.*

*Daylight is good*

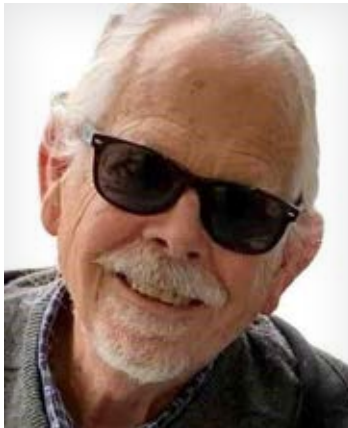
*At arriving at the right time.*

*It’s not always gonna be this gray.*

*All things must pass.*

*All things must pass away.”*

*“All Things Must Pass”, The Beatles*



Brian Boles

***A True Renaissance Man,  
Riverside County Assistant Public Defender***

**BRIAN BOLES**

**October 8, 1951 - October 17, 2022**

There’s a WH Auden poem called “Funeral Blues” that captures the somber mood and gasps of sadness (tears blurring our eyes) when we at the Riverside County Public Defender’s Office learned of Brian Boles’ passing. He was one of our own, a stalwart and leader among men and women and an inspiration to all of us public defenders. It still hurts us deeply to know that Brian has passed away because the world is a sadder and colder place without his presence.

As the Auden poem says, “Stop all the clocks, cut off the telephone ...”

Brian was born in Carmel, California and received his undergraduate degree from UC Berkeley and his J.D. in 1979 from the Golden Gate University School of Law. He spent his career in public service and was known by all as a dedicated defense attorney and advocate for criminal and social justice. He retired in 2020 as the Assistant Public Defender for Riverside County.

Brian was a lawyer and public defender, but even more importantly, he was a man of strong character, integrity and grit. He was also an undisputed music man, one who had an encyclopedic-like knowledge of all music, especially rock and roll and punk rock. He had been to many concerts, so many that they are likely too many to count. (For those in the know, Brian even

saw the seminal punk rock band The Sex Pistols play live back in the day in San Francisco.)

Due to his demonstrated music obsessions, I feel obligated to include the above quote from one of his most beloved rock and roll bands, The Beatles. And truth be told, if I could, I would fill this entire article with song lyrics from all of his favorite bands in tribute to him, but if I did, this article would take up the whole magazine.

Instead, let’s talk about how much Brian influenced all of us deputy public defenders. I remember well the day he hired me. It remains imprinted on my mind. Back then, almost 15 years ago, I thought I had no chance to get hired as a deputy public defender, being a burnt out civil litigator searching for her lost passion for the law. Yet, Brian saw something in me and he not only hired me, but he mentored me during my entire career at the Riverside County Public Defender’s Office. Brian supported so many of us and he was one of the prime examples for the legions of deputy public defenders to follow. Brian was also one of the main leaders in the effort to move our public defender office from our old, outdated building (I am being kind in my description) on Orange Street to our lovely building on Main Street and he even helped design the beautifully stunning building that we all now work within. Thus, the walls bear his name, figuratively speaking, and if you listen closely, the memory of the sound of his footsteps echoes in the halls.

Brian, we miss you so. We hope that you are rocking out in the big amphitheater in the sky.

To end this, and because I know more than anything how unworthy I am to write anything close to capturing one of my heroes, I will use some of the quotes I gathered from the many who loved him at our office:

*Brian was greatly respected and loved by all of us. He recently retired after 19 years of service to our office. During his time with our office, he supervised many lawyers and was a wonderful mentor, guiding so many in their careers and*

helping them become successful lawyers. He was always a strong, steady force, pushing all of us to be better. Brian loved this office and loved all of us. Brian was a great help to me as we worked together for 7 years. He taught me how to be a Public Defender and guided me down many difficult roads. I will always be thankful to him for his help, and especially for being my friend.

Brian enjoyed his life and lived it with vigor. I always said that Brian was *The Most Interesting Man in The World*. He loved concerts, music, movies, art, travel, new foods, old rock stars, new bands, and a thousand other things and ideas. Although he was not religious, he was a deeply spiritual man. He had great stories and always told them in great detail and with a smile on his face. He could remember every word of a favorite old rock song or movie. Brian was one of a kind, and we loved him. We, who knew him, are all fortunate he passed our way. His legacy is deep and wide, and he will never be forgotten. **-Riverside County Public Defender Steven L. Harmon**

Brian was my long-time supervisor in trials and I appreciated his compassionate, yet hands-off style. He had a huge impact on a generation of trial attorneys in the Riverside County Public Defender's office and will be deeply missed. **-Riverside County Assistant Public Defender Judith Gweon**

I truly loved Brian for many reasons. He was firm, yet funny, and quiet but caring. He was a mentor and a friend. He would support you when you needed it and you always knew that about him. I will miss seeing him, talking to him, laughing with him and hugging him. Goodbye my friend, rest in peace. **-Riverside County Supervising Deputy Public Defender Barbara Plate**

Brian listened more than he spoke. As a young lawyer, I feared this man of little words until I realized that he was actually one of the funniest people in the office. Once I discovered that I could banter with him, we became fast friends. I should have known he was cool; he wore a skull ring for goodness' sake. **-Riverside County Deputy Public Defender Jennifer Bender**

I will always remember and be thankful to Brian for having faith in me and giving me the confidence and ability to succeed and will always remember the memories we created with our

lunches, trainings, and his stories that I will treasure for a lifetime. **-Debra O'Meara, paralegal, Riverside County Public Defender**

I have a million stories. Probably the best one would be one of my first trials that I lost. My client received 120 days straight on her misdemeanor conviction. I left the courtroom crying and walked back to the Orange Street office where I sat at my desk perusing the want ads in *The Daily Journal*. Brian walked in and asked me what I was doing. I told him I had to find another job, that I was no good at this and he took a couple hours to sit there and regale me with tales of his losses. He was always an inspiration to me. **-San Bernardino County Deputy Public Defender Jennifer Mullins and former Riverside County Deputy Public Defender.**

Brian is also remembered by his family, his wife, Carolyn Buck Boles; daughters, Meagan (Jason) Virrey and Erin Swortfiguer; beloved grandchildren, Marcus, Lauren, Maddox, Lia, and Ty; sister, Dr. Shelley Francesconi; and brother, Dr. Mark (Val) Boles. (See obituary at <https://www.legacy.com>.)

Juanita E. Mantz is a writer, a deputy public defender and a member of the RCBA Publications Committee.



## LAWYER REFERRAL SERVICE of the Riverside County Bar Association

How often do you get a call from a prospective client with a legal need that falls outside your area of practice?

You need a resource to quickly refer that caller to a qualified and reputable attorney.

The LRS has been providing referrals to the community since 1968.  
(951) 682-7520 or (760) 568-5555

# IN MEMORIAM: DON BARTELL

by Lara Gressley

## “What do we get to do today? We get to practice law!”

These were the words I often heard. Don would walk down the hall of our Canyon Crest office, stop at my open door, and remind me how lucky we were to be lawyers.

I was lucky to work with Don Bartell. When I started at the firm in 2010, it was like going to criminal defense attorney bootcamp. Soon after I was hired as the firm’s first associate attorney, he established “Thursday lunches.” Don Bartell and Don Hensel (whom we affectionately call “Vito”) took turns giving me a topic to study. Don provided the criminal defense or constitutional law topics and Vito gave me family law or evidence subjects to research. We ordered lunch, I told them what I learned, and was then peppered with questions. This undoubtedly prepared me for my later chosen focus of appellate advocacy.

Don Bartell was unlike anyone else. He didn’t concern himself too much with things most of us do, like eating at normal times, or getting eight hours of sleep every night. Indeed, he sometimes worked in the office until 2 or 3 a.m. Don was endlessly searching for another cutting-edge approach. He would say, “There’s something wrong with the DA’s argument, I just haven’t quite figured it out yet.” He never stopped thinking. Then he would call me, or come into my office and say, “Ace! When does luck come?” (His nickname for me was Ace.) Familiar with all of Don’s favorite sayings, I responded, “At 3 a.m. in the law library.” He would then explain his theory and dispatch me to further research the issue.

I eventually started to come up with these cutting-edge theories on my own. When I did, it was like I was channeling my friend and mentor, Don Bartell. When I proposed the theory to him, he would immediately argue against it. It was his knee-jerk reaction. But after I showed Don the law, he beamed with pride at my ability to do what he loved – create arguments no one has ever heard. When the prosecution was about to get served with our brief, Don would say, “They’re about to meet the lawyers from La Mart Drive (where our office is located).”

A couple of years after I began at the firm, I told Don I wanted to get into appeals. He was excited about the prospect and we immediately took on appellate cases. Don was



Don Bartell

always up for something new, and we shared a passion for writing. He asked me to write a chapter on appeals for his book, *Attacking and Defending Drunk Driving Tests*, which I did. I also drafted “writing tips” to include in the book at Don’s request. He had the best ideas. Our associate attorney, Mike Donaldson, called us “The Writing Team.” We were better together because we each had different ideas, and Don came up with the most interesting verbs. In our last brief we will ever write together – two weeks before his passing – that verb was “outflanked.” He never disappointed.

Don and I were supposed to lecture together on November 9, 2022. We had a legal writing webinar scheduled for the members of California DUI Lawyers Association. Don would not want me to cancel, so I didn’t. Mike and I did the honors. But Don’s presence, his enthusiasm for writing, and his ability to brilliantly relate the material is irreplaceable.

Don and I didn’t always agree. When I first told him of my plans to run for District Attorney, he tried to talk me out of it. He told me there was no one better for the job, but feared I would not be successful given the odds. But when he saw my determination, he got right alongside me. Don was proud of me for speaking out and fighting for what I believe in. There were many decisions I had to make along the way, including whether I was going to change in order to receive contributions and votes. Don believed I wouldn’t, and he was right. Don was fiercely ethical and did everything with integrity. He was my example.

I have so many memories of Don, our visits to the United States Supreme Court, flights in his plane to courts across California (he was a pilot), and our extravagant office Christmas parties, which were all about the children. Don didn’t have any of his own, but he treated the children of those closest to him like family because they were. We were Don’s family and he was ours.

The witty banter, the jokes, and the laughs were prevalent in our firm, but when it came time for trial, Don meant business. Don taught me everything he knew about trial preparation, jury selection, cross-examination, and brief writing. Every case was handled as a team. That team approach was Don’s pitch to every prospective client and he never let them down. He led us to victory in many cases



because he had the uncanny ability to see what needed to be done to win. He got along with prosecutors, won the respect of judges, and stole the hearts of jurors. Don was never aggressive unless he needed to be. And if he was yelled at by a judge, he was unfazed and told me, "We don't work for the judge. We work for our client."

Don taught me that as criminal defense attorneys, we are the only Sixth Amendment lawyers in the courthouse. He understood the privilege of advocating for those who have no voice. Don recognized that we are all human beings who have made a thousand mistakes. His compassion was great. Don's heart was even bigger than his brain.

Don was famous. Walking into a courtroom with him was like accompanying a rockstar onto the stage. As one of the most sought-after DUI defense attorneys in the state, Don handled high profile cases, lectured lawyers around the country, and worked with me on the most impactful of matters in the California Supreme Court and in the United States Supreme Court. His book helps countless lawyers defend seemingly impossible cases.

Don was also my best friend. We talked constantly. More often than not he began the conversation with, "If you've run out of problems ..." and then he would tell me about a new challenge we faced or some other issue. I usually cut him off by saying, "Don, I will never run out of problems."

My problem now seems insurmountable. I have to go on without my beloved friend, my son's uncle, my mentor, my law partner, my big brother. He was my teacher and my protector. No one messed with me because they would have to deal with Don Bartell. He made me laugh and he also drove me nuts. But working with Don was an absolute joy. He was always there for me and for anyone in the legal community who needed advice. He gave so much.

We honored Don with a memorial service on November 5, 2022. Don was remembered by his family, friends, and colleagues at the Commemorative Air Force Hangar at the Riverside Municipal Airport, where Don had a hangar. With Don's prop plane parked outside, many of us shared our favorite memories of Don. His two sisters, Ave and Mary, gave tearful speeches. I also sang for Don, one last time.

Don Bartell will never be forgotten. His legacy lives on in every criminal defense attorney who speaks for those who have no voice, in every advocate for justice, and in every person who loves the law like he did. I am still not ready to say goodbye to Don, so I will just use his favorite saying instead. Vaya con Dios.

*Lara Gressley is a partner at Bartell, Hensel & Gressley in Riverside. Her practice focuses on criminal defense and appeals.*



# RUN YOUR PRACTICE NOT YOUR I.T.

Make your technology work for you and not the other way around by letting Inland Premier I.T. Solutions manage it for you - so you can get back to the business of running your business!

Inland Premier specializes in: Networks | Email & Exchange | Network Security | Data Recovery | Support | Archiving

**Quote:** RCBA when you call for a free consultation and IT review.



On-Site  
Services



Help Desk  
Support



Consulting



**CALL US TODAY: (951) 530-9609**

**WWW.INLANDPREMIER.COM**

# OPPOSING COUNSEL: ALLAN M. FONG AND HIS ROAD TO PUBLIC DEFENSE

by Juanita E. Mantz

Deputy Public Defender Allan M. Fong is a native of Southern California and grew up near Pasadena, in a small suburb east of downtown Los Angeles. His father is an immigrant from Hong Kong, who has practiced medicine as a hepatologist for over thirty years. Fong's dad is one of his inspirations, along with his mother who worked as a nurse and sadly, died of cancer in 2017. Fong says his dad and mom taught him, through words and example, to take the time to humanize everyone and practice empathy.

Fong graduated from Trinity College in 2015 with a degree in political science focusing on international relations. After completing his undergraduate degree, he moved to Washington, D.C., where he interned for six months in the U.S. Senate working on both sides of the aisle. He then honed his writing skills by working as a print journalist for a newspaper in D.C., covering a range of topics from the arts to economic development.

After working as a journalist, Fong moved to New York City to work as a paralegal for a large international law firm, at which time he applied and was accepted to USC Law School, where he graduated in 2021. During law school, Fong kept busy and developed his interest in criminal law by interning with both the Los Angeles District Attorney's Office and the Office of the California Attorney General. While at USC Law, Fong served as the community service chair of his school's student bar association, and senior production editor of the Southern California Review of Law and Social Justice. Fong also authored and published a note titled *Interrogations and False Confessions: How the Innocent Are Made Guilty* (Volume 30, Number 2 Spring 2021).

After law school, Fong was determined to work in public defense after spending time as a post bar clerk at the Riverside County Law Offices of the Public Defender. I met Allan as a post bar clerk, and when I saw his strong writing skills, I recruited him to write for the *Riverside Lawyer* magazine. Fong now serves as a member of the magazine's Publications Committee.

When asked how he knew public defense was his career calling, Fong credited his upbringing for the



Allan M. Fong

passion he exudes as a deputy public defender. "My dad is the inspiration for my work as a deputy public defender," Fong said with an earnest look in his eyes and a wisdom that belies his youthful appearance. "He always told me he loved his work so much that he would do it for free. I'm fortunate enough to be working in a field that I'm passionate about, and I always try to give people the best criminal defense that money cannot buy." Fong proved this to be true in his first trial, in which his client was fully acquitted of misdemeanor child endangerment. Fong

is currently assigned to Riverside's Department 22, appearing in front of Judge Yang, who he appreciates for his fair and balanced application of the law.

Fong's hobbies include writing, collecting and listening to records, and spending time with his two yellow Labrador retrievers.

*Juanita E. Mantz is a writer, a deputy public defender and a member of the RCBA Publications Committee.*



## RCBA GENERAL MEMBERSHIP MEETING

**Friday, January 20, 2023 at Noon**  
**RCBA Building, John Gabbert Gallery**

**Speaker: UCR Professor Clifford Trafzer**

A revisit of "Tell Them Willie Boy is Here." Professor Trafzer's research and work on the story from the Indigenous perspective and his work with Jason Mamoa and his new movie, "The Last Manhunt."

**An RCBA History Committee Presentation**  
**Sponsored by RCBA Dispute Resolution**  
**Service, Inc. (DRS)**

Free to RCBA Members, \$40 for Non-members  
Lunch Catered by Wood Ranch  
Seating is limited.

RSVP by January 17 to RCBA office.

# PRINTING & MARKETING SUPPORT

## for Legal Firms



**Local. Award-Winning. Trusted.**

Serving the Riverside County legal community since 1968.

### STATIONERY

- Letterhead
- Business Cards
- Envelopes
- Mailing Labels
- Notary Stamps

### ORGANIZATION

- Binders
- Custom Folders
- Forms
- Labels & Seals
- Rubber Stamps

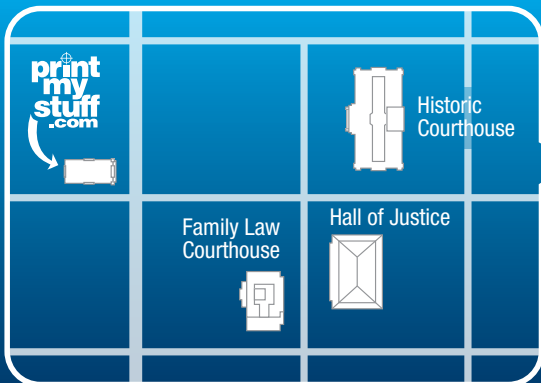
### PROMO ITEMS

- Pens
- Notepads
- Sticky Notes
- Thumb Drives
- Tote Bags

### SECURE DOCUMENT SERVICES

- Shredding
- Scanning
- Exhibits

*...and so much more!*



*Located in the heart of Riverside's Legal District*

**Riverside** 4093 Market St  
951.682.2005

**Corona** 501 E. Sixth St  
951.737.1820

# JUDICIAL PROFILE: HONORABLE MONA NEMAT BRINGS TO THE BENCH PERSEVERANCE, RESILIENCE, AND A DEDICATION TO PUBLIC SERVICE

by Laura Crane

Riverside County's bench has grown with the addition of a truly unique and special public servant. Judge Mona Nemat was appointed by Governor Newsom in July 2022. She brings an exceptional background and dedication to public service that will further enhance justice in the community.

A quick glance at Judge Nemat's resume reflects a normal progression to the bench. Judge Nemat obtained her bachelor's degree from the University of California, Irvine and went straight through to the University of California, Davis for her Juris Doctorate degree. After law school, she had a successful career specializing in municipal litigation, becoming a partner at Best Best & Krieger LLP and operating her own firm for nearly nine years.

A resume, however, never includes the essence of a person. Looking beyond Judge Nemat's resume, you will discover a history that reflects a determination few of us will ever know and the resilience needed to manage the extreme caseloads handled by the local judiciary.

Judge Nemat was born in Pakistan to young parents. Her mother left to the United States of America when Judge Nemat was just three years old. Her father, a squadron leader in the Pakistani Air Force, struggled to balance his career while caring for Judge Nemat and her older brother. Ultimately, he negotiated for Judge Nemat and her brother to attend an all-boys military boarding school. She left her family home when she was just four years old. Unbeknownst to her, she was the subject of a multi-year international custody battle between her parents.

When Judge Nemat was seven years old, she left Pakistan to join her mother in America. But like everything in Judge Nemat's life at this point, this voyage was fraught with difficulty. What was supposed to be a three-day trip from Pakistan, to Turkey, to London, to America, became a multi month affair as Judge Nemat and her brother were held up in Turkey with problem-



Hon. Mona Nemat

atic paperwork. They lived with relatives for two months before being able to finally meet their mother in Tustin, California.

Life remained challenging after Judge Nemat arrived in California. Initially, she lived in a two-bedroom apartment with her mother, brother, two aunts, and countless cockroaches. The family moved at the end of every school year. Judge Nemat's mother explained these moves as "leaving a dirty apartment," but Judge Nemat would later understand the family was struggling financially and attempting to avoid rental

increases. With every move came a new school, new friends, and new challenges.

Judge Nemat's father eventually joined the family in the United States, but was infrequently involved in Judge Nemat's life until she was an adult. Through her teen years, Judge Nemat struggled to reconcile the traditions and expectations her family maintained for her with the expanded opportunities made available in her new country. Ultimately, Judge Nemat left home at just 17 years old to find her own way through a confusing world.

Judge Nemat's resume shows a regular progression though college and law school. Her resume does not show that at 17 years old, she not only left home, but also left high school after obtaining her California High School Proficiency Certificate. She was then married at 19 years old and was the mother of two by the time she was 20. Her marriage was short lived and she raised her first two children without their father for the remainder of their lives.

Judge Nemat made her way through community college and finished UCI while a single mother of two boys, ages five and six. She did not let anything hold her back. She graduated with honors and two majors, criminology and psychology. She headed straight off to law school.

Judge Nemat left the support of her extended family in Southern California and brought her children to law school in Davis, California. Throughout law school, she juggled elementary school, day care, moot court, teach-

ing assistant positions, and internships. As the most well-spoken speakers at her swearing in ceremony, Judge Nemat's oldest children displayed the strong foundation they were given as they formed an unbreakable bond with their mother through this period. In their speeches, they remarked that they had no idea when their mother studied in law school because she was there for them at every step. These were just some of the first signs of Judge Nemat's dedication to others that forms the core of her being.

As Judge Nemat entered her new career in the legal profession, she struggled to understand her new reality of having a seat at the same table as those she had envied throughout her upbringing. As her family moved from home to home and learned to blend into an entirely different culture, many of Judge Nemat's new colleagues had grown up in single city going on annual family vacations. Eventually, she was able to see her differences as strengths and used those strengths to give back to her profession and community.

Judge Nemat married the love of her life promptly after graduating law school. They had met many years before while she was working in a Taco Bell drive through. Her husband is also an immigrant raised by a single mother.

The couple added two more children to their family as Judge Nemat progressed through her early legal career. She remained dedicated to all of her children as her career quickly moved forward. She guided her older children as they transitioned to adulthood and volunteered at her younger children's school. She formed a tight knit group of friends through her multi-year participation in the PTA.

As part of the recruitment committee at Best Best & Krieger LLP, Judge Nemat mentored new attorneys by providing them an opportunity to see how her history motivated her to be a successful attorney. After completing multiple trainings with the National Institute of Trial Advocacy, she was asked to become a member of the faculty. She accepted and lead various trainings for years.

In 2011, Judge Nemat was part of a group that formed Riverside County's "Project Graduate." Project Graduate teams the Riverside bench and bar with the school system to assist foster youth to graduate high school and plan for their futures.

In 2020, Judge Nemat became a volunteer attorney at the Inland Empire Latino Lawyers Association where she volunteered hundreds of hours helping people navigate the judicial system. Her son eventually joined her at IELLA as a legal assistant. Her entire family volunteered throughout the pandemic to distribute food to those in need through the For the People Task Force.

Now, Judge Nemat will bring her perseverance, resilience, and dedication to public service to the Riverside County bench. As reflected by her history, the bar should expect a hardworking judge that will relate to the community's diverse backgrounds and will do everything it takes to deliver justice.

*Laura Crane is a principal assistant county counsel with San Bernardino County and became dear friends with Judge Nemat as they made their way through their early careers at Best Best & Krieger.*



## ATTENTION RCBA MEMBERS

**How would you like to receive (or read) the Riverside Lawyer magazine?**

Some members have told us they prefer reading the online version of the Riverside Lawyer available on RCBA website at [riversidecountybar.com](http://riversidecountybar.com) and no longer wish to receive a hard copy in the mail.

**OPT-OUT** (If you have not done so already):

If you would prefer not to receive hard copies of future magazines, please let our office know by email to [lisa@riversidecountybar.com](mailto:lisa@riversidecountybar.com).

Thank you.

**Barry Lee O'Connor & Associates**  
A PROFESSIONAL LAW CORPORATION

REPRESENTING LANDLORDS EXCLUSIVELY  
UNLAWFUL DETAINERS/  
BANKRUPTCY MATTERS

951-689-9644

951-352-2325 FAX

3691 Adams Street  
Riverside, CA 92504  
[Udlaw2@AOL.Com](mailto:Udlaw2@AOL.Com)

### Need Confidential Help?

Contact Us: The Other Bar  
24 hours • (800) 222-0767

*The Other Bar is a network of recovering lawyers, law students and judges throughout the state, dedicated to assisting others within the legal profession who are suffering from alcohol and substance abuse problems.*

*We are a private, non-profit corporation founded on the principle of anonymity providing services in strict confidentiality.*

## CLASSIFIEDS

### 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

Certified Specialist by the State Bar of California Board of Legal Specialization. Referral Fees Paid. California and Nevada. 760-479-1515, Joel@SelikLaw.com.

### Judgment Collections

California and Nevada. Referral Fees Paid. 760-479-1515, Joel@SelikLaw.com.

### Nevada

Referrals or Pro Hac Vice. Nevada since 1985. 702-244-1930, Joel@SelikLaw.com.

### Contract Attorney Available for Legal Research/ Writing

Freelance attorney available to provide legal research and writing services to other attorneys on a project-by-project basis. Former judicial law clerk to federal judge in San Diego for three years. Licensed in California. For more information, please visit [www.meghandohoney.com](http://www.meghandohoney.com).

### Palm Desert Law Firm Seeks Attorney and Paralegal

The Law Office of Karen J. Sloat in Palm Desert seeks a senior paralegal and an attorney with 2+ years experience in labor law for our premier law practice. Please submit resumes to [Brittany@KarenSloatLaw.com](mailto:Brittany@KarenSloatLaw.com).

### Sale of Law Practice

Sale of existing Personal Injury and Workers' Compensation law practice with staff and lease. Terms negotiable. Turnkey operation of 32-year old practice. Will train. Please contact Owen L. McIntosh at [lomac5@yahoo.com](mailto:lomac5@yahoo.com).

### 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](mailto:rcba@riversidecountybar.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](mailto:rcba@riversidecountybar.com).



## SAVE THE DATE

### Criminal Law Section

Wednesday, February 8, 2023

12:00 p.m. to 1:15 p.m. (Zoom)

### Civil Litigation Section

Tuesday, February 14, 2023

12:00 p.m. to 1:15 p.m. (Zoom)

### Estate Planning, Probate & Elder Law Section

Wednesday, February 15, 2023

12:00 p.m. to 1:15 p.m.

Location: RCBA Building

“Probate Court Update”

Guest Speakers from Riverside Probate Court

### General Membership Meeting Joint with Project Graduate

Friday, February 17, 2023

12:00 p.m. – 1:30 p.m.

Location: RCBA Building

*Events subject to change. For the latest calendar information please visit the RCBA's website at*

[riversidecountybar.com](http://riversidecountybar.com).

*More info will be forthcoming by emails.*

## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective January 30, 2023.

**Bryce Sterling Baresi** – Law Student, San Francisco

**John Guerrini** – Law Office of John Guerrini, Palm Desert

**Robert Carl Hale** – Nguyen & Hale, Brea

**Ana Y. Lee** – Solo Practitioner, Riverside

**Aalia A. Sonawalla** – Office of the Public Defender, Riverside

**Nicolas G. Villa** – Inland Counties Legal Services, Riverside

**Jay S. Yu** – Montanez Yu, Corona





## BUILT WITH YOU IN MIND, INTRODUCING OUR LAWYERS' INSURANCE DEFENSE PROGRAM

Lawyers' Mutual is excited to share our values, services and member benefits with an ever expanding pool of California attorneys.

Built with you in mind, Lawyers' Mutual has redesigned our Lawyers' Insurance Defense Program for firms of six attorneys or more who practice 90% insurance defense work or greater.

### Key program features:

- Limits from \$1,000,000 per claim / \$3,000,000 in the aggregate to \$10,000,000 per claim / \$12,000,000 in the aggregate.
- \$50,000 Claims Expense Allowance outside limits included.
- Expert in-house California claims examiners.
- Multi-attorney discount factor.

Our Lawyers' Insurance Defense Program delivers on our commitment to enhance, revolutionize and challenge the status quo of how the traditional insurance industry operates.



**LAWYERS'  
MUTUAL**  
INSURANCE COMPANY

*Our strength is your insurance*

[www.lawyersmutual.com](http://www.lawyersmutual.com)



Riverside  
County

**LAWYER**

**Riverside County Bar Association**  
4129 Main St., Ste. 100, Riverside, CA 92501  
RCBA 951-682-1015 LRS 951-682-7520  
www.riversidecountybar.com rcbars@riversidecountybar.com

PRSRT STD  
US POSTAGE  
**PAID**  
PERMIT #1054  
RIVERSIDE, CA

## ARBITRATION & MEDIATION SERVICE PROVIDER

**RCBA Dispute Resolution Service, Inc.**

*You be the Judge.*

**Over 100 experienced Riverside County Bar Association mediators**

**2 out of 3 private mediations reach full settlement**

**3 out of 4 Family Law cases referred to our Court program reach full settlement**

**No administrative fees! Competitive hourly rates!**

DRS is a nonprofit public benefit corporation proudly serving Riverside County since 1995.  
DRS is the approved mediation service for the Riverside County Superior Court.  
Located across from the Riverside County Historic Courthouse at 4129 Main Street, Suite 100.

(951) 682-2132  
[www.rcbadrs.org](http://www.rcbadrs.org)

