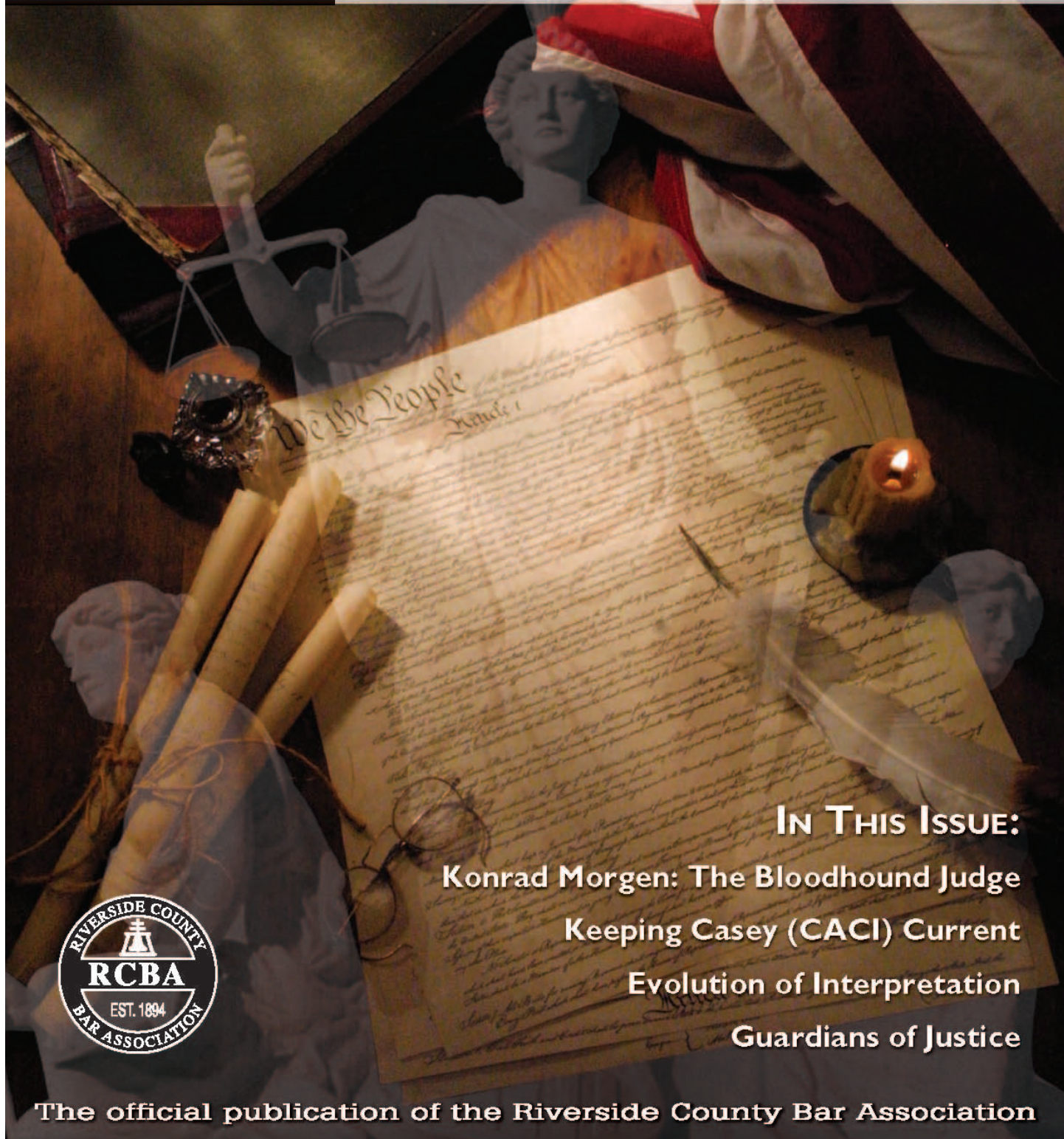


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- Konrad Morgen: The Bloodhound Judge
- Keeping Casey (CACI) Current
- Evolution of Interpretation
- Guardians of Justice



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MISSION STATEMENT

Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

Serve its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of Riverside County Lawyer published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication and timely business matters.

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.



CALENDAR

March

- 16 Family Law Section**
RCBA 3rd Floor – Noon
(MCLE)
- 18 Business Law Section**
RCBA 3rd Floor – Noon
(MCLE)
- 19 General Membership Meeting**
RCBA 3rd Floor – Noon
(MCLE)
- 22 Judicial Liaison Committee**
RCBA – Noon
- 24 EPPTL Section**
RCBA 3rd Floor – Noon
(MCLE)
- 25 CLE Brown Bag Seminar**
RCBA 3rd Floor – Noon
(MCLE)
- 27 State Mock Trial Competition**
in Orange County
- Volunteers in Parole, Inc.
Statewide Mentor Conference**
University of San Diego School of Law
(MCLE)
- 30 LRS Committee**
RCBA – Noon
- 31 HOLIDAY**

April

- 7 Bar Publications Committee**
RCBA – Noon
- 8 CLE Brown Bag Seminar**
RCBA 3rd Floor – Noon
(MCLE)



President's Message

by Mary Ellen Daniels

A Little History

Each month the bar association has the *Riverside Lawyer* reflect a theme. This month, our theme is "History in the Law." As most of you know, I have been in the legal community for many years. When working for the State Department of Justice, in its Criminalistics Laboratory in the 70's, I never dreamed I would end up here in this honored position.

My climb to the presidency began by working as a Superior Court bailiff, for the late, great J. William Mortland, Judge of the Superior Court, Department 5. Those were the good old days.

Prior to being permanently assigned to Judge Mortland, I worked for Judge Hews. He walked the courthouse hallways daily, talking to other judges, then walking down to Department 5, where Judge Mortland would tell him a new joke. The laughter that filled Department 5 was a kind of laughter that one does not hear now. The respect I had for the judiciary was overwhelming. Injustices were considered, the rights of the people were considered, and upholding the law was foremost in the minds of the judges and the lawyers. It is my hope that we, in the legal profession, keep in mind diversity as it relates to religious beliefs and ethnic background.

The way I felt about the justice system was quite different than it is now. I thought that anyone who took an oath to tell the truth . . . would. I thought that all of those in law enforcement really worked to better communities, would never lie, and would never falsify documents. Now, I think "all" is extreme.

I remember having long conversations with Judge Mortland regarding the Constitution and its guarantees. When I first was employed in Department 5, I had no desire to become an attorney. You see, where

I came from, it is thought that attorneys are brilliant people who have a special gift of intelligence, far beyond anything that we could comprehend. I never, never thought that I would be honored enough to work with or communicate with such brilliant minds. I never thought that I would be able to converse with a judge. I was honored then, as I am honored now.

I remember the first day I appeared in Riverside Superior Court. My first uniform was tailor-made just the right way, so that my tummy would appear flat. The uniform was starched and pressed and, having finished my firearms training, I was ready to take on the world. I was assigned to Mack McCombs, the bailiff of bailiffs. McCombs was the trainer and I was his student. I remember walking with McCombs over to the calendar section, where the calendar for the day's legal events and trials were posted. My first glance at the calendar left me gasping for air. How was I to know what a 211 P.C. was? Where was Department 10? What was a civil trial? What was law and motion? I knew that I was not going to make it. I made a decision and called Art Young, the managing criminalist at the Department of Justice, to beg for my old job back. I cried into the telephone, telling Art that I knew I could not make it as a deputy; it was just too complicated; I had made a bad mistake; and I asked him if anyone had been hired for my old job. After he replied, "No," I dropped the bomb on him. I WANTED MY OLD JOB BACK. Art laughed and reassured me that I would do all right if I just calmed down. He advised me, "Take a couple of weeks and then see if you want to come back."

In two weeks, I had determined that running the court halls with Roxanne Orrock (still my best friend) was what God had planned for me. Within two weeks, I had learned not only how to read the court calendar, but that almost everyone had a skeleton in the closet. Oh, yes, this was the place for me, and I was never leaving.

Recently, I was honored to sit in the hallway of the Superior Court with one of my former law school professors, Thomas Carpenter. I will always admire and respect this man. First of all, he gave me the highest grade in my law school career; and second, he is a legal scholar who is loved and respected by everyone in the legal community. He is my friend.

Mr. Carpenter sat me down and told me that I have a responsibility to try to capture on paper everything that I can remember and everything that he tells me, because I have a duty to preserve the history of the Superior Court. He took me back mentally to days before I was born. He told me about the great contributions that such attorneys as Krieger, Redwine, Sherrill, Thompson, and Colegate had made to our community. He recalled times when attorneys in the bar association would bond by spending quality time together. He told me about the assistance he had given to great judges when they sat on the Probate Bench for the first time and had no true understanding of probate law.

Mr. Carpenter and I compared the old probate judges to our own Judge Cunnison. I, personally, have never met such a bril-

continued next page

Barristers

by Robyn A. Beilin

In the past few months, I have had the opportunity to meet several of the newest members to our legal community, and I am pleased that there has been increased interest among recent admittees in becoming more connected by joining Barristers. However, there are still so many new attorneys out there who have not discovered or joined our organization, which facilitates networking and gives the opportunity to get to know your colleagues. For those of you who have not yet joined Barristers, I would strongly urge you to stop by for one of our monthly meetings and see what we are all about.

Barristers is an organization for those attorneys who are 35 years of age or younger or who have been in practice for seven years or less. We meet on the second Wednesday of each month at Cask 'n Cleaver, which is located on University Avenue here in downtown Riverside, at 6:00 p.m. At each meeting, we are joined by a respected member of the legal community, who leads a discussion on topics that are geared to younger attorneys and for which attendees receive one hour of MCLE credit. There is no cost to join Barristers (other than the annual dues to the Riverside County Bar Association) – just the cost of having dinner and drinks at Cask 'n Cleaver, which, of course, is optional. We would welcome any other member of the RCBA to join us as well!

In January, we were fortunate to have Terry Bridges speak on "Ethics and Professional Civility." Judge John Kennedy of JAMS joined us in February for an informative discussion on "Alternative Dispute Resolution." A special thanks again to both of them for taking time out of their busy schedules to join us and for sharing their thoughts and perspectives on such important topics.

Please note that, due to the "Oldtimers' Reception" (on March 10, 2004), Barristers will not be meeting at Cask 'n Cleaver during the month of March. Our next regular meeting at Cask 'n Cleaver will be on April 14, 2004 at 6:00 p.m.. We will be joined by Randy Stamen, who will be leading a discussion on "Carving Your Niche."

If you have any questions regarding Barristers, please contact Robyn Beilin at beilinro@yahoo.com or at (909) 686-8848. We look forward to seeing you!

Robyn Beilin is with the Law Offices of Harlan B. Kistler and Secretary of Barristers.



President's Message *(continued)*

liant judge. When I am in his chambers, I sit in amazement at how this mortal man can recite the Probate Code almost word for word. Judge Cunnison will always shine as a bright light in the history of the law in Riverside County.

We members of this Bar Association of Riverside County are honored to practice law in front of such an esteemed and HONORABLE bench. That . . . shall go down in history.

Mary Ellen Daniels is president of the RCBA and is a sole practitioner in Riverside.



Riverside County Law Alliance Spring Reunion

THE RIVERSIDE COUNTY LAW ALLIANCE
WILL BE HOLDING ITS SPRING REUNION
PARTY ON FRIDAY, APRIL 30, 2004,
AT THE VICTORIA CLUB.

ANYONE INTERESTED IN BECOMING A
MEMBER OF THE GROUP IS WELCOME TO
ATTEND. RCLA IS OPEN TO SPOUSES
AND FORMER SPOUSES OF LEGAL
PROFESSIONALS. IT IS A VOLUNTEER
ORGANIZATION THAT CONDUCTS LAW-
RELATED ACTIVITIES. FOR INFORMATION
ON THE SPRING PARTY, PLEASE CALL
TAMMY STREAM AT (909) 796-5804.

ANYONE INTERESTED IN BECOMING
A MEMBER MAY CALL MEMBERSHIP
CHAIRMAN KATIE SMITH AT
(909) 684-8504 FOR INFORMATION.

BOARD MEMBERS FOR 2003-2004 ARE:
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DIANA CHANDLER; TREASURER,
CHRISTINE CAHRAMAN; AND AUDITOR,
NANCY FOSTER.



JUDICIAL PROFILE: HONORABLE LAWRENCE FRY

by Rick Lantz

If you walk into Larsen Center looking for a typical TV judge – one with a flowing white mane and the skill of Solomon or a wise-cracking, seen-it-all, know-it-all, who exudes law and order – don't walk into Department 2J, because Judge Lawrence Fry won't fit the bill. He is a quiet, unassuming gentleman, arguably the most respected judge in Riverside County. I walked into his courtroom to set up an interview and was greeted with a, "Who me?," as if, "Who in the world would want to interview me?" I did . . . and I did, a week later in his chambers. I wanted the interview to take on a different tone, one that drew out not the Honorable Lawrence Fry, but Larry Fry.

"What book are you currently reading?" "In Search of Identity: The Search for Anwar Sadat." "Do you tend to read biographies over novels?" "No, actually I like to read them all. I probably read more novels than anything else." "Have you ever had any desire to write a novel, a historical book, poetry, or anything else?" "No, no. I don't think I can do that. Writing is very hard work, probably the hardest work you can do. Even the writing I do is hard." "If someone wrote a biography of you entitled 'The Story of Lawrence Fry _____,' how would you fill in the blank?" "Probably, a person who is happy with his life, professionally and personally." "You're one of the rare ones." "Yes, I am fortunate."

"I have a feeling you enjoy traveling." A slight nod of the judge's head. "Where have you traveled that made the most lasting impression on you?" "After I took the bar exam in '75, I went to Europe and spent six months there. It was such a drastic change from law school. It was wonderful, backpacking with one of my buddies from college. We lived in hostels and little hotels for \$2.00 a night. We met people from all over the world, and I'm still in contact with some of them." "Where would you like to travel that you haven't been?" Without hesitation, "Africa. I get 30 vacation days, 30 work days, six weeks."

"Some people make a wish list, things they want to do before they die. What's on your wish list?" With a smile, "Personally, I don't make a wish list and I'm pret-

ty satisfied with the way things are. But ... looking ahead, when I retire, time to just read, do gardening, not meet deadlines." "What sports and hobbies do you like to do?" "I swim, I have a pool, doing laps in the summer. I used to play tennis, but no more – it's always a hassle getting someone to play with you." "Since you've been out here, have you picked up golf?" "No, I haven't. It's an all-day thing. But I do like the theater and movies – I go a lot."

"Do you support any charities?" "Yes, a number of charities. I'm really interested in animals and belong to charities associated with animals. Also, my father died of colon cancer 13 years ago, so I deal with charities dealing with cancer research and also AIDS research. I also contribute to Boys and Girls Town."

"I did a bit of research and found out that you were in the Naval Reserve from 1968 to 1974 and saw action in Vietnam. Have you ever had the desire to return to Vietnam?" "Yes, I'd love to go back to Vietnam. While in the Naval Reserve, I was off the coast, so actually I've never seen Vietnam, other than from the sea. Yes, I would very much like to see it. I understand it's a beautiful country."

"When you are at functions, social events, do you tend to mention you're a judge or don't mention it?" "I tend not to mention I'm a judge." "Why is that?" "I really avoid mentioning I'm a judge because I want to be treated as a person, not a title. If I'm specifically asked what I do, I do say I'm a judge." "Do people treat you differently knowing you are a judge?" "In a preferential way, yes, which is nice but I really want to be treated like a person, I want to relate person-to-person, and not based upon a title."

"On the bench, what bothers you more than anything else?" A bit of thought, then . . . "I think probably what bothers me is when someone is behaving in a rude manner toward a litigant, toward opposite counsel, a witness, or even toward me. That upsets me the most." "Have you ever put anyone in jail for contempt?" "No, I haven't, however [with a bit of a smile], I've come close."

"Have you ever recused yourself from a case?" "Many times. I have to recuse myself from a case if I personally know a party, and also I recuse myself from certain types of cases, such as animal abuse, where I feel I cannot be impartial enough."

"I read a 1996 judicial profile from the Daily Journal where you were quoted as saying, 'One aspect of the job that I did not anticipate is the isolation. I'm not one of the guys anymore. I miss the collegiality of the bar.' Have you gotten over that aspect, isolation, or is that still a part of you?" "My life changed when I became a judge because I was very active in the bar association; however, a couple of positive things happened when I became a judge. I broadened my scope of my friends. Also, I've been very active in the Inns of Court, where I'm the current president. That's got me dealing directly with bar members on a personal level, where I enjoy the collegiality that I once had. I think we have a wonderful bar association out here."

"Is there a camaraderie among the judges off the bench?" "I would say, not generally, although there are judges who are good friends off the bench, but they were friends beforehand. Now, I have a good friend, Judge Tom Douglass; we've been friends forever, we have lunch together and so forth. But generally, judges don't have much to do with one another off the bench, although a judge who I didn't know before, but who I now admire a great deal, is Rob Taylor."

"If today you stepped down from the bench, how would you like the legal community to remember you?" "I would like them to remember me as being fair and being even-handed with both sides, and as having an easygoing demeanor." "Have you succeeded?" "Generally speaking, I have. I believe that's one of my main traits – having an even demeanor."

One last question: "As between Elvis Presley and Tony Bennett, who do you prefer?" With a laugh, "Actually, I prefer classical music." "Somehow, I had you pegged as an Elvis fan." "I don't mind him, but I still like the classics."

Rick Lantz, a member of the Bar Publications Committee, is an attorney in La Quinta.



THE HONORABLE BERNARD SCHWARTZ

by Jacqueline Carey-Wilson

He was an exceptional trial attorney, always prepared and forceful, but polite. These are the qualities that he will bring to the bench and make him an outstanding judge.

- Judge Rick Thierbach

Bernie has all the qualities to make a good judge.

He is kind, intelligent, fair, patient, wise, compassionate, and respectful.

- Ron Obirek



Grover Trask, Public Defender Gary Windom, the Riverside Police Officers Association, and numerous other lawyers, judges, and community leaders also supported Judge Schwartz's appointment.

Judge Schwartz was born and raised in Canada, and earned his bachelor's degree from the University of Alberta. He left Canada in the early 1980's to

attend law school in California. "Canada's loss was California's gain," said Ron Obirek, a long-time friend of 30 years. "Bernie has all the qualities to make a good judge. He is kind, intelligent, fair, patient, wise, compassionate, and respectful."

Judge Schwartz graduated from McGeorge Law School in 1986 and first practiced civil law before coming to the Riverside County Public Defender's Office in 1988. Judge Schwartz opened his own criminal defense practice in 1990. He handled all types of cases, from simple misdemeanors to the most serious of felonies. During his years in private practice, Judge Schwartz earned the respect of prosecutors and defense lawyers, along with the judiciary. "He was an exceptional trial attorney, always prepared and forceful, but polite," said Judge Rick Thierbach. "These are the qualities that he will bring to the bench and make him an outstanding judge." "Bernie was a very hardworking lawyer," said Pete Scalisi. "He will bring that sense of hard work and dedication to the bench."

Judge Schwartz began serving on the bench in a pro tem capacity in 2001. In July 2002, he was selected by the Riverside County judges to serve as a commissioner. As a commissioner, he handled various assignments, including preliminary hearings, criminal trials, and drug court cases. "He demonstrated an ability to handle a high volume calendar and resolve 90 percent of the cases," said Judge Thierbach. After he had been a commissioner for about eight months, many, including



Judge Taylor was pleased that Judge Schwartz was appointed to replace him. Sheriff Bob Doyle, District Attorney



Judge Thierbach, encouraged him to apply for an appointment to the bench because of his excellent skills as a bench officer.

He currently presides over criminal trials in Department 42 at the Hall of Justice. As a judge, he hears all types of cases. The second trial assigned to him was a special circumstances murder case. Judge Schwartz believes that such a difficult case was assigned to him because of his years of criminal defense experience. He finds the job most rewarding when the case is concluded and justice is dispensed. "As a judge, you are able to do the right thing on cases and get people's attention," said Judge Schwartz. "You might even be able to change a person's life around."

Judge Schwartz expects all attorneys who appear before him to be prepared for their cases. According to Judge Schwartz, "Attorneys carry with them a weighty responsibility and it is important for them to understand the ramifications of what they are doing."



Judge Schwartz was formally enrobed on January 9, 2004, in Department One of the historic civil courthouse. Judge Schwartz resides in Riverside with his wife, Cathy Spurling, a supervisor with the Riverside County Public Defender's Office, and stepson Matthew Spurling.

Jacqueline Carey-Wilson is with the Office of the San Bernardino County Council.



BENCH TO BAR

United States District Court, Central District Of California — Notice From The Clerk

Effective January 1, 2004, the Central District of California has established an Eastern Division pilot project. Under the pilot project, Magistrate Judge Stephen G. Larson, the resident magistrate judge in the Eastern Division, to be included in the pool of judicial officers for random selection as the assigned judge for all civil cases except death penalty habeas petitions, bankruptcy appeals, and case referred to a magistrate judge for a Report and Recommendation.

The Clerk shall provide a Notice and Consent Form to the filing party who shall serve the Form on each party served in the action. If all parties consent, the case shall remain assigned to Magistrate Judge Larson for all purposes, including jury and non-jury trials and the entry of final judgment, pursuant to the provision of 28 U.S.C. § 636(c) and F.R. CivP. 73(b). If any party fails to consent within (5) days of the filing of a dispositive motion or application for temporary or permanent injunctive relief, or (5) days before the final pre-trial conference, whichever occurs earlier, the case shall be reassigned to Judge Robert J. Timlin to whom the case would have been assigned initially.

The party or parties are advised that they are free to withhold consent without adverse substantive consequences.

Subsequent documents for these cases must be filed at the location where the District Judge is located: Eastern Division, 3470 Twelfth Street, Room 134, Riverside, CA 92501.

You may obtain a copy of the new General Order 03-13 by visiting the Court's website at www.cacd.uscourts.gov.



BARRISTERS PROFILE: CHAD FIRETAG

by Robyn A. Beilin



I can honestly say that, had I not been involved in Mock Trial, I would not have been a lawyer.

After being approached by a good friend of mine, I reluctantly agreed to be an attorney coach for a Mock Trial team. I say reluctantly because I was aware of the incredible time obligation that such a commitment entails. However, over the last few months that I have been a coach for Santiago High School in Corona, I have realized not only how rewarding this experience has been for me but how invaluable the experience can be for the students who participate in the Mock Trial program.

My friend Jonathan Lewis of J. Lewis and Associates, who is my co-coach, had wanted to volunteer because he was a member of the Mock Trial Team at Arlington High School when he was a student. He explained that his experiences with Mock Trial had led to his ultimate decision to become an attorney.

One night at practice, we were reviewing with our students an old videotape of a Mock Trial Team that had gone on to win the Nationals that year, and I realized that I recognized one of the student attorneys. It was none other than Chad Firetag, who now practices criminal law here in Riverside. I was intrigued by the fact that, like Jonathan, Chad had gone on to practice law, and I thought this profile would be particularly apropos in light of the recent Mock Trial competitions.

Chad explained that he always knew that criminal law was something he was interested in, beginning with his experiences during his participation in Mock Trial. Growing up in Riverside, Chad attended Arlington High School, where he was involved in Mock Trial for three of his four years of high school. His attorney coach was Steve Harmon, a well-known and respected Riverside criminal defense attorney. "My sophomore year, I was just a bailiff, and I was an attorney in my junior year for the prosecution. I was an attorney for both the defense and the prosecution in my senior year."

During Chad's senior year of high school, his team went on to win the National Mock Trial Championship in Chicago, which was an incredible accomplishment, after having won the Regional and State Competitions. Chad attributed the success of his team that year to the efforts of Steve Harmon. "The sacrifices that Steve made for us far outweighed any sacrifices that we had to make. It never really hit me how much work he did until I coached myself."

After graduating from high school, Chad attended UCR for his undergraduate degree. While in college, Chad interned at the Riverside District Attorney's Office in its Domestic Violence Unit for several quarters, which, he explains, was a "great experience." Chad also clerked for Steve Harmon during his last two years of college. "Really, it was then that I decided that I liked criminal law." Chad went on to graduate from UCR in 1998 with a degree in Political Science.

Following college, Chad attended law school at UC Davis and graduated in 2001. While in law school, Chad participated in Moot Court, was a member of the Mock Trial Team and was in the Order of the Barristers. "I did some of the smaller Moot Court competitions and went to New York for an Evidence Moot Court Competition." Chad was also the editor-in-chief of the Environmental Law Journal.

At the end of law school, Chad explained, he decided to focus on civil litigation, as he realized that an associate attorney position was easier to get in a civil firm than it would be in a criminal firm. "I didn't want to go the route of getting a government job, as there was a lot more flexibility with a private job." Chad's first position as an associate attorney, after being admitted to the bar in 2001, was with Rutan & Tucker, which is located in Orange County. He first joined Rutan & Tucker as a summer associate. In his capacity as an attorney with that firm, he focused on intellectual property litigation and government tort litigation. "I was a summer associate and worked there for about a year. They were a great firm but I was fairly certain that I didn't want to do civil work."

Chad soon realized that it was criminal law that was really his passion. After moving back to the Riverside area with his wife in October of 2002, he joined the Law Firm of Paul Grech, where his entire practice is devoted to criminal law. Specifically, he handles the defense of misdemeanors and felonies, primarily here in Riverside County. Chad also participates in the Conflicts Panel, which, he explained, "is a panel that handles indigent cases whenever the

Public Defender's Office declares a conflict of interest, which typically happens in codefendant cases."

Leaving civil practice to focus on criminal law was clearly the right choice for Chad. "Sometimes, I lean back and think how good of a decision I made because I know this is really what I wanted to do because I wasn't really feeling fulfilled. This is, by far, the best decision that I made." Chad expected that the trial experience that he would obtain by practicing criminal law would be his favorite aspect of his job. But Chad explained that it is his interaction with clients that is the most rewarding for him. "I get to talk to the client, I get to interact with them, I get to feel their life experiences and get their sense about what they want to do with the case. The best times are when I can have a full, open discussion with them about what their fears are about the case, what they want out of the case, and what they expect out of the case."

Chad's experiences with Mock Trial proved to have a lasting effect on him. "I can honestly say that, had I not been involved in Mock Trial, I would not have been a lawyer." He is still involved in the Mock Trial program as a member of the Steering Committee, which runs and coordinates the Riverside program which selects the top performers among the participants. The relationships that he forged during that experience also have remained with him. "I still see Steve [Harmon] every day. In fact, I see him in court on a regular basis." In addition to his present involvement with Mock Trial, Chad is also a member of Inns of Court, Barristers, and the Riverside County Bar Association.

After meeting with Chad and hearing about how his experiences with Mock Trial ultimately led to his decision to become an attorney, I feel even more privileged that I am participating in Mock Trial as an attorney coach. I would encourage you to become involved as a coach or a scoring attorney.

Robyn Beilin is with the Law Offices of Harlan B. Kistler and Secretary of Barristers.



CURRENT AFFAIRS

by Richard Brent Reed

CURRENT OFF-AIR

Freedom is in the air. It's electrical! Free wireless DSL has come to Riverside . . . or part of it. If you take your laptop to the Mall in downtown Riverside, you can hook up for free. All you have to do is buy a wireless "card" that attaches to your computer, load the accompanying software, walk to the Mall, turn on your laptop, and your machine will sniff the air, find the DSL transmission, and connect you. Then you just log on.

The City of Riverside has established a transmission corridor down the length of the Mall. All of the city's terminals can now become a wireless network, wherever the office is located along the Mall. The hype said that access extended 300 feet on either side of the Mall, but actually the reception fades out at around 150 feet. Free DSL is for the techno-hip. Park yourself anywhere on the Mall and go to it. But don't stray too far from what was once Main Street. "300 feet" should be narrowly construed.



KEEPING CASEY (CACI) CURRENT

by Justice James D. Ward

When I was approached to chair the Judicial Council Advisory Committee on Civil Jury Instructions, I said yes. After investing six years in the creation of CACI – the new Judicial Council civil jury instructions – I could not resist the offer to hang around for a couple more years to see the reaction to the instructions and help in their maintenance.

Since their adoption on September 1, 2003, the instructions have been used regularly by judges throughout the state. They are following the admonition of new Rule 855 of the California Rules of Court, which provides that the new instructions are “the official instructions for use in the state” and that their use “is strongly encouraged.” While many judges observe that the

Justice James Ward and Justice Carol Corrigan Awarded 2003 Jurist Of The Year

Justice James Ward of the Fourth District Court of Appeal and Justice Carol Corrigan of the First District Court of Appeal were jointly selected as recipients of the 2003 Jurist of the Year Award for their work on the Judicial Council’s Task Force on Jury Instructions. Chief Justice Ronald M. George and Administrative Director of the Courts William C. Vickrey presented the awards during the 2004 California Judicial Administration Conference (CJAC) in February. The awards are the highest honors given by the council to those who demonstrate extraordinary leadership and who make significant contributions to the administration of justice in California.

Since 1997, Justice Corrigan has served as chair of the task force while Justice Ward has served as the task force’s vice-chair and chair of its civil subcommittee. Both justices were instrumental in the drafting of the task force’s plain-language civil jury instructions published this fall, the most extensive revision of jury instructions ever attempted in the United States. Plain-language criminal instructions are in preparation and will be out in approximately one year. The justices’ commitment to the more-than-six-year project has been unwavering and their dedication has continued through the promotion of the new instructions. They have spent countless hours on the project, including the presentation of seminars to bar associations and other interested organizations.

The new plain-language jury instructions have been recognized both in California and nationally. The State Bar of California presented an award to Chief Justice George honoring the work of the task force and passed a resolution endorsing the use of the new instructions. In addition, the Burton Foundation in Washington, D.C., presented the task force with the Burton Award for Outstanding Reform, a national award honoring clear legal writing.

rule is not mandatory, others consider it tantamount to obligatory language.

I am happy to report that the reaction of the legal community has been overwhelmingly positive. We regularly receive laudatory expressions regarding the clarity of the language, the superior organization and the overall effectiveness of the instructions. Frankly, the response has been positive beyond our wildest expectations. We know that our profession is resistant to change but the bench and bar are accepting the instructions and even learning to use the new software provided to the courts by our official publisher. Obviously, there are some concerns about particular instructions. Despite our assiduous efforts at maintaining neutrality, some divergent elements of the bar feel that their “ox is being gored” by the instructions. We hear some concerns about the software and we recognize the difficulties of learning a new process. The number of negative comments received has been far fewer than we expected.

I knew that our new instructions would require maintenance, but only after the experience of these first months do I understand how that will be done. The 800 instructions, with accompanying authorities, printed in two volumes consisting of 1350 pages, are not static. They are a living, changing statement of California law. The extensive authorities must be updated regularly and the language of the instructions must adapt to changes in the law. Also, because the instructions are new, we can expect comments from the judges and attorneys who are using them. We recognize that a project of this magnitude will not be perfect and some changes will be in order. Also, we have ambitions of covering additional areas of the law.

Under the mandate of the Judicial Council, maintenance of the instructions is the responsibility of the Advisory Committee. Appointed by the Chief Justice, the 20-person committee consists of 13 holdovers from the original task force. On the committee are appellate and trial jurists, plaintiff and defense attorneys and an academic whose specialty is legal language. Three subcommittees are responsible for portions of the instructions. Staff work is provided by Lyn Hinegardner of the Administrative Office of the Courts. The official publisher, Lexis-Nexis, provides research support.

The process for change is guaranteed to achieve maximum involvement of the legal community. This is a very important goal, but doing so results in a lengthy and somewhat cumbersome process. Suggestions are sent to Ms. Hinegardner at the AOC (455 Golden Gate Avenue, San Francisco, California 94102-3660). We decide which of them require action by the subcommittees, which then forward drafts to the committee itself. The Advisory Committee makes the changes and releases them for public comment through an extensive mailing to the legal community and by posting on a web site (www.courtinfo.ca.gov). The comments received inevitably result in editing and the results are sent to the Judicial Council. The Council and its Rules and Projects Committee review the work and approve the changes. Only then can the material be printed by the publisher. The process takes about six months. We are unhappy with this delay and we are working with the publisher to create a system for providing information regarding pending changes.

At the first meeting of the Advisory Committee, we had about 40 items on our agenda. They included, inter alia, the following items reflective of the work being done: We created new contract verdict forms to correct an oversight in the first publication. We addressed concerns about the definition of “substantial factor.” We discussed whether changes were required in the punitive damages instructions because of the recent U.S. Supreme Court case on the subject and the responsive opinions of California appellate courts. Our introductory instruction regarding the forbidden practice of jurors deciding the verdict amount by averaging the figures advanced by the individual jurors had to be “tweaked” because there is an appellate opinion which permits that so long as there is additional deliberation as to the correctness of the verdict. Some pre-evidence and post-evidence instructions had to be revised to correct minor tense problems. We added a new instruction regarding the doctrine of “avoidable consequences” in cases of sexual harassment by a supervisor.

We are considering adding instructions for areas of the law not now covered, including con-

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THE EVOLUTION OF INTERPRETATION: THE MODERN VIEW OF THE LIVING DOCUMENT

by Andy Sheffield

Only in the past 40 or so years, beginning probably with the ascendancy of former Supreme Court Justice Earl Warren, did the majority of judges begin to view the Constitution as an evolutionary document that could be interpreted differently with the passage of time. Under this view, the Constitution is seen as a “living document” full of words that are fluid, with no set meanings, words that are subject to interpretation by each generation. It necessarily follows from this that the Constitution will mean different things to different generations. Due to society’s desire for instant results and the dramatic politicization of the judiciary (coupled with its inability to refuse power that has been dropped in its lap), this view has, unfortunately, become the prevailing one.

Those who favor this evolutionary view of the living document are wrong. This nation was not built on the principle that judges, attempting to measure the will of society, would interpret the Constitution differently as time goes by. The term “living document,” first coined by Chief Justice John Marshall, was meant to describe the document as it was created 215 years ago, with its built-in mechanism for change. This mechanism is the amendment process, not randomized evolution. By the clear terms of the Constitution, the amendment process is the only way to change the constitution, and it requires ratification by three-quarters of the state legislatures or special state conventions – nothing more, nothing less. This is the only plausible definition; since the framers knew that they could not possibly plan for every circumstance or situation, they provided the methods by which the Constitution and its laws could be modified as society grew and changed.

The dangers of this prevailing view are clearly evident today, as the president, Congress and the judiciary have used it to increase federal powers without limit, since the built-in

check (the Constitution) no longer provides an obstacle. The presidency has been utilizing an evolutionary reading of its enumerated duties to expand its influence and power, culminating with President Franklin Roosevelt’s infamous attempt at court-packing to avoid the Constitutional barriers to the “New Deal.” This expansion has led to the executive branch’s unlimited ability to create any agency it deems fit, and even to assume powers expressly reserved to the other two branches – to spend the national treasury unchecked and to commit troops to combat without the consent of Congress, among many other less evident breaches.

Congress has also acquiesced in the evolutionary living document view. By accepting this view, it has been able to play both sides. On the one side, Congress has been able to give up some of its collective power to secure each member’s individual power. This is done by foregoing its decision-making responsibility on the pivotal issues facing the nation over the past 50 years. By failing to take action on issues such as abortion, homosexual sodomy, affirmative action, war and religion, members of Congress remain blameless when the judicial or executive branch acts. This allows them to campaign with a clean slate come election time, since they have no responsibility for the outcomes of the controversial decisions. On the other side, the evolutionary view allows Congress to pander to its constituents by creating and instituting laws that are contrary to the text of the Constitution. A few of the biggest examples of these include campaign finance reform, affirmative action and laws limiting and preventing the possession of and access to firearms.

The judiciary has fully embraced the evolutionary view of the living document. Over the past 60 years, the Supreme Court found no constitutional impediments to usurpations of powers never granted to the federal government. In doing so, it discovered that the powers traditionally reserved to the states and localities were in violation of the Constitution. In just the past 30 years, the Court has made laws and created restrictions on the once-guaranteed constitutional freedom of religion and on the right to bear arms, while creating new rights, such as abortion and sodomy. While this may not be alarming to some, the fact that five out of nine lawyers, who were never elected and have no accountability for their actions, are creating laws and redefining and changing the meaning of the Constitution with no guidance other than their own consciences has led to a situation the Constitution’s framers dreaded, which is best summarized by Abraham Lincoln in his inaugural address of 1861:

“[T]he candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, . . . the people

will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal.” A. Lincoln, First Inaugural Address (Mar. 4, 1861), reprinted in *Inaugural Addresses of the Presidents of the United States*, S. Doc. No. 101-10, p. 139 (1989).

Until Roosevelt ascended to the presidency, the federal judiciary agreed that any expansion of federal power required a constitutional amendment, not a clever interpretation of the interstate commerce clause or the 14th Amendment. This has changed over time, as the judiciary has become more politicized and has chosen to address the social issues that Congress has ignored. Rather than act to provide the checks and balances the Constitution requires, Congress has mired itself in trying to influence the “evolution” by expanding and abusing the power given to the Senate by the Constitution to advise and consent regarding the president’s court nominees. Beginning with the confirmation of Justice Hugo Black, and continuing through the nominations of Robert Bork and Clarence Thomas, the senators have become more concerned with the nominees’ personal beliefs and feelings on social issues than their legal abilities. Recently, this abuse has spread to nominations for the lower federal courts as well.

In seeking ratification of the Constitution, the framers expressly disclaimed the judiciary’s ability to discern and dictate the current issues of society. “The judiciary . . . has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will, but merely judgment . . .” The *Federalist* No. 78. This principle was also recognized in one of the opinions dissenting from the *Dred Scott* decision: “Political reasons have not the requisite certainty to afford rules of juridical interpretation. They are different in different men. They are different in the same men at different times. And when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean.” *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 620-21 (1857) (Curtis, J., dissenting). However, these statements seem to be irrelevant to the evolutionary thinking of today’s enlightened individuals who control our government.

The standards for constitutional change were set high. This is evidenced by the Constitution’s amendment history. In the past 215 years, thousands of amendments have been proposed and only 27 have been ratified. Those who favor the evolutionary definition of the living document have no patience for historical precedent or the checks and

balances provided by the amendment process, because the odds are against their success. They do not want to subject their whims to the high standards set forth in the Constitution. Nor do they want to subject their views to debate in the public forum; instead, they would rather have the government mandate that their views are the correct ones.

Over time, the use of the evolutionary view of the Constitution has allowed the federal government’s power to become so vast and undefined that constitutional questions about its powers are rarely posed. The framers recognized the possibility that the branches of government may not fulfill their duties under the Constitution. They stated that: “As the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived, it seems strictly consonant to the republican theory, to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish, or new-model the powers of the government, but also whenever any one of the departments may commit encroachments on the chartered authorities of the others.” The *Federalist* No. 49. As the people, and specifically as the lawyers, we must not merely accept what is told to us by the government. It is our duty to demand constitutional accountability. We must not get caught up in the merits of an issue before we ask whether the issue is appropriately addressed by the federal government.

We’ve lost the habit of demanding that the federal government show its credentials before it creates and exercises any novel power. The Constitution specifically delineates the federal government’s jobs, dividing them among the three branches; the remainder were reserved to the states and the people. Where, for example, does the government get the authorization to impose any type of racial preferences? Nobody asked this fundamental question while the issue has been hotly debated for several years. We can argue philosophically about whether the provision of equal opportunity or equal results is a proper function of any government. It would

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Evolution of Interpretation *(continued)*

simplify policy debates if we would begin by asking whether our government is given the specific power under the Constitution to enact this particular law. When the answer is no, the answer for advocates of, for example, abortion, sodomy, affirmative action or gay marriages is to garner enough support from the public and pass laws – not to have Supreme Court justices and other federal judges continually revising their views of the Constitution in order to satisfy what they believe to be the will of society. Without the firm limits imposed by the Constitution, the federal government has become a mere tool of those who hold power at a given moment.

If we plan to remain the land of the free, we must respect the document that guarantees our freedoms. Should we find fault with the Constitution, “let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.” George Washington, Farewell Address (1796).

Andy Sheffield is an associate with LeBeau & Thelan in Bakersfield.



Keeping Casey . . . *(continued from page 13)*

servatorships, unlawful detainer, intellectual property, certain real property actions and others. If any readers have suggestions for areas to cover, we want to hear from you. If anyone has jury instructions we have not covered, please share them with us so we can expand the set.

The Advisory Committee wants your suggestions for change. We want to hear about your experience with the instructions. We consider our role as that of facilitator, so the legal community can maintain and expand its jury instructions.

Justice Ward is with the Court of Appeal, 4th District and past president of the RCBA.



KONRAD MORGEN: THE BLOODHOUND JUDGE

by Richard Brent Reed

How does a just judge enforce justice in an unjust system? Georg Konrad Morgen was such a judge. As an administrative judge for the SS in Nazi Germany, Morgen created a pocket of justice in one of the most oppressive systems of government in history: the Third Reich. Though a specialist in international law and a published pacifist, he was drafted into the SS toward the beginning of World War II and, eventually, given the rank of Sturmbannführer, with jurisdiction over all of Germany's concentration camps. His determination to weed out corruption in the camps gained him the moniker: The Bloodhound Judge.

In the ten camps that he investigated, he discovered the practice of summarily shooting prisoners and hoarding their valuables. Over 200 people were put on trial. Five commandants were arrested (one of them the maniacal Amon Goeth, who used people for target practice in the film *Schindler's List*); two commandants were arrested personally by Morgen and executed by his order. He also uncovered the grisly atrocities of Ilse Koch, the wife of the commandant of Buchenwald. And it all began with a Jewish wedding.

The wedding in question is recounted by Alan Dershowitz in “Letter 12 22-Aug-2001 A Jewish Wedding” The nuptials took place at Buchenwald. The consumption of wine and food was conspicuous. Even more conspicuous was the presence of prison guards and SS officers. Morgen smelled a Deutsche ratte and investigated. At first, witnesses were “opaque” to his queries. Finally, Morgen learned of the “secret order” to recruit Jews to assist in the extermination of all Jews. Apparently, Morgen did not approve of Hitler's “Final Solution.”

Morgen knew that, under German law, there was nothing illegal about killing prisoners. Lethal injection was, in fact, prescribed by SS regulations. Summary shooting, however, was not. Nor was the hoarding of prisoners'

effects, which, having escheated to the state, became Reich property. These technicalities were just the weapons Morgen needed to visit justice upon camp officials who were murdering prisoners for their belongings. Since execution by shooting was against SS regulations, it was not lawful. And, as we all learned in law school, intentional, unlawful homicide is murder.

One of these prisoner-shooting, gold-hoarding officers was Karl Koch, commandant of Buchenwald. It was Koch's love of money that got him imprisoned by Morgen and, eventually, shot. Koch's wife Ilse, on the other hand, was an art lover. Supposedly she would ride through the camp on her big, chestnut mare, spot some hapless prisoner whose body art she fancied, and have her lover kill him and skin him. She then had the admired tattoo fashioned into a lampshade. She became affectionately known as the “Bitch of Buchenwald.”

Morgen attempted to pin the lampshade evidence on Frau Koch, but she seduced one of her keepers into getting rid of the evidence, along with the forensic report. After the war, the lampshade story created an international sensation. Under intense public pressure, the Allies tried her on the same charge before the Nuremberg war crimes tribunal. Again, the evidence against her was misplaced, due, once again, to her powers of seduction. This left the Allies with one competent witness: Konrad Morgen. He, after all, had seen both the lampshades and the forensic report. Morgen, however, refused to falsify his testimony. As John Toland tells us in his book *Adolf Hitler*:

“Morgen also did his best to convict Ilse Koch, the wife of the Buchenwald commandant. He was convinced that she was guilty of sadistic crimes, but the charges against her could not be proven. After the war Morgen was asked by an American official to testify that Frau Koch made lampshades from the skin of inmates. Morgen replied that, while she undoubtedly was guilty of many crimes, she was truly innocent of this charge. After personally investigating the matter, he had thrown it out of his own case. Even so, the American insisted that Morgen sign an affidavit that Frau Koch had made the lampshades. Anyone undaunted by Nazi threats was not likely to submit to those of a representative of the democracies. His refusal to lie was followed by a threat to turn him over to the Russians, who would surely beat him to death. Morgen's second and third refusals were followed by severe beatings. Though he detested Frau Koch, nothing could induce him to bear false witness.” (*John Toland, from a footnote in his book entitled Adolf Hitler*).

Ilse Koch was, eventually, convicted – though not on the lampshade charge – and sentenced to life in prison. She committed suicide in her cell in 1967. Morgen returned to private practice and ran a successful law firm in Germany. Morgen's adherence to the prin-

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GUARDIANS OF JUSTICE

by Richard Brent Reed

On January 13, 2004, retired San Diego Judge Norbert Ehrenfreund addressed the assembled membership of the Riverside County Bar Association and recounted his wartime experiences. Toward the end of World War II, Ehrenfreund was stationed in Germany as a soldier. Upon the cessation of hostilities, he was assigned as a journalist for the U.S. armed forces overseas publication, Stars and Stripes. In that capacity, he covered the first of the Nuremberg war crimes trials.

February of 1945 saw the Big Three – Churchill, Stalin, and Roosevelt – meeting at Yalta to discuss how they would carve up Germany and the rest of Europe after the war. They also talked about the disposition of Nazi war criminals. With the death of Roosevelt in April of 1945, Harry Truman ascended to the presidency. He asked Supreme Court Justice Robert Jackson to step down from his bench to prosecute before the Nuremberg war crimes tribunal. Jackson agreed, but made Truman promise to give him his old job back after the trials had ended.

Nuremberg had been chosen partly for its symbolic significance – it had been the site of those grandiose Nazi rallies that lit up movie houses during the newsreels – and partly because it was one of the few German cities with a courthouse that was still standing. There, in that bombed-out city, due process was to be applied to a defeated nation for the first time in history. Before that could be done, however, Jackson had to deal with his Soviet counterpart, Rudenko. (One imagines the hours spent consulting dictionaries to find the Russian equivalent of “due process.”) Justice Jackson’s notion was that the world yields no respect to a court designed to convict. Jackson was a stickler for details like “the presumption of innocence” and “proof beyond a reasonable doubt.” Rudenko reminded Jackson that fair trials in the U.S. were not ubiquitous. In the end, Rudenko conceded to the more Western concept of justice, if only in spirit.

[Author’s note: The Nuremberg trials did not adhere to the rules of court to which we are modernly accustomed: prosecution witnesses were paid for their testimony, and hearsay was allowed, as well as affidavits; the accused parties were not called “defendants,” since the burden of proof was on them, not the prosecution. The tribunal could also take judicial notice that the crimes had been committed so that the defense could not argue otherwise.]

Despite the limitations imposed upon them, the accused came up with some thorny defenses: the “international law” cited by the prosecution was *ex post facto*; the jurisdiction of the court was simply that the court represented the side that won the war; and, of course, the now famous defense, “I was just following orders.” Even the doctrine of *tu quoque* was invoked: the accusers are just as guilty as the accused.

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Konrad Morgen *(continued from page 17)*

ciples of justice and the rule of law produced an ironic result: it got him the approval of his boss Heinrich Himmler, who saw him as a force for order, and a couple of beatings from the Allies, who saw him as uncooperative.

How does a just man find justice in the midst of injustice? By being himself.

Richard Brent Reed, a member of the Bar Publications Committee, is an attorney in Riverside.



Guardians of Justice *(continued)*

(Because German submarine tactics shocked the sensibilities of the court, German Admiral Dönitz would have been sentenced for war crimes, but for the intervention of American Admiral Nimitz, who informed the judges, by affidavit, that American submarines used the same tactics.) Nevertheless, the trials proceeded and many Nazi sympathizers were made to answer for their “crimes against humanity.”

At the end of his presentation, Judge Ehrenfreund lamented America’s lack of support for the World Court. Then, he looked about the room and assured his audience, “We are the guardians of justice.”

Richard Brent Reed, a member of the Bar Publications Committee, is an attorney in Riverside.



THE RCBA ELVES PROGRAM 2003

by Brian C. Percy

The second year of RCBA's Elves program was a resounding success! We more than doubled the number of families served this year (15) and nearly tripled the number of individuals served (34 kids and 16 adults). We touched a greater number of communities in the County (8: Corona, Hemet, Lake Elsinore, Mead Valley, Moreno Valley, Perris, Riverside, San Jacinto) and the feedback from the Elves and the families served was overwhelmingly positive.



This year (December 2003) we had 55 Elves participate. In several instances some members were so excited about the program they wore two and three Elves hats! The Money Elves really came through this year too. We nearly tri-

pled the amount of money raised from last year (\$6,240.00). Due to the large amount of last minute donations, we were able to have a second shopping and wrapping session!

The success of this program is due to the great support and generosity we have received from the members of this Bar and their families who helped them participate. (Note to future shopping elves: Bring your kids! Those that did this were able to model to them the benefits of the act of giving AND have their assistance in figuring out what kind of cool gifts to get the kids and which ones to avoid!)

It is also wonderful to see the growing participation from the Bench. Like last year, they have discovered that this program is



something they can get involved in without running afoul of conflict issues. Not only have they been generous with money, but this year we even had some become Wrapping and Delivery Elves!

Thanks also to the generous folks at Target and their non profit discount program we were able to stretch our dollars and make them go farther on the merchandise purchased.

Finally, a big "Thank You" to the Elves themselves. Your wonderful spirit and camaraderie (which you can see in the photos accompanying this article) was evident throughout all the events.

Shopping Elves: Antoinette Jauregui, Soledad Jauregui, Michelle Winston, Christoffer Jones Winston, Pam Bratton, Amanda Owen, Sheryl McDonnell, Rina Gonzales, Judi Murakami, Kevin Murakami, Jaime Murakami, Tera Harden, Judith Runyon and Brian Percy.

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RCBA Elves Program (continued from page 20)




Wrapping Elves: Antoinette Jauregui, Soledad Jauregui, Michelle Winston, Rosetta Runnels, Reggie Sampaga, Rina Gonzales, Dan Hantman, Pam Thatcher-Lind, Lucas Lind, Commissioner Bob Lind, Maria Hoff, Diane Huntley, Tera Harden, Judith Runyon and Brian Pearcy.

Delivery Elves: Antoinette Jauregui, Michelle Winston, Christoffer Jones Winston, Pam Bratton, Sheryl McDonnell, Justice James Ward, Maria Hoff, Tera Harden, Mike Mayman, Kelly Bennett, Greg Bennett, Judith Runyon, Mark Thompson, Lesa Newman and Brian Pearcy.

Money Elves: Judge Becky Dugan & Kennis Clark, Aurora Hughes, Judge Elwood Rich, Amanda Owen, Justice James Ward, Daniel Greenberg, John Michels, Judge Dallas Holmes, Commissioner Paulette Barkley, Michelle Ouellette, Debra Gervais, Judge Thomas Cahraman & Christine Cahraman, Bernard Donahue, Terry Bridges (Bridges & Leahy), Virginia Blumenthal, Beck & Serna, Herreman Law Center, Edward Fernandez, Tera Harden, Irene Morales, James Cuevas, Judge Victor Miceli, Ilene Hunt, Stevan Rich, Diane Roth, Inland Counties Association of Paralegals, Newman & Associates.

Special Thanks: Charlotte Butt, the Riverside County Bar Association Staff, my assistant Rosetta Runnels who kept this organized and moving forward, Mary Ellen DeSantis and Pam Reliford from the County of Riverside and the Target Store at Galleria at Tyler.

Next year let's see if we can help 25 families! 



IN MEMORIAM

Rodney Tyron Mathews, Jr.

April 23, 1958 – January 2, 2004

by Michael J. Cappelli

Waiting On Mister Guitar

Years from now, after I'm gone, someone will listen to what I've done and know I was here. They may not know or care who I was, but they'll hear my guitars speaking for me.

Chet Atkins (1924-2001)

I took a stroll into a popular “hot spot” restaurant last week. My wife and I hadn’t been out for a time. Nic was at a sleepover, and we just wanted to have a meal and hang out incognito. As we entered, and much to my pleasant surprise, I spied a sign that said, “Atkins on the Menu!” “Totally kewl,” I told the wife – since Chet Atkins has been an idol of mine since I started plucking on my own guitar about 40 years ago. A meal with the music of Chet was just what this worn-out soul was looking for.

As we were seated, I heard a lot of noise, mostly the cacophonous voices of people who could pass for 18 and change. They were drinking, noshing and yapping, though there was a noticeable blank slate behind their eyes (something I learned to discern from my last jury trial). Yep, plenty of noise but no Chet.

Now, I’m one of those guys who would run the Jeopardy category on just about any type of music. I can’t remember what day it is, but I do remember music. I have a unique, though disturbing, ability to glean the music from the rest of the racket that surrounds me in the typical restaurant, bar, or nightclub. I usually sing along, annoying the wife and anyone else within earshot. But on this night, I heard nothing but the sounds of silence (and I don’t mean Simon and the dude with the big hair). To be honest, I really wasn’t expecting much more than a decent meal until I saw the sign. Then I got my hopes up, as the mellifluous picking of *Tears* and the jammin’ *Poor Boy Blues* started playing in my head.

Our waitress approached and advised us as to the daily specials. I’m always amazed at the colorful language employed by restaurateurs as they describe these delectable dishes. I guess “Alaskan Halibut with Toasted Almonds” is more appealing than a “hunk of white fish with nuts.” It kind of reminds me of the language we often employ when describing injuries and damages.

After we ordered, I was compelled to inquire about the music, as I still hadn’t heard any strummin’ by Chet:

“So, what’s the deal with the music?”
“What music, sir?”
“Well, you do have music this evening.”
“We have music every evening, sir. Is there something in particular you had in mind?”
“No, I mean, I just wanted to listen to the music advertised at the entrance.”
“Music, sir?”
“Yeah, Atkins, Chet Atkins, Mister Guitar, you know.”

I could see the emptiness pouring out of her brain as she stared silently into space before asking, “Chet who?”

“Could I please talk to your manager?”
“Absolutely, sir, I’m sorry, I just don’t know what you’re talking about.”

The manager cruised over, all of 25ish, and asked if he could be of assistance. I reiterated my desire to enjoy my meal with the music I’d been promised. As the scowl on my mug became more apparent (and as my wife kicked me square in the shins), the manager excused himself and returned with the sign.

“See!” I said. “There it is, Atkins on the Menu – Tonight!”

Feeling vindicated, I folded my arms, awaiting his apology and a complimentary cocktail for such egregious treatment. A smile appeared on his face, followed by a hearty laugh. My biceps were ready to explode over this weasel.

“Sir, I am so sorry, but you are mistaken. You see, the Atkins on the menu is Dr. Robert Atkins.”

“Who the hell is he and what instrument does he play?” I demanded. (I’ve heard of Dr. John, Jackson Browne’s “Doctor My Eyes,” and Peter Frampton’s “I Don’t Need No Doctor,” along with similarly titled songs by Brother Ray Charles and WASP.)

“I’m sorry sir, Dr. Atkins is that diet guru whose diet stresses meat, eggs and cheese over pasta, bread and vegetables. We have a variety of low-carb meals based on his principles.”

“No Mister Guitar?,” I murmured to myself.

I sank in my booth like a fool. I apologized for my actions and ordered Fettuccine Alfredo with Garlic Bread to spite myself. When I got home, I put on some Chet Atkins and warmed up a snifter of cognac. I sat at my computer to check out this Dr. Atkins dude. Redemption was mine! Turns out that Dr. Atkins died last April at 72, when he fell on an icy sidewalk. Now, I don’t mean to sound callous about such a tragedy. But it seems this quack fell down and broke his crown because he was too fat. Being the size of a rodeo animal myself, I felt a momentary twinge of empathy for the poor bastard. However, there was no such empathy shown by Mayor Michael R. Bloomberg of New York City, who remained unapologetic for calling Atkins a fatso. He even went so far as to criticize Atkins’ food as “inedible” at a recent fundraiser. Come to think of it, I still find it hard to believe that a “fashionable” dining establishment would have “diet” items on its menu as some sort of tribute to a dead, fat guy. But then, I now have hope again (as I await Subway’s naming of a sandwich in honor of some fat lawyer).

Michael J. Cappelli is a partner in the law firm of Babcock & Cappelli and a member of the RCBA's Bar Publications Committee.



RCBA

To register for RCBA events, call (909) 682-1015, or email rcba@riversidecountybar.com or use the online form at www.riversidecountybar.com. RCBA is a State Bar of California approved MCLE provider.

Friday, March 19, 2004; 12 PM – 1:30 PM

RCBA General Membership Meeting
“Stop and Eat the Roses”
 Speaker: Justice William Bedsworth
 Cost: Members \$18; Non-members \$25
 Location: RCBA Building, 3rd Floor
 MCLE: 0.75 hour General
 RSVP by to RCBA office.

Thursday, March 25, 2004; 12 PM – 1:15 PM

(CLE Brown Bag Series)
“Effective Oral Argument Before the Court of Appeal”
 Speaker: Justice Bart Gaut
 Cost: Members FREE; Non-members \$25
(Bring your own lunch.)
 Location: RCBA Building, 3rd Floor
 MCLE: 1.0 hour General
 RSVP by March 24 to RCBA office.

Thursday, April 8, 2004; 12 PM – 1:15 PM

(CLE Brown Bag Series)
“Minors Compromise”
 Speaker: Commissioner Joan Ettinger
 Cost: Members FREE; Non-members \$25
(Bring your own lunch.)
 Location: RCBA Building, 3rd Floor
 MCLE: 1.0 hour General
 RSVP by April 6 to RCBA office.

UCR Extension

Each quarter, UC Riverside Extension offers over 40 courses for MCLE credit for attorneys and paralegals. Below is a partial listing. Classes are held at the UCR Extension Center, 1200 University Avenue, Riverside, unless otherwise indicated. To register or request a catalog, call (909) 787-4105 or (800) 442-4990, e-mail register@ucx.ucr.edu, or visit our website at www.ucrextension.net/law. For program information, contact the Department of Law and Public Policy at (909) 827-7820 or e-mail law@ucx.ucr.edu.

Overview of the California Workers’

Compensation System.
 Thursday, April 8-June 17, 2004. 6:00-9:30 pm.
 MCLE 33 hours. \$375. Reg# 34F17.

Overview of the California Workers’

Compensation System.
 Thursday, April 8-June 17, 2004. 6:00-9:30 pm.
 MCLE 33 hours. \$375. Reg# 34F19.
 (UC Riverside Extension - Temecula Center)

Mediation II.

Monday, April 12-May 17, 2004. 6:00-9:00 pm.
 MCLE: 18 hours. \$275. Reg# 34F11.

Nonviolent Social Change and Dispute Resolution.

Friday, April 16, 2004 (6:30-9:30 pm)/
 Saturday, April 17, 2004. (9:00 am-5:00 pm).
 MCLE: 9 hours. \$145. Reg# 34F27.

Legal “How To” Seminars: Handling DUI and Drug Cases.

Friday, April 16, 2004. 1:00-5:00 pm.
 MCLE: 4 hours. \$95. Reg# 34F41.

Negotiation and Dispute Resolution.

April 20-June 22, 2004. 6:00-9:00 pm.
 MCLE: 30 hours. \$395. Reg# 34F22.

Communication Skills for Working with Relations in Conflict.

Friday, April 23 and 30, 2004 (6:30-9:30 pm)/
 Saturday, April 24 and May 1, 2004 (9:00 am-5:00 pm).
 MCLE: 18 hours. \$275. Reg# 34F25.

Legal “How To” Seminars: Introduction to Employment Law.

Friday, April 23, 2004. 1:00-5:00 pm.
 MCLE: 4 hours. \$95. Reg# 34F43.

LSAT Review.

Saturday, April 24, May 1, 8, 15, 22, June 5, 2004.
 9:00 am-1:00 pm. No MCLE. \$595. Reg# 34F08.

Legal “How To” Seminar: Probate Court - Conservatorships, Powers of Attorney, Trust and Wills.

Friday, April 30, 2004. 1:00-5:00 pm.
 MCLE: 4 hours. \$95. Reg# 34F44.



CLASSIFIED ADS

Attorney Wanted

New admittee, some experience preferred, for growing litigation firm in Corona. Fax resume to (909) 734-8832.

Litigation Attorney Wanted

Established AV-rated law firm seeks 2+ years associate for new Temecula office. E-mail resume to mgrace@gbhlaw.com.

Immediate Need for Attorney

Well-known Riverside general, civil, law firm has an immediate need for an additional attorney in Riverside office. Applicants should be a member in good standing of the California Bar Association and have 3-5 years experience, preferable with some knowledge of transactional matters. Salary is negotiable. Firm provides health insurance and has a 401(k) plan available. Those interested should submit resumes to Mr. Eagans or Mr. Matheson at 1950 Market Street, Riverside, CA 92501 or call (909) 684-2520.

Office Space for Rent

San Bernardino – Downtown, next to Courthouse. Great location, 500-700 sq. ft.; \$1.37 per sq. ft. Full service lease with limited parking. Call (909) 906-9304.

Office Space – Riverside

Office space for rent, downtown Riverside, includes conference room and receptionist. Competitive rates. Call Chris at (909) 683-4615.

Office Space for Lease

Great location. Half way between Riverside and San Bernardino Courts, 22545 Barton Road, Grand Terrace. 1052 sq. ft., \$900/month; 2 months free rent with 3 year lease. Call (909) 689-9644.

Riverside Downtown Office Space

Two locations near post office & justice center now available. 745 sq. ft. available on 9th Street. Also 977 sq. ft. on the Main Street Mall. Can assist with other site selections. Call for information: IPA (909) 686-1462.

Office Suites Available

Office suites available in RCBA building. Contact Sue Burns at the RCBA, (909) 682-1015.

Conference Rooms Available

Conference rooms, small offices and the third floor meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance by contacting Charlotte at the RCBA, (909) 682-1015.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 31, 2004.

Kerri L. Anderson –

Bell Orrock & Watase, Riverside

David Cantrell –

Lobb & Cliff, Riverside

Anthony Capobianco –

Sole Practitioner, La Quinta

Darla Ann Cunningham –

Lerner Moore et al., San Bernardino

Robert J. Curatola –

Sole Practitioner, Riverside

Thomas M. Derryberry –

Sole Practitioner, Riverside

Ira A. Falk –

Seifer & Associates, San Diego

William A. Finer –

Finer Kim & Stearns, La Quinta

Richard H. Glucksman –

Chapman Glucksman & Dean, Riverside

Gerarda G. Hamodey (S) –

Law Student, Chino

Gloria Dredd Haney –

Sole Practitioner, Anaheim Hills

Lisa Marie Killingbeck –

Thompson & Colegate, Riverside

Jason D. Klein –

Burke Williams & Sorensen, Riverside

Sheryl A. McDonnell –

Sole Practitioner, Riverside

Queenie K. Ng –

Best Best & Krieger, Riverside

Joseph W. Taylor –

Sole Practitioner, Riverside

David J. Thomas –

Hanna Brophy et al., Riverside

Fred L. Valentine, Jr. –

Sole Practitioner, Corona

Codette G. Wallace –

Anderson & Kriger, Riverside

Roger Wilson –

Office of the City Attorney, Riverside

(S) Designates Student Member

