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Riverside
County

LAWYER

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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

June

15 VIP Attorney/Parole Agent Mixer
RCBA 3rd Floor – Noon

RCBA Board
RCBA – 5:00 p.m.

23 DRS Board
RCBA – Noon

25 General Membership Meeting
RCBA 3rd Floor – Noon
(MCLE)

26 Bridging The Gap
8:20 a.m. – 12:30 p.m.
San Bernardino County Law Library
(MCLE)

30 EPPTL Section (Brown Bag)
“Basics of Probate Practice”
RCBA 3rd Floor – Noon
(MCLE)

Riverside Superior Court
Judge Pro Tem Training “Unlawful Detainer”
12 p.m. – 5:00 p.m.
Banning Courthouse
(MCLE)

July

5 HOLIDAY

7 Bar Publications Committee
RCBA – Noon





President's Message

by Mary Ellen Daniels

Legal Professionals Luncheon

I was privileged to recently meet with members of the Riverside Legal Professionals Association and a host of fellow attorneys, as well as some of our Superior Court judges and commissioners. This month, the Riverside County Bar Association honored legal professionals by hosting a luncheon at the Riverside Bar Association building. Many of the legal professionals in our community attended. The President of the Riverside Legal Professionals Association, Maria Hoff, gave out awards and announced the new slate of officers for the coming term. It was refreshing to hear attorneys get up and praise the work of their legal professionals. It was also enlightening to hear the judges talk about their support staff and the contributions they make daily.

I often wonder whether we in the legal community really understand how much we owe to our support staff. My own staff, which is managed by Toni Lorenz, knows how much I appreciate them. If it were not for Toni, I would miss appointments, I would never get time off, and my business would be in turmoil. We truly appreciate the assistance that our staffs give to us and we want to assure the Legal Professionals that we will continue to honor them with yearly celebrations. THANK YOU ALL, AGAIN.

Membership

As you will note in the last issue of the *Riverside County Lawyer*, we have had a tremendous increase in membership this year. Since September 2003, we have had 116 new members join the Bar Association. The Bar Association is committed to putting together quality programs. We had an excellent speaker for a recent Bar luncheon, Michael Doyen, who spoke on "From Gettysburg to Brown vs. Board of Education."

Our Bar leader, Theresa Han-Savage, must be commended for the programs she is putting together.

Our next Bar luncheon on June 25, will feature Prof. Charles Doskow and Judge Becky Dugan, who will speak on "Same Sex Marriages." Please make your reservations early, as we anticipate a full house.

Judicial Forum

The Riverside County Superior Court is facing an unprecedented challenge this year. Although we are one of the fastest growing counties in the country and we have had a tremendous population increase, our funding and staffing levels have not kept pace with our filings. As most of you are aware, the state has cut into our budget, so we implemented a budget plan to reduce the impact of the cuts. We are now being required to handle more cases with less money, fewer staff, and an insufficient number of judicial offices.

In order to deal with the problems that the budget cuts have created, our Presiding Judge, Douglas Miller, and the Riverside County Bar Association have teamed up to put together a roundtable discussion with the leaders of our judiciary which will identify issues and propose solutions. We are confident that this judicial forum will assist us in maintaining and preserving the administration of justice.

Citizenship Award

This year, I was honored to be able to attend the presentation of the RCBA Good Citizenship Awards, which took place on May 7, 2004, in Department One of the Superior Court. Citizenship Awards are presented yearly to those students who have shown exemplary traits of citizenship.

The awards ceremony was special. There were representatives from the offices of State Senator Jim Brulte, State Senator Denise Ducheny, State Senator Jim Battin, State Senator Dennis Hollingsworth, Congressman Ken Calvert, Assemblyman Robert Dutton, Assemblyman Ray Haynes, and Senator Barbara Boxer.

As opening speaker at the Citizenship Award ceremony, Presiding Judge Miller talked about the importance of honoring students such as those who received awards. He spoke about the greatness of our country and the fact that we look to the students to protect our shores and to carry on the greatness of our country. Each student received a \$100.00 certificate from the Riverside County Bar Association. Attorneys donate each year to make sure that these students receive honors.

Law Day

Law Day, May 1, is an annual event that is sponsored by the American Bar Association. As part of its celebration of Law Day, the Riverside County Bar Association has volunteer attorneys give legal advice at the numerous malls in our county. This year,

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IN MEMORIAM: LEMOYNE “LEE” S. BADGER

by Judge Tom Cahraman



- Deputy DA Riverside County 1952-1956
- Private practice of law 1956-2003
- Member Perris Rotary Club 1956 -1958
- Chairman, Republican Central Committee 1959
- Campaign manager, numerous successful state and county offices 1964-1975
- President, Riverside Junior Chamber of Commerce 1955
- President, Riverside Opera Association, 1962 - 1964
- President, Riverside County Bar Association, 1968
- President, Riverside Chamber of Commerce, 1972
- Member, Parking and Traffic Commission, City of Riverside 1959 - 1971
- President, Riverside Magnolia Center Rotary Club 1982-1983

I spent the summers of 1974 and 1975 with Lee Badger, as a law clerk, then returned in 1976 while awaiting my bar results. He then took me on as an associate, with the understanding that I could build my own practice while also working on his cases. At that time, Lee had a true general practice, including wills and probate, family law, business cases, bankruptcy, real estate, and even some misdemeanor cases. We also had Bill Kellen in the office, but he had built his own practice to the point that he couldn't give much time to Lee's cases.

We practiced together for eight years, until 1984. This was a wonderful period of professional development for me. Lee helped me hugely in learning the technicalities and practicalities of many areas of law. After Bill Kellen left in 1978, Lee decided to call the firm "Badger and Cahraman" (overruling my suggestion of "me and Lee"). We were not partners, but rather two sole practitioners sharing overhead in the same office. I still did some work for Lee on an hourly basis, but I continued to build my own caseload. This format worked well for us because we gained some economics of scale and enjoyed mutual calendar coverage, without the financial issues that can arise in a partnership.

During this period, Lee's wife Lorna would do the books for his practice, and my mother (Betty Cahraman) would come in two or three times a week to do my bookkeeping. We had several fine secretaries. The social environment of the office was very engaging. The personalities were compatible and we all enjoyed many a laugh together.

Whenever I had a trial scheduled, Lee would ask, "Who's your judge?" Usually he could give me an anecdotal history

that greatly extended what you could learn from the Daily Journal profile — and those stories served to remind me that judges were lawyers once and are, by and large, mere mortals. (Of course, I'm speaking of the judges "back then," not my stellar contemporaries.)

By 1984, Lee had built up his caseload in the field of commercial collections. This was a true market niche that he found and developed. I was, meanwhile, developing a personal injury caseload. Our areas of interest had diverged, so we parted on good terms. Lee continued to refer accident cases to me until my appointment to the bench.

I was 25 when I was sworn in. At that time, Lee and Lorna's youngest son, Leo, was 17. I was an adult, you see, and a licensed attorney, whereas Leo was but a boy. In the ensuing years, Leo took over his dad's collection practice and has become one of my best friends — and now I find that we are roughly the same age!

LeMoyne "Lee" S. Badger was my mentor and my friend. He personified ethics, diligence, and skill as a practicing lawyer for half a century. He will be missed.

Judge Cahraman is with the Riverside County Superior Court.



IN MEMORIAM: LEMOYNE “LEE” S. BADGER

by Leo Badger



Many of you knew my dad, LeMoyné Badger, as “Lee.” His mother named him LeMoyné, which I understand is French for “the monk.” She didn’t know that meaning; she just liked the name. She and my grandfather used more well-known names for the four siblings who followed. It so happened that my dad’s “stand-out” name fit his life story.

Not that he lived like a monk. He enjoyed privacy, but needed plenty of face time with people. His taste in food was simple and healthy, but he loved ice cream, chocolates and a good drink. He loved to be with family or friends, and he and my mom were rarely apart during their 58-year marriage.

But he stood out. He was incapable of joining a group or association without stepping up. After his decades of civic and political work, he said he had to quit joining because his nature propelled him to run things, which became exhausting after 25 years in the local limelight. Even in high school, he and his close friend were picked from the entire student body to represent the school at an academic honors institution called “Boys’ State.” Then, in World War II, he was picked to guard a general. And in law school at Stanford, he sat with his classmates, future Chief Justice William Rehnquist and future Justice Sandra Day O’Connor. When he passed the bar, he came to Riverside and commenced his political career almost immediately.

I understand his political career will be outlined in accompanying articles — though, with its dramas and successes, it could fill a book. I was younger than 10 during most of it, and remember many early Saturdays plastering bumper stickers and posters around this and nearby towns, attending pancake breakfasts, being thrilled at campaign parades and reading about my dad in the newspapers. In recent years, I’ve learned reams from him about some of the big players back in those days.

To him, driving political machines was the direct route to helping the most people. Legislating a free economy meant pushing all people, rich and poor, to do their best and get the most from their lives. He was electric every election night, even long after his active years in politics.

In his time away from the campaigns and civic endeavors, he lit the way for the people close to him. Like most folks his age (he would have been 80 in November), he grew up poor, through the Depression and all that followed. Still, his childhood photos show his big smile and his easy assurance, which were large all through his life. His siblings tell about him protecting and giving to them throughout their lives — even during his teens and before.

I cannot begin to describe what he did for my siblings and me. How do you talk about the all-encompassing effect a father has on his children,

or how it feels to lose a dad who made every inch of the universe feel friendly and within reach?

I want to thank the RCBA, on behalf of my family, for honoring my dad with this tribute. He loved the organization and was proud to practice law in Riverside with the fine community of lawyers here. In his last days, he got quite emotional about his years practicing law and about the help he was privileged to provide to his clients.



President's Message

(continued from page 3)

I was privileged to work with attorneys Pamela Bratton and Sheryl McDonald. Our day started early at Tyler Mall in Riverside. This event not only serves its main purpose of giving free legal advice to the public, but incidentally allows attorneys who would not otherwise communicate with each other to spend quality time together and discuss the Riverside County Bar Association. The three of us had a good time and have agreed to participate in other bar activities and continue the bonding process. I will remember this fun-filled day for years to come.

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



GOOD CITIZENSHIP AWARD 2004

by David Bristow



The Riverside County Bar Association's Law Day festivities culminated with the annual Good Citizenship Award Ceremony on Friday, May 7, 2004, in Department 1 of the Riverside County Historic Courthouse. The award is presented to those high school juniors in the county who have been designated by their respective principals as exhibiting the characteristics of a good citizen – leadership, problem solving and involvement on campus. The recipients receive \$100 cash stipends from the RCBA, as well as certificates of merit from their local elected officials. This year, representatives from the offices of State Senator Jim Brulte, State Senator Denise Ducheny, State Senator Jim Battin, State Senator Dennis Hollingsworth, Congressman Ken Calvert, Assemblyman Robert Dutton, and Assemblyman Ray Haynes were on hand to present the certificates and to congratulate the honorees, as were members of the RCBA Board of Directors and our Presiding Judge, the Honorable Douglas Miller. One of the highlights of this year's ceremony was the attendance of Assemblyman John Benoit, who set what is hoped to be a precedent of having actual elected officials attend the ceremony and hand out certificates to the students.

Judge Miller spoke on the importance of being a good citizen, and also touched on the theme for Law Day 2004



– the 50th anniversary of the Supreme Court's decision in *Brown v. Board of Education*. Assemblyman Benoit and RCBA President Mary Ellen Daniels also addressed the



crowd, both of whom stressed the ability of the students to set high goals and to achieve them through education.

As an integral part of the RCBA's Law Day activities, the Good Citizenship Award represents a substantial investment on the part of the association and its members, since, with 37 high schools in the county, the \$100 award each student receives amounts to a significant expenditure. Historically, the RCBA has funded the award



by soliciting donations from its members in a targeted giving campaign. However, this year, it was able to fund the award from the proceeds of its inaugural golf tournament, which was held on November 10, 2003, at the Canyon Crest County Club. It is the hope of the RCBA that the golf tournament will fund the award for the foreseeable future, as it is far more enjoyable to spend a day on the links with your fellow members than simply to drop a check in the mail.

photos continued on next page, article continued on page 10



continued on next page

Good Citizenship Award *(cont. from page 8)*

For those who have never experienced it, the Good Citizenship Award Ceremony is a rewarding example of the positive role the RCBA plays in this county. While the students, their friends and families are deeply appreciative of the certificates and stipend, it is the attention and appreciation of the members of the bar, bench, and local government which really make an impact. I would encourage any interested member to become involved in the program, or simply to mark your calendar for next year's ceremony, when a new crop of young citizens will be recognized for their commitment to the ideals upon which our nation is based.

David Bristow, with the law firm of Reid & Hellyer, is Chair of the Public Bar Relations Committee, which is in charge of the Good Citizenship Awards and Law Day at the Malls activities.



LAW DAY AT THE MALLS



The Riverside County Bar Association would like to thank the following attorneys who donated their time to help with RCBA's annual "Law Day at the Malls" (Galleria at Tyler and Moreno Valley Mall) on Saturday, May 1, 2004:

- Pamela Bratton**
- David Bristow**
- Lawrence Bynum**
- Mary Ellen Daniels**
- Michael Geller**
- Michael Gouveia**
- Kamola Gray**
- Katie Greene**
- Guy Herreman**
- Larry Maloney**
- Jim Manning**
- Sheryl McDonnell**
- Janet Nakada**
- Kenny Padilla**
- Richard Pershing**
- Chris Peterson**
- Rosa Elena Sahagun**
- Michael Schneider**
- Shannon Thomas**
- John Vineyard**



IMPOSSIBLE MARRIAGE

by Vickie Broach

My friend, Lis, who lives in Oregon, wrote me to say that she and her partner, Mary, got married recently in Multnomah County, which had been performing same-sex unions until April, when a judge ordered it to stop. Lis reported she and Mary still planned to travel to Canada this summer to get married again. They plan to get married everywhere until some place finally recognizes their union as legal.

I witnessed a wedding ceremony for Lis and Mary two years ago. It happened one spring afternoon in a tiny 150-year-old Portland church. The two women wore cotton dresses in contrasting pastels. At the end of the service, we sang “So Happy Together” by the Turtles, and the children attending sent soap bubbles floating around the couple. Then we had a champagne brunch overlooking the Willamette River and snapped lots of photographs.

I’ve also attended a religious ceremony for two men. Amid candles and incense, the Episcopal priest spoke these words from the marriage rite: “Defend them from every enemy. Lead them into all peace. Let their love for each other be a seal upon their hearts, a mantle about their shoulders, and a crown upon their foreheads. Bless them in their work and in their companionship; in their sleeping and in their waking; in their joys and in their sorrows; in their life and in their death.” And nothing about that language seemed amiss or more properly applied to Tom and Alice instead of Tom and Steve.

In both cases, the people getting married and their guests seemed perfectly happy. But when San Francisco started issuing marriage licenses to same-sex couples, I found myself wishing that my friends could have claimed the legitimacy of that “piece of paper from the city” on their wedding days.

In spite of Joni Mitchell telling us differently, marriage must, I think, mean something after all. And, certainly, it is not only about procreation. The two couples I mention here have decided not to have children. But that doesn’t mean they would have become parents otherwise. And when I, with my one son, and my husband, with his three children, embarked

together on our second marriage, we knew we were not going to have babies again. But we still wanted to be married.

As another songwriter, Greg Brown, puts it:

“Marriage is impossible, marriage is dull,
your dance card is empty, your plate is too full,
it’s something no sensible person would do,
i wish i was married, i wish I was married,
i wish i was married to you.”¹

By which, I think, Brown is describing the yearning that leads to marriage, the longing for an almost indefinable intimacy that occurs when two people agree to join households and economics and pledge their future to one another. My three-year marriage has enriched my life deeply. The idea of it not existing is almost terrifying. And the knowledge that other people, people whom I like and respect and love, are prohibited from having that kind of recognized public and legal relationship seems intolerable.

As I write this, the California Supreme Court has ordered San Francisco to stop issuing marriage licenses. And I am mindful of the slow march of the law from the Dred Scott decision upholding slavery in 1857, to the announcement of the doctrine of “separate but equal” in *Plessy v. Ferguson* in 1896, until finally both cases were repudiated in *Brown v. Board of Education* in 1954. The United States Supreme Court took 17 years – from *Bowers v. Hardwick* in 1986 to *Lawrence v. Texas* in 2003 – to recognize adult sexual privacy. I worry it may take another century for this country and its courts to accord the proper civil rights to all our citizens.

I know many of us have been raised in a tradition that does not approve the “Love that dare not speak its name,” as it was called by Lord Alfred Douglas. But now we must see in our families and friends and co-workers and public figures that love takes many forms. Our gay sister or uncle or neighbor or professor or minister deserves that we put aside childish things and welcome all men and women fully into the human family.

As W. H. Auden exhorted us in “September 1, 1939”: “We must love one another or die.”

(FOOTNOTES)

¹“The Marriage Chant,” by Greg Brown from *Covenant* (2000).

Vicki Broach is a member of the RCBA. The views expressed are entirely her own opinions.



L I C E N S E T O

by Stephen Osborn

The legal aspects of marriage, and more particularly of weddings, have been extensively reported in every form of media in the United States. On the one hand, some assert that the notion of separation of church and state mandates a reform of civil law to change the definition of marriage – a way to keep the church out of government. On the other hand, some would like to see the law become even more involved in protecting marriage by wider implementation of “covenant marriages” existing in some states.

The question arises for me, however, why is the state in the business of licensing marriage? Is marriage somehow like driving a car or owning a pet or practicing law?

In a culture with a primary source in European law and cultural sensitivities, we find the historical involvement of the state in marriage arising from Roman law. However, even there marriage existed long before the state was involved. Roman religious practice before the Republic presented marriage as an integral part of the “paternal hearth,” which we might describe as an appreciation for ancestry. In this understanding, the essence or spirit of the family is passed down from generation to generation by marriage. It is this interconnection of the present generation to the past that makes us who we are. It must be acknowledged, however, that the orderly Romans of the Republic soon set about making laws about the status of individual rights and obligations, including marriage, to the point where one author describes the *matrimonium liberum* as “a formless transaction.”¹

In the Jewish tradition, there was no issue of civil marriage or licensing; marriage was a family affair. Moreover, it was the way by which one generation could expect that the whole identity of the Jewish people would be carried forward. This was not a civil contract. It was a reinvigoration of the identity of the Jewish nation, beginning each time one family joined with another. It was a new beginning, requiring blessings and public celebrations – not contracts and not licensing.

Scholarly analysis of marriage for Christians begins with Tertullian’s writings, around 200, describing mar-

riage for the followers of this religion, which still had not been officially approved by the Roman authorities. He noted that Christians marry in the same fashion as any other member of the community – when in Rome, do as the Romans. If a Christian were to enter into marriage in a place not under the Roman civil authority, however, the parties would follow whatever civil requirement might be in place – often none.

The civil form is essentially irrelevant to what a marriage relationship should be for the Christian. The Christian should see the marriage as the image of the new covenant of Christ with his Church, as presented by St. Paul in his letter to the Ephesians (5:31-33). In that sense, it should be holy and certainly superior to the civil contract available for sale from any government.

Men and women came from England for new beginnings in what we now call the United States. Married and unmarried came to what they saw as the new world. As is obvious, there were no licensing agencies for marriage. Nor was this considered a fatal element in the formation of a marriage. Rather, the ministers of the churches, most often the Church of England, were simply asked to keep track of those people they joined together in “holy matrimony.” With time and the inevitable formation of bureaucracy, marriages were recorded in civil registers – not licensed, per se, but recorded.

Tribal practices in much of the world today continue to define marriage without consideration of any governmental involvement. For those of us who sometimes have need to track marriage for church purposes, this often takes us to securing “testimony” of family members who can confirm the ceremony.

The family and spiritual understanding of the marriage relationship thus came first, the notion of civil involvement only with some perceived need for the government to regulate marriage. However, what is the need or value in having government regulate or license marriage in a democratic state? Why is government in the business of marriage licensing? What is the civil value being protected?

To argue that it is necessary to protect children or property rights fails to recognize the fact that such interests are already protected, whether two people are married or not. Moreover, those are not rights dealing with entry into marriage, but rather rights that only arise from death or upon leaving a marriage. The existence of a marriage license or certificate is typically irrelevant to the ordinary case

MARRRY?

of dissolution or the death of parties who hold property recorded as joint tenancy.

Thus, while the civil identification of the relationship might be what we commonly experience in the United States, it is not an essential attribute of what historically or culturally been considered as marriage.

At a time when the issue of marriage has raised such contumacious dispute and when the separation of church and state seems to be such an exceedingly elevated value, it would be very practical for the state simply to withdraw from the marriage business. The state's involvement is obviously not intrinsic to marriage; routinely, when the state has been involved, marriage is reduced to minimalistic requirements to satisfy recordation needs. Now the very definition of marriage for the entire history of a civilization has been challenged.

I maintain that it's time to get the state out of the marriage business and return it to the hands of the individual participants. Whether this means weddings in "chapels" with Elvis impersonators or in cathedrals with choirs and cardinals ought to be left to those entering the marriage. The parties, in relationship to their faiths or lack of faith, family or lack of family, tradition or lack of tradition, should decide what a wedding is and what a marriage is, and not the government.

Furthermore, getting the state out of weddings ends a confused church-state relationship in which a member of the clergy somehow affects the civil status of the parties by performing what many perceive to be a religious ceremony.

My suggestion is probably too novel to have a solid, definitive answer, but the question deserves consideration. Why not remove government from the marriage process?

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(FOOTNOTES)

- ¹Mackin, Theodore, *The Marital Sacrament*, Paulist Press: New York/Mahwah, 1989. Mackin has three major volumes on marriage, each with extensive sections on history.

Stephen Osborn received a J.C.L. (Licentiate in Canon Law) at Catholic University of America in 1998 and is a Judge of the Tribunal of the Diocese of San Bernardino.



WHO GETS THE LICENSE?

by Richard Brent Reed

On February 12, 2004, the Mayor of San Francisco took it upon himself to issue marriage licenses to gay couples. On March 11, 2004, the Supreme Court of California put a stop to it. On May 25, 2004, the court heard arguments for and against. The threshold issue for Golden Gate honeymooners in *Lockyer v. San Francisco* is whether or not Mayor Gavin Newsom has overstepped his authority. State Attorney General Bill Lockyer fears that validating the mayor's actions would encourage public officials to make unilateral decisions about other applications of state law.

ET UX

The approach in *Lewis v. Alfaro* is less straightforward. There, three Bay Area taxpayers want the court to enjoin the mayor and anyone else from running off marriage certificates that replace the signatories "man" and "woman" with "party one" and "party two." (It should be noted that the United States Supreme Court has recognized taxpayer standing only in cases involving First Amendment religion issues.) San Francisco City Attorney Dennis Herrera defends the nonconforming licenses, characterizing marriage as a property right. The revocation of a marriage license – even a bogus one, the argument goes – is a taking, entitling the license holder to due process: notice and the right to be heard. (On the other hand, regarding a spouse as property would be in contravention of the 13th Amendment and, what's worse, politically incorrect.)

IT'S NOT POLITE TO STARE DECISIS

Quoting the miscegenation case *Loving v. Virginia*, Herrera argues: "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." (In America, all men are free – until they marry.) Then, confounding the court with its own stare decisis, Herrera uses *McClure v. Donovan* to throw the court's own words back in its face: "To annul [a] marriage on the ground of [one's] unsoundness of mind without giving . . . any notice or opportunity for a hearing on that issue would clearly involve issues of due process." Creative as this approach is, the unfortunate analogy to be drawn is that each same-sex marriage requires a judicial determination as to whether or not the applicants are both of the same gender.

DON'T ASK, DON'T TELL

Should the Equal Protection argument fail, another will take its place: California's statutory prohibition against same-sex marriage was intended only as a bar to *out-of-state* same-sex marriages, not those

performed in San Francisco. That brings us to Massachusetts. That state's court is O.K. with splicing its same-sex citizens, but their governor wants to discourage gay out-of-staters from coming there just to take advantage of the state's liberal hook-up policy. A 1913 Massachusetts law, originally intended to hamper interracial marriage, states that: "No marriage shall be contracted in this commonwealth by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this commonwealth in violation hereof shall be null and void." Currently, only Massachusetts, Vermont, Illinois, and Wisconsin have such a Marriage Evasion Act on the books.

TRAIN WRECK WAITING TO HAPPEN

So far, the same-sex marriage debate has made its way through our courts without the participation of the parties. That will change when the first gay newlyweds walk into one of our family law courts asking for a same-sex divorce. If the judge rejects the petition, the parties will, no doubt, appeal that decision, forcing the issue, once more, through the Equal Protection and Full Faith and Credit gantlets. Should his or her honor allow the action, however, who would have standing to appeal that decision? Once a California court honors a same-sex marriage contract in a divorce action, it would be an anomaly not to recognize that union generally. So, when Utah or Arizona starts handing out certificates with signature blanks for "party one," "party two," "party three" . . . well, you do the math.

Richard Brent Reed is a member of the Bar Publications Committee and is a sole practitioner in Riverside.



by Gayle Webb

BELTS ARE GETTING EVEN TIGHTER

Despite a very busy and successful celebration of National Library Week, the Law Library's dwindling budget is continuing to consume most of our energy and will soon become much more apparent to our patrons than our subscription cancellations and collection changes have been. We would like to draw your attention to a matter of some importance and solicit your input.

In the past five years, the Law Library's book and staff costs have increased 25% and 32%, respectively. During that time, filing fee income, which accounts for over 90% of our revenue, rose only by 1½%. A \$3 fee increase in 2002 temporarily alleviated some of the pressure, but it is clear that other actions are needed to mitigate an increasingly difficult financial situation. Despite having already implemented a number of cost-saving measures, we find it necessary to consider taking additional steps that may cause some anxiety in the community in order that we may avoid a more serious budgetary crisis.

The cost of being open on Saturdays is quite high relative to the number and length of stay of the patrons accessing the libraries. There are at least two hours most Saturdays when no one but the staff is present in either facility. During the summer months, the average attendance in Indio on a Saturday is only 5 (as opposed to 45 in Riverside). In our new budget year (July 1), we propose to eliminate two hours from the current Saturday schedule at both the Indio and Riverside locations. We also find it necessary to consider closing the desert branch altogether on Saturdays during the months of July and August.

To control staffing costs even further, we are also looking at ways to more efficiently utilize our regular, full-time employees during our open hours instead of having to rely on additional part-time help. Riverside is currently open for a total of 57 hours during the week, closing at 8 p.m. Mondays through Thursdays. We propose to reduce the open hours to a total of 51, more closely mirroring our neighboring county law library

in San Bernardino. All these various measures will hopefully enable us to meet the spiraling, unavoidable cost of retirement and health insurance increases.

Riverside is definitely not alone in having to make serious cutbacks in law library service. A state task force involving the Judicial Council and the Council of California County Law Librarians is working this year to detail the budget crisis facing all county law libraries; any recommendations that might come out of their work will be of great interest but too late to help with our immediate concerns. We value your feedback and encourage you to contact us regarding these proposals. We would be particularly interested to hear your suggestions regarding the most advantageous daily schedules for weekdays and Saturdays and we will provide survey forms at our Reference Desks for you to fill out.

Gayle Webb is the Riverside County Law Library Director.



VOLUNTEERS IN PAROLE FOURTH ANNUAL AWARDS LUNCHEON

by Jacqueline Carey-Wilson



photo by Joe Lopez

The Community Service Awards prepared and issued by the Riverside Mayor's office were given to those whom were mentored, parole agents and mentors who had donated some of their spare time by publicly speaking to students at schools and at a RCBA general meeting.

On April 30, 2004, attorneys, parolees, and public officials gathered at the Fourth Annual Awards Luncheon for Volunteers In Parole (VIP). The VIP program began in Riverside County in 2000. The program recruits attorneys to serve as mentors for men and women on parole from the California Department of Corrections. The attorney mentor spends approximately four hours per month talking and visiting with the parolee. The attorney mentor usually has a positive impact on the parolee finding employment, achieving educational goals, and effectively coping with personal and family problems. The awards luncheon serves to honor all of the attorney volunteers and the parolees they mentor.



photo by Joe Lopez

Standing left to right: Dave Bristow, Judge Stephen Larson, John Hicks, Anthony Capozzi and John Vineyard

The outstanding attorney and parolee match went to Darryl Exum and Rasheed Bismillah. Darryl and Rasheed spend many hours together, exceeding the requested time commitment of four hours per month. When he spoke, Darryl revealed that there were many things about Rasheed that reminded Darryl of himself. Both are committed to the program and to each other. Neither wants to let the other down.



photo by Jacqueline Carey-Wilson

Dave Phillips and Mary Ellen Daniels

Deputy Public Defender Mary Bernal-Flores and her mentee, Marta Patterson, were also awarded the outstanding attorney and parolee match. Both women spoke and discussed the Christian bond that they share. Marta referred to the darkest days in her life being the time she spent in prison. The hardest part was leaving her daughters during their teenage years. Marta introduced one of her daughters at the ceremony and apologized to her for the years she spent without a mother. Mother and daughter cried, as did most in the assembly. Marta is now celebrating her 11th year of sobriety.

Dave Phillips received one of the outstanding mentor awards. Dave has mentored 11 parolees since 2000. Six mentees have been discharged from parole. Dave spoke about the difficulty he had as an attorney watching his clients serve longer and longer periods in prison. The VIP program has given

Dave renewed energy and hope. Dave believes he is making a difference, one person at a time.

Olga Vera, Kennis Clark's mentee, accepted the outstanding mentor award on behalf of Kennis, who passed away several weeks ago. Kennis became a mentor in April 2001 and had two successful matches. According to Judy Davis, Director of the VIP program, "Kennis was a caring, supportive, and dedicated mentor who made a positive impact on her mentees lives." Kennis remained active in the program despite her failing health.

During the luncheon, Magistrate Judge Stephen Larson gave an inspirational keynote address, calling on all of us to understand ourselves as well as the solidarity we have with each other so that we can "give back":

"I only wish that this event were being held in the Convention Center – we need more lawyers willing to make the rewarding commitment that the wonderful mentors with us today have made . . . I thought I'd speak this afternoon for a few moments on those impediments, those things in our lives, which get in the way of our giving back, our giving of ourselves.

"I recently gave a talk on war crimes in Croatia during which I discuss the pervasive mentality of 'us vs. them.' In time of war it is 'us vs. the enemy.' We are all affected by the rhetoric of war; you are either 'with us or against us.' Law enforcement is also affected by rhetoric, which pitches 'the good guys vs. the bad guys.' In society at every level, there are cliques, groups, and gangs. We have categories, labels, projections that stratify and divide. This



photo by Jacqueline Carey-Wilson
Olga Vera, Mentor, receiving Outstanding Mentor Award on behalf of Kennis Clark

can, on a national scale, be disastrous. The history of the 20th century testifies to the horror.

"In the 1900's, over 1.5 million Armenians were killed at the hands of their Ottoman rulers. In the 1930's, over 20 million Russians and Ukrainians were killed at the hands of the Stalinists. In the 1940's, over 6 million Jews were killed at the hands of the Nazis. In the 1970's, over 3 million Cambodians were killed at the hands of the followers of Pol Pot. In the 1990's, hundreds of thousands more were killed and displaced in diverse locations such

as Rwanda, the Sudan, the Balkans, Iraq, Central Asia, and elsewhere.

"We keep saying 'never again,' but why does it keep happening? I suspect part of our difficulty in understanding why it keeps happening is our conviction that it happens 'over there,' and is committed by 'those people.' A crucial lesson of the 20th century is that we are all capable of the tragic loss of compassion and the loss of perception that propels our inhumanity to each other. We must be mindful that there is no us and them; it is all us. The line between the criminal and non-criminal is very thin; we are all capable of doing wrong.



photo by Jacqueline Carey-Wilson
Mary Bernal-Flores, Mentor; Judy Davis and Marta Patterson (person being mentored)



photo by Jacqueline Carey-Wilson
Rasheed Bismillah, person being mentored and Darryl Exum, Mentor

"I make these remarks not to blur the line between right and wrong, guilt and innocence, but to underscore that it is a line, a thin line, and not a wall; that we are all capable of crossing it, for good and for bad. It is only when we begin to see ourselves for who we really are, and only then, can we truly give of ourselves to each other. When we see

continued on next page

Volunteers in Parole *(continued)*

‘the other’ in ourselves, and when we see ourselves in everyone else, when we overcome the impediment of labels and the mentality of ‘us vs. them’ – then giving back will come naturally and effortlessly.



photo by Jacqueline Carey-Wilson
John Vineyard, David Bristow and Carol Greene

“Whether you are an attorney, parolee, law enforcement officer, government official, or even a federal judge, understand that these labels mean *nothing* in terms of who each of us really is. The call to give back goes out to all of us regardless of our past – what we have done or what we have not done. That call does not discriminate between those who have been blessed with good fortune or cursed by the consequences of poor choices.

“Let your life speak, not so much to others, but to yourself, and listen to who you are. Being good and living an ethical life should not be reduced to a checklist. Rather, we must focus on ‘be’ – being who we are meant to be. To discover your potential to give, to be who you are to be, you must listen. Vocation – from Latin vox: the voice or call – comes from inside; it is there that we discern our gifts and our limitations. We need to know *both* how and what we can give.

“When we combine these two themes: An understanding of our shared, common existence – the us-ness of humanity, the sense of



photo by Joe Lopez
Ed Caguin (*Outstanding Mentoring Recipient of the Year*) and wife, Nancy

solidarity with each person, their joy, sorrow, brokenness, corruptibility, vulnerability, genius, insanity, greatness – which, of course, when the false veils are removed, is nothing more than our own joy, brokenness, vulnerability; our own genius, insanity and greatness.

“When this solidarity is combined with a true understanding of who we are, of our own vocation, our own meaning in life, a purpose discovered by listening to ourselves and respecting our own self-worth and meaningfulness, we cannot help but be compelled to give back.



photo by Jacqueline Carey-Wilson
Champagne Ford,
Governor Schwarzenegger representative

“Before us today we have a tremendous example of organization and of persons who foster and encourage a recognition of our solidarity and celebrate and promote each individual’s integrity and potential. You have my deepest appreciation and fondest wishes for continued success.”



photo by Jacqueline Carey-Wilson
Judge Stephen Larson and
Anthony Capozzi, State Bar President

If you have any questions about VIP or would like to sign up to be an attorney mentor, please call Judy Davis at (909) 782-4814.



KRIEGER AWARD NOMINATIONS SOUGHT

by Judge Craig Riemer

In 1974, the RCBA established a Meritorious Service Award to recognize those lawyers or judges who have, over their lifetimes, accumulated outstanding records of community service. The award, later named for James A. Krieger, has since been presented to James Wortz, Eugene Best, Arthur Swarner, Arthur Littleworth, Justice James Ward, Fred Ryneal, John Babbage, Patrick Maloy, Ray Sullivan, Justice John Gabbert, Jane Carney, Judge Victor Miceli, and Justice Manuel Ramirez.

Obviously, with just 13 honorees in 30 years, the award is not presented every year. Instead, it is given only when the extraordinary accomplishments of particularly deserving individuals come to the attention of the award committee.

The award committee is now soliciting nominations for the award. Those eligible to be considered for the award must be (1) lawyers, inactive lawyers, judicial officers, or former judicial officers (2) who either are currently practicing or sitting in Riverside County, or have in the past practiced or sat in Riverside County, and (3) who, over their lifetime, have accumulated an outstanding record of community service or community achievement. That service may be limited to the legal community, but must not be limited to the RCBA.

Current members of the RCBA board of directors are not eligible. Nor are the current members of the award committee: Roland Bainer, Jim Heiting, Chris Jensen, Terry Bridges, Jody Isenberg, Stan Orrock, Justice Gabbert, Art Littleworth, and Judge Riemer.

If you would like to have anyone considered for this most prestigious of RCBA awards, please submit a nomination to the RCBA office not later than July 2. The nomination should be in writing and should contain, at a minimum, the name of the nominee and a description of his or her record of community service or accomplishments. The identities of both the nominees and their nominators shall remain strictly confidential.

Judge Riemer is the chair of the Krieger Meritorious Service Award Committee and a past president of the RCBA.



14TH ANNUAL RED MASS

by Jacqueline Carey-Wilson

Photos provided by Jacqueline Carey-Wilson

Approximately 150 members of the legal community gathered at the 14th Annual Red Mass on May 4, 2004. The Red Mass is celebrated by the members of the legal community and their families to invoke God's blessing and guidance in the administration of justice. The Mass was held at St. Francis de Sales Catholic Church in downtown Riverside. Those in attendance included judges, lawyers, peace officers, and public officials of many faiths.

The principal celebrant of the Red Mass was Monsignor Donald Webber, Judicial Vicar for the Diocese of San Bernardino. Reverend W. Clarke Prescott of All Saints' Episcopal Church read a passage from the New Testament. Stephen Osborn, Judge of the Tribunal of the Diocese of San Bernardino, read the passage from the Old Testament. Lastly, the Honorable Cynthia Ludvigson, Superior Court Judge in San Bernardino County, read the Prayers of the Faithful, which included remembering Bishop Dennis O'Neal, along with the judges, lawyers, and peace officers who passed away during the last year.

During the Mass, Abbot Francis Benedict, O.S.B., gave a homily, reminding

those present how easy it is to misuse power when given authority over others. "We are called on to respect the humanity of each person, especially when measuring out punishment," said Abbot Benedict. "When power is left unchecked, we are all capable of inhumanity." Abbot Benedict concluded by asking all men and women to walk humbly and always pursue justice.

The scales of justice were placed on the altar at the beginning of the Mass to symbolize the impartiality of justice and how

all must work toward the fair and equal administration of the law, without corruption, avarice, prejudice, or favor.

At the reception immediately following the Mass, Judge Virginia Phillips presented the second annual Saint Thomas More Award to Judge Robert Timlin. Judge Phillips began the presentation by analogizing Judge Timlin's life and career to that of Saint Thomas More.



Abbot Francis Benedict



Judge Timlin & Nancy Smoke



Judge Cynthia Ludvigson



Mary Jo Carlos, Patricia Cisneros, Steve Bermser, Mitch Norton and Jacqueline Carey-Wilson



Monsignor Donald Webber and Deacon Scott Hunsicker

"As we present this tribute to Judge Timlin, it's appropriate to reflect on Sir Thomas More and what he stood for," said Judge Phillips. "He rose rapidly in public life, despite his lack of ambition, becoming Lord Chancellor to Henry VIII of England. He had a horror of luxury and worldly pomp. He found the lies and flatteries of court nauseating. He felt the scholar's life was conducive to a virtuous life of piety toward



Jerry Lopez, Comm. Marty Swanson, Luis Lopez, Acela Sandoval and Maricela Sandoval

spirit of gentleness . . . Sir Thomas was a man of conviction and was executed on Tower Hill in 1534 for his refusal to violate his religious beliefs by accepting the Act of Supremacy, validating the King's breach with the church in Rome. On the scaffold, he said simply, 'I have been ever the King's good and loyal servant, but God's first.'"

Judge Phillips continued, "These things I've touched on tonight are the examples I believe of why Judge Timlin is being honored



Carlos Juarez, Judge Timlin, Rosa Elena Sahagun, Erin Bernstein & Alexa Alonzo

with the Saint Thomas More Award. His rise in public life, despite his lack of personal ambition; his lifetime of public service as a lawyer and as a judge for over 30 years; his abhorrence of pomp and luxury; his scholarship and his belief that education should lead to a spirit of detachment from riches and earthly possessions, along with a spirit of gentleness; and of course, his extraordinary diligence; all these are values and qualities that apply equally to both men." Judge Phillips then presented the Saint Thomas More Award to Judge Timlin in gratitude for his extraordinary service and devotion to church, community and justice.

God and service to his neighbor. Virtue and religion were the supreme concerns of his life. He considered pride the chief danger of education, believing instead that education should inculcate a spirit of detachment from riches and earthly possessions, along with a



Judge Phillips and Judge Timlin



Judge Phillips and Judge Larson

The Red Mass Steering Committee is currently accepting nominations for the third annual Saint Thomas More Award. The Saint Thomas More Award is given to a lawyer in the community whose profession is an extension of his or her faith, who has filled the lives of the faithful with hope by being a legal advocate for those in need, who has shown kindness and generosity of spirit, and who is overall an exemplary human being. The award will be given at the reception following next year's Red Mass, which is scheduled for Tuesday, May 3, 2005. If you have any questions or would like to be involved in the planning of next year's Red Mass, please call Jacqueline Carey-Wilson at (909) 387-4334 or Patricia Cisneros at (909) 248-0343.



Lisa Visigardi, David Warner and Theresa Han Savage



BENCH TO BAR

Public Notice – San Bernardino County Courts

Pursuant to California Rules of Court 6.620, the Superior Court of California, County of San Bernardino hereby gives notice that commencing July 12, 2004, it intends to reduce the number of hours for the Superior Court located in Twin Peaks.

The court intends to be open on Monday of each week and will only handle traffic cases, small claims cases and landlord-tenant cases, limited civil cases and ex-parte matters related to domestic violence and family law.

The hours of the Twin Peaks clerk's offices will be: Monday, 8 AM to 4:30 PM only. The clerk's office will be closed Tuesday through Friday. Filings will be accepted in Twin Peaks on Mondays and in San Bernardino on Tuesday through Friday for the Twin Peaks Court.

All other criminal matters will be heard in the Central District in San Bernardino, located at 351 North Arrowhead Avenue, San Bernardino.

The San Bernardino District clerk's office is open Monday through Friday, 8 AM to 4 PM, except for court holidays.

All public comments must be sent via e-mail to the Presiding Judge of the Superior Court at crttpcomments@courts.sbcounty.gov.



CLASSIFIED ADS

Appeals & Writs

Full-service appellate practice. Flat, hourly or contingency rates. Highly qualified. Jeffrey S. Mintz, Esq., phone or fax (909) 927-4227.

Wanted – Associate Attorney

Palm Desert law firm seeks associate attorney with 0-2 years experience for litigation/transaction position in common interest development law. Strong academic, writing and communications skills required. Applicants should email resume to jrossman@fiorelaw.com.

Firm Seeks Associate Attorney

Growing Southern California consumer bankruptcy firm seeks associate attorney for San Bernardino/Riverside office. Candidate must be hard working, outgoing and self motivated. No bankruptcy experience necessary. Spanish speaking preferred. Fax resume to (626) 332-8644.

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.

Attorney Wanted

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

Free Skip Tracing

We want to be your Process Serving Company. Our local fees are only \$35.00 per defendant/witness, which includes a FREE basic skip trace (if needed). Call us anytime, at (909) 544-0140, or you may fax your case to us at (909) 653-3202. Judgment Collection and other services available. (License #713)


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.

Lawyer Referral Service Clerk/Receptionist Immediate FT Position

Multi-lines telephone and good communication skills. General office duties. General computer knowledge needed. Spanish a plus. Benefits. \$8 hr., 7 1/2 hr. a day. Please email resume to charlotte@riversidecountybar.com or fax to (909) 682-0106.

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. 

ERRATA

In the May 2004 issue the *Brown v. Board of Education* was re-printed with the permission of the National Association for the Advancement of Colored People.

MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective June 30, 2004.

John Scott Carter –

Sole Practitioner,
Temecula

Antonio A. Cota –

Law Offices of Todd Rash,
Riverside

Jerry R. Dagrella –

Best Best & Krieger,
Riverside

Bryan C. Hartnell –

Hartnell Horspool & Fox,
Redlands

Kathleen C. McCarthy –

Sole Practitioner,
Corona

Walter T. Moore –

Hartnell Horspool & Fox,
Redlands

E. Joan Nelms –

Hartnell Horspool & Fox,
Redlands

Glen G. Nelson –

Sole Practitioner,
Corona

Barrie M. Robinson –

Law Offices of Earl Carter
& Associates,
Riverside

Max F. Ruffcorn –

Law Offices of Earl Carter
& Associates,
Riverside

