

# RIVERSIDE LAWYER

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MAGAZINE

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# RIVERSIDE LAWYER

MAGAZINE

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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 our members, our communities, and our legal system.

## Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, RCBA - Riverside Superior Court New Attorney Academy.

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

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

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

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

*The Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6<sup>th</sup> day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$25.00 and single copies are \$3.50.*

*Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in the Riverside Lawyer.*

*The material printed in the Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.*

# CALENDAR

## FEBRUARY

- 8 Criminal Law Section**  
Noon – 1:15 pm  
RCBA Gabbert Gallery  
Speaker: James E. McGee  
Topic: “Using Discovery to Fight Gang Cases”  
MCLE
- Mock Trial – Round 1**  
5:30 p.m. – 8:00 p.m.  
Regional Competition  
Riverside, Indio & Murrieta Courthouses
- 15 Estate Planning, Probate & Elder Law Section**  
Noon – 1:15 pm  
RCBA Gabbert Gallery  
Speaker: William Dahling  
Topic: “Highlights from 2016 USC Gould School of Law Annual Trust & Estate Conference”  
MCLE
- Mock Trial – Round 2**  
5:30 p.m. – 8:00 p.m.  
Riverside HOJ
- 21 Family Law Section Meeting**  
Noon – 1:15 pm  
RCBA Gabbert Gallery  
Speaker: Judge Dale Wells, Riverside Superior Court  
Topic: “State of the Family Law Court”  
MCLE
- 22 Mock Trial - Round 3**  
5:30 p.m. – 8:00 p.m.  
Riverside HOJ
- 23 CLE Event – Co-sponsored by RCBA Solo Small Firm Section/APALIE & RCLL**  
6:00 – 8:30 p.m.  
Riverside County Law Library  
Speakers: Jennifer Gerard, Brian Percy, Greg Rizio & Ami Sheth Sagel  
Topic: The Small Firm Practice: Stories, Challenges & Inspirations  
RSVP to <http://apalie.org/event/the-small-firm-practice-mcle/>
- 24 General Membership Meeting**  
Noon – 1:15 pm  
RCBA Gabbert Gallery  
Speakers: Hon. Becky Dugan, Presiding Judge, Riverside Superior Court  
Topic: “State of the Court”  
MCLE
- 25 Mock Trial – Round 4**  
8:30 a.m. – 11:00 a.m.  
Riverside HOJ
- 28 Appellate Law Section**  
Noon – 1:15 pm  
RCBA Gabbert Gallery  
Speaker: Dennis Haserot  
Topic: “Going Digital: Creating E-ppendices for E-filing”  
MCLE



### Cover photo:

*Mount Rubidoux, courtesy of Marian Semic*



# President's Message

by Jean-Simon Serrano

The theme of this issue is “healthy lifestyle.” As I write this, it is the first week of January – a week where gyms are packed with those who have resolved to “get healthy” in the New Year. By the time you read this, it will be February and many will have already broken their resolutions and gyms will have gone back to their regular occupancy, with very few of those whom had resolved to “get healthy” in the New Year in attendance. This is unfortunate because exercise is vital to all of us, including attorneys.

Exercise attacks stress in two ways, according to Matthew Stults-Kolehmainen, Ph.D., a kinesiologist at the Yale Stress Center. In his opinion, raising one’s heart rate can actually reverse damage to the brain caused by stressful event. “Stress atrophies the brain — especially the hippocampus, which is responsible for a lot, but memory in particular. When you’re stressed, you forget things.” He goes on to claim that, conversely, exercise promotes production of norepinephrine and other neurohormones associated with improved cognitive function, elevated mood and learning.

As attorneys, memory and proper function of our brains is invaluable and few would argue that this is not a stressful profession. That being said, exercise and general healthy living is of paramount importance; however, there are many realities surrounding this profession that make it difficult for us to maintain a healthy lifestyle.

First, many of us have sedentary jobs. Other than when I’m in trial, or appearing in court, my job largely consists of sitting

at a desk. This lack of physical activity throughout the day further emphasizes the need to engage in regular exercise to de-stress and stay healthy.

Another major problem with this profession, as it relates to exercise and being active, is the time commitment involved. Lawyers regularly work long hours and/or spend much time traveling for work. The last thing we want to do after a long and tiring day is change into workout clothes and go to the gym for another hour or so. And for those who travel for work – does anyone actually use the gym at their hotel? The lack of time also comes into play when it is time to eat. Who has time to prepare healthy meals (lunch or dinner)? Healthy food might not be available when we are traveling or in an unfamiliar place.

Further, stress from work can actually perpetuate an unhealthy lifestyle. I know I am guilty of eating poorly when stressed.

It’s easy to get wrapped up in work and neglect our own personal health. Hopefully this issue will help us understand the detrimental effect this can have on our work. If we can find the time to exercise and be healthy, it will help us maintain mental acuity so we can be better lawyers.

*Jean-Simon Serrano is an associate attorney with the law firm of Heiting & Irwin.*



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# BARRISTERS PRESIDENT'S MESSAGE

by Erica M. Alfaro



David Hamilton is a Barristers Member-at-Large. He grew up in Southern California living in Upland. He and his family now live in Rancho Cucamonga.

David earned his bachelor's degree from Chapman University. In 2015, he graduated magna cum laude from the University of La Verne College of Law. During law school, David was the Editor-in-Chief for Volume 36 of the *University of La Verne Law Review*, and he was

the Editor-in-Chief for Volume 20 of the *Journal of Law, Business & Ethics*. He also competed on La Verne Law's national moot court competition team. David recently began teaching Criminal Law and Introduction to Legal Studies at La Verne Law as an adjunct professor.

David is one of three attorneys who practice at Dennis M. Sandoval, A Professional Law Corporation. They focus on estate planning, probate, elder care, and special needs planning. David was a 2016 update author for Chapter 7 (Funding Third Party Special Needs Trusts) in CEB's *Special Needs Trusts: Planning, Drafting, and Administration*.



David Hamilton

David enjoys practicing law in the Inland Empire, and especially Riverside, because it's a tight-knit community. He graduated from the New Attorney Academy, and he attended Bridging the Gap. Both programs gave him fantastic insights and tips for practicing law as a new attorney. David enjoys being a Barristers board member because he gets to meet other new attorneys.

In his spare time, David enjoys spending time with his wife and kids. They enjoy walks, movies, reading, and relaxing at home.

## Upcoming Barristers Events

Mock Trial scoring attorneys are needed on February 8, 15, 22, 25. Please consider volunteering. Registration forms are available at the RCBA building. For additional questions, please contact Tracy Case at [tcase@rcba.us](mailto:tcase@rcba.us) or 951-826-6570.

In addition, Barristers will be holding a social event at CraftyUToo located in Canyon Crest Town Center on Tuesday, February 28, 2017 from 5:00pm-8:00pm. Please join us for a night of fun and painting!

Erica Alfaro currently works at State Fund.



## FINAL DRAWING of the Riverside Historic Courthouse by Judy Field

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# Public Interest Law Foundation 2017 Gala Dinner and Silent Auction

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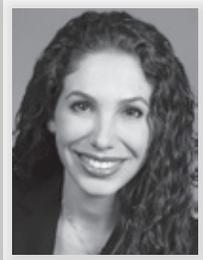


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Proceeds from the dinner and silent auction will be used to support PILF's Summer Grant Program. The Program provides scholarships to Chapman students wishing to take public interest positions during the summer.



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# DIET, EXERCISE AND ATTITUDE: A WINNING COMBINATION

by Betty Fracisco

In this issue, dedicated to health, we wanted to spotlight a senior attorney and find the secret to his health and his longevity in the legal profession. We found Harry Histen, 2009 RCBA President, to be such a man, as those of you who have known him over the years can attest.

Harry was born in 1942 in St. Louis, Missouri, but he grew up in Huron, Ohio; a small town on the shores of Lake Erie. From a young age he always had a job or two, from delivering newspapers to setting pins at a bowling alley. At the age of 13, his family relocated to Glendora, where he spent his teen years. He then attended Santa Clara University for two years, Cal Berkeley for one year, and eventually graduated from Cal State LA with a bachelor of science in math. During college he had an internship with IBM and a joint venture with IBM that resulted in his being recruited as a programmer in the aerospace industry. This was the beginning of his computer systems career with North American Aviation (later Rockwell International). In the midst of his time at Rockwell, he served two years in the Navy during the Vietnam War. After an initial assignment in Oakland, he served the rest of his time on a mine sweeper in Vietnam.

Harry spent 11 years at Rockwell, working in the design and programming of large-scale online engineering, logistics, quality, and payroll/personal computer systems for the Apollo missions and the Space Shuttle. He helped adapt Apollo systems for the first GPS system, utilized with the Space Shuttle. When he began at Rockwell it was a company with camaraderie, a pioneering atmosphere and the freedom to create. But, with time, the bureaucracy and security restrictions decreased his enjoyment of the work.

How did Harry switch professions, from technical guru to attorney? As the story goes, one day Harry was driving down Brookhurst Avenue in Anaheim and passed Western State University College of Law's small campus. On a whim, he went inside and registered for the part-time program (nights and weekend classes), taking advantage of his GI Bill. He has vivid recollec-



Harry Histen

tions of spending weekends with his kids at his condo in Palm Springs, the kids in the pool while he read his law books. After he graduated and took the bar exam in 1976, he sold his home in Cerritos and his condo in Palm Springs and bought a home in Riverside, where he planned to open his own practice in what he saw as an underserved market.

Harry has fond memories of his early days as a sole practitioner in Riverside, when he received advice and friendship from Vic Miceli (later Judge Miceli) who

was in the next office. Harry specialized in estate planning, trusts, wills, probate matters and advised small business owners, because he was a small business owner himself. Other friends who gave him support in the early days included Bill and Pamela Bratton, Dave Moore, and Bill Dahling. Harry built a reputation for himself as an honest, hard-working attorney, and as he says, "Judges knew I didn't lie."

In 2004, at the encouragement of Riverside legal maven Irma Asberry, Harry became a member-at-large of RCBA. He was then elected treasurer and "moved up the chairs" to the presidency. David Bristow talked him into it, he says. He served as president from 2009 to 2010, presiding over many RCBA events, donating his time with the Elves Program founded by Brian Percy, and writing his president's column for the *Riverside Lawyer* magazine. The most memorable personal highlight of his presidency was when Vincent Bugliosi, prosecutor of Charles Manson and the best-selling author of *Helter Skelter*, was a speaker for a RCBA program (which was well attended).

Since 1977, Harry has been a court appointed and private mediator/arbitrator. He holds mediator certificates from both UC Riverside and Pepperdine University School of Law's Straus Institute for Dispute Resolution. Since 2009, he has been a director of the RCBA Dispute Resolution Service.

In recent years, Harry's legal career has been his constant. As he says, "I like to practice law." His practice is busy and continues to focus on estate planning,

wills and trusts, probate matters and assorted business matters, with an excellent paralegal, Patty Chaisawang. He can only remember being angry twice in his career, once in the 1982 US Life case, when at a hearing before Judge Robert Timlin, the other attorney (female) “did evil things” and he reacted. This was a major case at the time, especially for a fifth year attorney, and took four years to complete. There are certain cases an attorney never forgets.

Harry’s lovely wife, Sherise, assists in the office with administrative matters, and can surely be given partial credit for Harry’s great outlook and health. Like anyone his age, Harry has children spread across the country: Derek and Kerry in Texas, Stefanie in Boston, and his step-daughter who lives locally.

Harry looks much the same as he did ten years ago, so I had to ask him the secret to his well being. Diet and exercise seem to be the formula. In his own words, he “works out a lot.” You can find Harry most mornings before work at LA Fitness lifting weights (he received his first set of weights at the age of 13) and running. He likes to stay strong and feels he has to do this to keep

his back strong. As for his diet, Harry has been known to have a peanut butter and jelly sandwich on wheat most days for lunch, cereal for breakfast, and a normal dinner, staying away from fatty foods. Although he is slender, Harry doesn’t take this for granted. He weighs himself every Sunday and records his weight and body fat in a program on his computer. At 6 feet tall, he weighs 175 and has a body fat index of 15 ½, numbers that would be the envy of a 30-year-old.

To add to the healthy portrait, calling himself an introvert, Harry works on his computer (he still loves math), is an avid reader, and travels occasionally. Although the law was his second career, Harry sees no end in sight, and “retirement” does not seem to be in his vocabulary. He says he never thinks about it.

Harry Histen can be reached at his law office, located at 6800 Indiana, Suite 100, Riverside 92506, phone (951) 682-4121.

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



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# HEALTHY ENVIRONMENT, HEALTHY PEOPLE: HOW THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PROMOTES PUBLIC HEALTH

*by Jennifer Lynch*

The California Environmental Quality Act (CEQA) is one of the state's most important environmental laws. While "environmental protection" brings to mind the obvious goals of protecting and preserving sensitive species and habitats, CEQA also has an important role in human health, regardless of our lack of endangered species status!

In the metropolitan centers of the United States, our understanding of the correlation between a healthy environment and healthy people dates back to the Industrial Revolution and the very start of the urban planning profession. Zoning that placed residents further away from the polluted air caused by factories, infrastructure systems that kept drinking and bathing water clean, and buildings and neighborhoods that let in light and fresh air were the goals of planners, architects, and public health officials alike.

Today, CEQA requires that public agencies study, disclose, and mitigate to the extent possible the potential impacts of projects on the natural and built environment. This is done through the preparation of environmental review documents, such as environmental impact reports. The environmental review lays out a project's potential impacts for the public and public officials, who then rely on this information to make informed decisions about whether to approve or deny a project. Where environmental review identifies potential impacts to the natural or physical environment, CEQA requires that changes be made to the project, or "mitigation measures" be incorporated, that would reduce or eliminate those potential impacts to the extent feasible.

One of the obvious ways in which CEQA review relates to human health is CEQA's required analysis of a project's impact on air quality. CEQA requires that an environmental review consider a project's potential to violate air quality standards, increase criteria air pollutants, or expose "sensitive receptors" like residences, schools, or medical facilities to substantial air pollutant concentrations. A line of case law from the Court of Appeal has further held that CEQA also requires at least the identification of potential health effects associated with pollutants that may be emit-

ted by a specific project.<sup>1</sup> Where a project's own pollutant emissions are likely to impact sensitive receptors, for example through industrial processes or the generation of diesel truck traffic, a Health Risk Assessment may also be done as part of the CEQA analysis, to determine whether a project will result in a substantial increased cancer risk as a result of its emissions.

CEQA also specifically requires analyses of hazards and hazardous materials, the transport, use, or disposal of which could impact human health if not carried out in accordance with local, state, and federal laws. CEQA expressly requires analysis and disclosure of whether proposed projects might emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one quarter mile of an existing or proposed school.

CEQA may also indirectly encourage healthy habits, such as bicycling or walking. CEQA specifically directs agencies to address whether a proposed project might conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities. In other words, while CEQA itself does not direct projects to incorporate features that encourage walking and biking, a city or county's own General Plan may encourage or require these types of amenities, and CEQA requires an analysis of a project's consistency with these policies. Further, CEQA requires an analysis of a project's potential greenhouse gas emissions, which may be reduced through the incorporation of walkable sidewalks, connected trails, or the provision of bicycle paths, lanes, and parking. CEQA's mandate that potential impacts be mitigated to the extent feasible may therefore encourage the provision of these facilities.

Beyond physical manifestations of health, CEQA may also have a role in protecting our psychological health. For example, CEQA requires an analysis of noise impacts on persons, be it the exposure of residents to excessive construction, operation, and even airport-related noise. While extreme noise events can certainly cause a person physical harm, more common are the psychological rami-

<sup>1</sup> See *Beverly Hills Unified School District v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 667.

fications of being exposed to excessive noise levels, such as higher stress levels.

In addition to requiring that agencies analyze potential impacts relating to air, water, hazardous materials, noise, and alternative transportation in ways that encourage healthier communities, CEQA also has built in streamlining provisions for some activities protecting human health directly. While CEQA analyses are time consuming and costly, CEQA provides a specific exemption from its analysis requirements for health and safety inspections, which case law has held to also apply to code enforcement programs.<sup>2</sup> Similarly, projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed in a natural disaster are exempt from lengthy environmental review, as are emergency repairs to public service facilities, actions to prevent an emergency, levee repair, seismic retrofit projects, and

<sup>2</sup> See Cal. Code Regs., § 15309; *Apartment Association of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1173.

emergency repairs to highways and bridges.<sup>3</sup> The speedy and efficient completion of these types of projects benefit public health and safety.

We often associate environmental laws with preserving and protecting our forests and lakes, our oceans and beaches, and our flora and fauna. However, the role these laws play in making our communities, neighborhoods, and new developments clean and healthy can be just as important.

*Jennifer Lynch is an associate in the Environmental and Natural Resources Practice Group at Best Best & Krieger, LLP. She provides legal services to cities, special districts and private developer clients throughout California, with a focus on compliance with the California Environmental Quality Act.*



<sup>3</sup> See Pub. Resources Code, §§ 21080(b)(2)-(4), 21080.12, 21080.16, 21080.33.

## **RCBA General Membership Meeting**

Friday, February 24, 2017 • 12:00 p.m. to 1:30 p.m.  
RCBA Building, John Gabbert Gallery  
4129 Main Street, 3rd Floor, Riverside

### **“State of the Court”**

*Guest Speaker:*

**The Honorable Becky Dugan**  
Presiding Judge, Riverside County Superior Court

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*Cost:*  
RCBA Members \$20, Non-Members \$40

Lunch provided; vegetarian requests  
must be received by RSVP deadline.

# WHAT IS TAEKWONDO?

by DW Duke

In searching for recreation many professionals have found martial arts to be particularly rewarding. As a sport, martial arts provides relaxation, discipline and focus. The training acquired easily transfers into other aspects of life including one's profession. The ability to engage in high intensity activities without emotional distraction can be useful in many facets of professional life from public speaking to negotiation and basic human interaction.

Martial arts began to acquire popularity in the United States in the early 1970s, in large part due to the television series Kung Fu which aired on ABC from 1972 to 1975. Although the television series was short lived, it spawned a wide interest in various forms of martial arts. This interest was further developed by the enormously popular 1973 re-release of a 1971 movie, *The Legend of Billy Jack*, which centered upon Billy Jack, a half white, half Navajo man who learned martial arts in the Green Beret, became a hapkido master, then returned to his home near Prescott, Arizona to fight racism and corruption. After the huge success of *The Legend of Billy Jack*, a number of foreign film producers released a series of motion pictures featuring Bruce Lee and other martial artists. One of Bruce Lee's fellow trainers, Chuck Norris, launched a series of movies and eventually the enormously popular television series, *Walker, Texas Ranger*.

During the 1970s, as martial arts schools began to spring up throughout the United States, there was little cohesiveness in the wide variety of systems. Often simply called karate, Taekwondo eventually emerged as the most popular of the disciplines. In time, the glaring absence of martial arts in the International Olympic Games fostered an interest in developing a new Olympic sport. Given the overwhelming popularity of Taekwondo, this discipline was chosen to serve as a demonstration sport in the 1988 Olympic Games in Seoul, Korea and in the 1992 Olympic Games in Barcelona, Spain. Finally, Taekwondo was accepted as an Olympic sport by the International Olympic Committee in 1994. The World Taekwondo Federation has refined and developed a series of rules to make the game easily understood and fair, while maintaining the safety of the participants. But what is Taekwondo?

*Tae* means kick, *kwon* means punch, and *do* means way of life. Thus, Taekwondo refers to the path of a warrior who devotes his life to disciplined fighting

techniques, using the hand and the foot. The key to Taekwondo is discipline which becomes the artist's way of life as he progresses through the belt ranks. Taekwondo is often said to have developed during the Japanese occupation of Korea from 1910 to 1945; and thus, was built upon Japanese Samurai fighting techniques developed during the Tokugawa era. This, in reality, presents a woefully deficient explanation of the history of Taekwondo. The truth is that Taekwondo was developed from a synthesis of nine different schools built upon a system that predated the Japanese occupation by thousands of years.

During the occupation of Korea by Japan, martial arts and weapons were prohibited. While the prohibition overtly prevented the teaching of martial arts, five schools secretly developed during this era. These schools, called kwans, were Chang Moo Kwan, Chung Do Kwan, Moo Duk Kwan, Song Moo Kwan, and Yun Moo Kwan/Jidokwan. The root technique of each of these kwans was the Chinese art of Yangshi Taiji Quan Kung Fu, more commonly known as Kung Fu. Kung Fu was the fighting system taught by the Chinese Imperial Guard. Kung Fu in turn traces its origin to a 5th Century Buddhist Monk named Bodhidharma who is attributed as having brought Sanskrit dhyana (meditation) from India to China. Thus, what is modernly known as Kung Fu, was derived from an ancient Hindu way of life.

But the search for origin of Taekwondo does not end there. According to a Jewish oral tradition, Hindu meditation and fighting techniques were actually gifts given by Abraham to his sons, which they then took with them to nations of the east as described in Genesis 25:5-6. If true, this suggests that Kung Fu and its derivative, Taekwondo, are actually offshoots from an ancient Hebrew fighting system developed by Abraham at a time long before modern military weapons, when fighting skills were a matter of life and death. While this is a fascinating teaching, there is no written record by which it can be confirmed. However, students of the Jewish mystic writings, the Zohar, have often been amazed at the similarities between teachings of the Zohar (kabbalah) to the teachings found in Sanskrit writings including the Jewish sephiroth and Hindu chakras. Many have found this to be confirmation of the claim that eastern religions, and martial arts, grew out of ancient Jewish oral tradition taught to Abraham by his grandfather, Shem (Melchizedek), the king of Salem (Jerusalem).

Martial arts were adopted and implemented into close quarter combat training in the United States military, as early as 1854, largely the result of the work of William Edward Fairbairn and Eric Anthony Sykes. Fairbairn and Sykes served in the Shanghai Municipal Police fighting organized crime associated with the opium trade. The use of martial arts in the US military remained limited, however, until the conclusion of the Korean War at which time it was incorporated extensively into all branches of the military.

After the Korean War, four more kwans developed in South Korea. These kwans were branches of the five original kwans and were known as Han Moo Kwan, Oh Do Kwan, Kang Duk Kwan, and Jung Do Kwan. In an effort to standardize the bare hand fighting techniques, in part for national security and in part for recreation and sport, these nine kwans formed a body of elders known as the nine Grand Masters. They in turn established the governing body of Taekwondo which today is known as the World Taekwondo Federation, located in Seoul, Korea.

There are many forms of martial arts and not everyone finds enjoyment in the same discipline. During the Holocaust, a system of close quarter fighting technique

was developed by a Jewish Hungarian boxer named Imi Lichtenfeld. It was taught to Jewish Resistance fighters in the Warsaw Ghettos and became a fighting technique used in the Uprising in 1943. This system is today known as Krav Maga and is the fighting technique used by the Israeli military and has become one of the primary fighting methods used by US law enforcement agencies. I have found a combination of Taekwondo and Krav Maga to be especially effective in teaching self-defense techniques. Should you decide to pursue martial arts as recreation, I would encourage you to research the various disciplines to find one that suits your interests the most. The rewards can be tremendous.

*DW Duke is the managing partner of the Inland Empire office of Spile, Leff & Goor, LLP and principal of the Law Offices of DW Duke. He has studied numerous disciplines of martial arts including Shuri-Ryu and Krav Maga and he holds a 4th degree black belt in Taekwondo with the World Taekwondo Federation in Seoul, Korea.*



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# THE PRESENT OF PRESENCE, WRAPPED IN A BOW

by Emma Smith

“Stupid Standing Bow Pose. Stupid, impossible, unattainable, aggravating, frustrating Standing Bow Pose!”

This thought kept playing over and over in my mind as I angrily shoved my yoga mat into its accompanying sack, and the soaking wet yoga towel into my Lululemon bag, brimming with water bottles, hand towels and other exercise paraphernalia.

It was the end of yet another 80-minute hot yoga class, and I was considerably rattled. I had recently taken up heated yoga after the birth of our second child. As with most everything in my life, I had certain expectations and preconceived ideas about how this all would play out for me.

I anticipated an improved back, an immediately reduced waist line, and glowing skin. I assumed I would become as flexible as a child, and would achieve blissful nights of sleep evermore. And I just *knew* that with a little focus and discipline, I would quickly master this form of exercise and become a top student in no time.

Not so much. Instead, I was a drenched and sweaty mess after every class. I was not really losing any weight yet, and my face was scarily pale and almost green-hued after the grueling classes. Not exactly the glow I was hoping for. My muscles were so sore that I would find myself close to tears at times. But, the real kicker was this blasted Standing Bow pose.

For those who don't practice, this posture is actually quite literal in its title. The yogi stands with her feet together, toes and heels touching. First, she holds out her right hand, palm up, and then kicks her heel up behind her with a bent right knee, balancing on her left leg. She grabs a hold of her right foot at the ankle, with her right hand, while raising her left arm straight up in the air. Then she slowly inches her torso down until completely parallel with the floor, standing on her left leg only, while pulling her right ankle up behind her so that eventually she is doing the splits standing.

Stupid, right?

I limped out with a defeated expression on my face. Karen, my instructor, looked up from behind the computer where she sat. Now *she* looked glowing and flexible and skinny and well-rested! Karen asked what was wrong and I dismissively sighed that I was a klutz who would never be able to “stand like a bow” and hung my head theatrically.

Karen, in her serene and calming fashion, looked me right in the eye and said: “Emma, the stories you tell yourself become true.”

I sort of blinked as I digested the seemingly simple words. I felt her observing me closely.

“So, you're saying if I tell myself a story that I can do this pose perfectly, it will just happen?”

She responded “whether you believe you can or believe you cannot, you're right.”

And so began my journey with the subject of positive intentions.

It was not a smooth or even linear journey. Days became weeks, weeks became months, and eventually those months became years of the same series of 26 postures, each repeated twice during the 80-minute classes.

I remember one time, well into my journey, I finally held the bow for a good thirty seconds before eventually losing concentration and tumbling off to the right of my mat. Ugh!

Karen came up behind me before the next round of the same pose, gently resting her hand on my shoulder. I dejectedly complained that I was pushing and pushing myself as hard as possible, and I simply could not do it.

With an amused twinkle in her eye, she asked what I was doing with my leg while in the fully executed pose. I said that I was pulling it with my hand.

“Well then... if pulling is the object of the pose... why *push* so hard?” The point resonated. Being pulled towards a goal is rewarding and sustainable, while pushing so hard will tire and frustrate. She was not teaching me about just yoga.

So I began to pull toward the intention I set at the start of class each day. I pulled toward strength and peace. I pulled toward compassion and balance. I pulled myself in the direction of my true driving values. I found, without meaning to, the postures began to fall into place!

Some number of classes later, I mentioned the whole exchange to Robin, another instructor and owner of the studio.

She shared how very common it is to hear frustrations after challenging practices and how for some, it is much easier to quit. She shared that a pivotal time in a person's practice occurs when the student decides which direction she will take. Will she err with ego? Will she feign injury, or blame the cardio component? Will she point to physical limitations or cite another student's age or gender as an excuse for a superior practice?

And she is right. There is no limit to the extent to which people will use creative genius in the service of ego. It will cripple and injure a person's ability to plow forward.

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It will dig its claws deeply into her perceptions and try to affect mood and intentions.

I took Karen and Robin's words and advice to heart. I slowly and steadily continued with my practice, quietly but carefully studying my peers along the way and building relationships with other students. Before long, I began to make my own independent findings about the difference between those who find their footing on the yoga mats and those who do not. Students who were successful were those who consistently looked for positives and were authentically pulled towards their intentions while maintaining a humble perspective.

This article really isn't about yoga. That is simply the path I walked to realize much greater lessons about life, motherhood, work, authenticity, my values, and love.

Perception is everything.

Pulling myself in the direction of my values and intentions is far more effective than pushing against the hurdles along the way. Let me give you an example.

If I have a challenging and difficult day, and I am not mindful about what I'm doing, I can walk into my house and see a chaotic and alarming reality. I observe my kids' school uniforms, covered with grass stains and strewn about on the floor of my foyer. I see watercolor paint, brushes, and a now-empty cup of brownish-greenish water that instead adorns my newly shampooed carpets. And I hear my two children squealing together from the depths of my closet, a loud bang, and my five-year-old son spontaneously screaming "NOTHING!"

However, when I take lessons from the mat home with me and have a mindful perspective, I walk into something entirely different. The grass stains on the knees of my son's slacks are from a particularly satisfying game of tag with his friend Jack. He ran and slid on the grass, slick from the rain, in a way that healthy little boys do, without a care in the world. The uniforms cover the floor right by our front door, because my skillful husband managed to negotiate with our little ones to bathe immediately after arriving home. This plan was designed so that by the time I got back from a day of trial, I would find them each clean, settled, and in pajamas. Hanging just to the left of the overturned cup of water, air-drying by our heater, is the colorful card Charlotte painted of her and me, signed off with the words "I love you Mommy." And when I gather the courage to enter my room and open the doors to my closet, I find Chase dutifully and patiently holding Charlotte's hand as she carefully teeters along in a pair of my heels. He looks up at me with huge blue eyes and assures "Don't worry Mommy, I will not let her fall again."

These lessons of patience, being pulled towards my intentions instead of forcing them, being mindful with positive intentions and perspective have eventually trickled into my practice of law.

I work as a deputy public defender, and this line of work is not without challenges.

On any given day, I may walk into court with seven brand new clients, all charged with felony offenses, in addition to the rest of my heavy caseload. Before I can even introduce myself to one of these new clients, he may yell at me in open court and call myself or a colleague a disparaging name in front of an audience of other inmates. I may go in the hallway to meet with his mother who immediately demands that I argue for her son to be released on his own recognizance, because despite the pending attempted murder charges, he did not commit the underlying offense. This may all occur before our judge takes the bench at 8:30 a.m., and will continue without pause for the next eight hours. I will skip lunch to use the precious office time to work on a stack of motions on my desk, squeeze in a jail visit and try to meet with my investigator for an update on one of the many cases we are preparing for trial. I will carry out a stack of files with me to work on at home that night after the kids are asleep... and wake up to do it all again the following day.

However, when wearing a different hued set of glasses, this situation displays much differently. Each of those seven new clients is a person to whom I owe a massive responsibility and standard of care. They each have a history, a story, and a vulnerability. I am coming into their lives during perhaps the worst period of time he or she has ever experienced, and it is my privilege to provide representation to help navigate those treacherous waters.

That young man who yelled? He is barely 18 years old and facing a life sentence. When I ask that he move seats so that we are alone and not in close proximity to other people in custody, it is quite clear the outburst was intended for the other individuals in orange jumpsuits who would otherwise continue to think of him as weak and small and a target. The mother in the hallway is utterly consumed with pain and fear, and self-loathing and shame. She is desperate and seeking anything that will make her feel a sense of control. That jail visit in the afternoon was the only one that my young female client has received from anyone at all since her arrest. She is a broken person who has never in her life experienced trust. When I promise her that I will visit again, she now finally trusts that I will.

And when I walk through the door to my home that night, lugging that stack of files, I smile at the grass stained clothes on the floor. After the kids are sleeping soundly tonight, I will do laundry and read through my cases for tomorrow.

Maybe I'll even do a little yoga.

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*Emma Smith is a deputy public defender in Riverside County.*

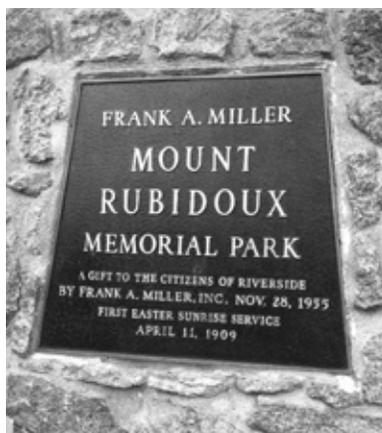


# WALKING RIVERSIDE'S MOUNT RUBIDOUX

by Abram S. Feuerstein

Walking as a prescription for good health is a practice as old as the hills. Hippocrates referred to walking as the “best medicine.”<sup>1</sup> Aristotle engaged in “walking lectures” with his students.<sup>2</sup> Steve Jobs favored “walking meetings” with his executives.<sup>3</sup> And, Harry Truman famously each early morning walked about two miles, typically at an army drill pace of 128 steps per minute, while dressed in a business suit and tie.<sup>4</sup> Upon returning from his walks, he would down a shot of Bourbon whiskey.<sup>5</sup> The walking, a modest diet, and maybe the Bourbon enabled Truman to “maintain (his) waistline” so that in 1952 he could wear suits he had purchased nearly two decades earlier in 1935.<sup>6</sup>

I moved to Downtown Riverside more than seven years ago and estimate that I have walked to the top of Mount Rubidoux at least 1000 times. My daily, ok, every other daily, walks can be characterized best by the outdated word, “constitutional,” an activity taken for the betterment of one’s health or constitution. I read that the English are big believers in daily constitutionals, but maybe that is to offset any negative effects of nationalized health care. From my house to the top and back again is about 4.5 miles (probably less, but I always round up



A plaque at Mount Rubidoux's main gate honors Frank A. Miller.

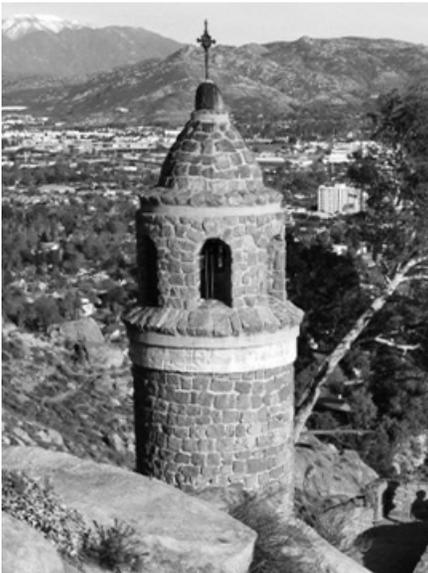
when I tell people), I am burning maybe 400 calories or, in food math, an “everything” bagel with cream cheese. I usually depart before sunrise, and return in the early sight of dawn. Don’t tell anyone, but even though the park and mountain trails officially are closed until sunrise, the main gate is open. I encounter a handful of other walkers, some runners, and a couple of friendly dogs. We say hello in passing, and politely turn away our flashlights to avoid blinding each other with sudden light.

## Ike Logan, the Mount Rubidoux Bell Ringer

My Mount Rubidoux mileage totals are nowhere near record-setting. The record may belong to Ike Logan, probably the most storied Mount Rubidoux walker, who was known also as the “Bell Ringer of Mount Rubidoux.”<sup>7</sup> Serving as the Riverside County Recorder from 1905 to 1919, Logan lived in a Craftsman style house located at what is now 4555 Mission Inn Avenue, and in 1910 began a daily routine of climbing the 1337 foot “granite block”<sup>8</sup> to ring a bell that hung at the mountain’s north summit.<sup>9</sup> For approximately 30 years, Logan rang the bell at

1 See Christopher Bergland, “Hippocrates Was Right: Walking is the Best Medicine,” *Psychology Today*, June 12, 2015, at <https://www.psychologytoday.com/blog/the-athletes-way/201506/hippocrates-was-right-walking-is-the-best-medicine>.  
2 See generally, [https://en.wikipedia.org/wiki/Peripatetic\\_school](https://en.wikipedia.org/wiki/Peripatetic_school).  
3 Vanessa Ko, “Let’s take a walk: A push for meetings on the move,” CNN, March 20, 2013, at <http://www.cnn.com/2013/03/20/business/walking-meetings/index.html>.  
4 See <http://millercenter.org/president/biography/truman-family-life>.  
5 *Id.*  
6 See Harry Truman Speaks, Par. 43, compiled by Raymond H. Geselbracht, at <https://www.trumanlibrary.org/speaks.htm>. When the author toured the Truman home in Independence, Missouri, in February 2015, visitors could see Truman’s trademark walking stick, along with a favorite hat, hanging from the wall in the home’s anteroom positioned exactly where they were when the National Park Service took possession of the home after Bess Truman’s death in 1982 at age 97. Bess Truman outlived her husband by ten years. According to the park ranger who led the house tour, the walking stick and fedora that were so much a part of Harry Truman’s identity had been left untouched by Bess during her widowhood, giving an impression that Truman had just returned home from one of his walks and placed them on the wall hooks.

7 Glenn Wenzel, *Anecdotes on Mount Rubidoux and Frank A. Miller, Her Promoter*, p. 152 (A to Z Printing Company 2010, 324 pages, \$27.25) (hereafter, “Wenzel”). Most of the factual information about Mount Rubidoux referenced in this essay is taken from the Wenzel book, a thorough and very readable history by a long-time Riverside resident who has served as the pastor at St. Paul Lutheran Church in Riverside. Wenzel states that he made his first trip up Mount Rubidoux almost 30 years ago, in April of 1987, when he accompanied his daughter on a class field trip. Wenzel, p. 324. The author of this essay purchased a copy of the book from the Riverside Metropolitan Museum gift shop. Another available source may be the Friends of Mt. Rubidoux, whose mission in part is to enhance the knowledge of the mountain’s history. See <http://mt-rubidoux.org/>. Any cherry-picking that I have done for this essay from Wenzel’s work that results in incomplete or inaccurate information is solely the author’s fault, and should not detract in any way from Wenzel’s remarkable research and scholarship.  
8 The phrase “granite block” to describe Mount Rubidoux is Wenzel’s, who also notes that early plat maps described the mountain as a “high detached hill.” Wenzel, p. 3.  
9 There have been a variety of bells located on Mount Rubidoux, and Wenzel does a good job of trying to keep track of them. According to Wenzel, today the only bell located on the mountain is the one in the Peace Tower, constructed in 1925 to honor Mission Inn founder Frank Miller, the Riverside resident most responsible for the early improvement and maintenance of Mount



*The Peace Tower and Bridge remain among the most popular of the mountain's attractions.*



*A plaque at the summit, unveiled by President Taft in 1909, commemorates Fr. Junipero Serra.*



*Part of a shrine to Saint Francis located at the western foot of the mountain.*

7:00 am sharp. Undeterred by vandals who stole the bell clapper, Logan took a hammer along on his walks which, at the appointed time, he used to strike the bell seven times.<sup>10</sup> In a newspaper interview conducted on his 76th birthday, Logan praised the “virtues of physical exercise and Riverside orange juice,” while noting that as to the early morning hours between 4:30 a.m. and 8:00 a.m.,

Rubidoux. *Wenzel*, p. 156. The Peace Tower and its attached bridge remain among the most noteworthy features on Mount Rubidoux.

<sup>10</sup> *Wenzel*, p. 154.

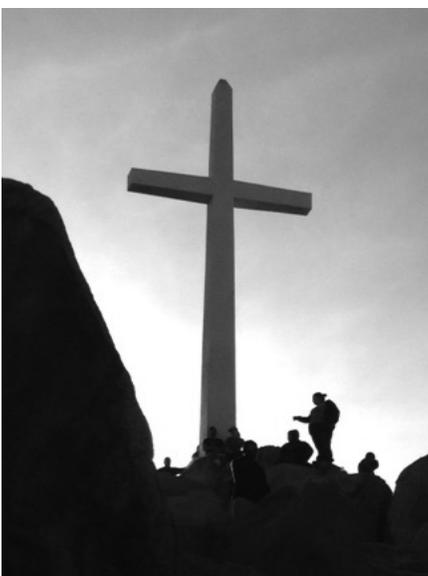
most people “waste the best part of the day snoozing in bed.”<sup>11</sup>

## **The Annual Easter Sunrise Service**

Warm summer evenings bring hundreds of strollers to people Mount Rubidoux’s paved trails. The crowds can be impressive. But it is a tradition that started in 1909, the annual Easter sunrise pilgrimages, which in the past really summoned the crowds to the mountain. Except for a skipped year in the 1920s, and several years during World War II, Easter services have been held on Mount

<sup>11</sup> *Wenzel*, p. 155 citing *Riverside Daily Press*, August 26, 1941.

*The cross is especially popular for Easter Sunrise Services*



*An American Flag stands atop of Mount Rubidoux.*



*Signage marking the unpaved trails around Mount Rubidoux.*



Rubidoux's summit every year.<sup>12</sup> By 1921, 25,000 people attended; in 1922, 30,000 people.<sup>13</sup> A *Riverside Enterprise* column from 1921 commented that "(s)hould hot dog vendors ever be permitted on the mountain – perish the thought – they would do an enormous business."<sup>14</sup> In recent years, the Easter crowds have been smaller, with an estimated 2500 to 3000 people attending the 2016 sunrise service.<sup>15</sup> The Easter service, entering its 108th year, likely is the longest continual outdoor non-denominational one in the United States.<sup>16</sup>

## More Mountain Majesty

Riverside's modern history and that of its mountain are wrapped around each other like double helices. By 1887, prominent early investors purchased the land in and around Mount Rubidoux primarily to subdivide the property to sell lots, and also to serve as a site for a luxury 250-room hotel to be named Hotel Rubidoux along the lines of San Diego's Hotel del Coronado.<sup>17</sup> However, severe winter windstorms destroyed early construction efforts, and few lots sold in the face of an economic collapse in the Los Angeles region resulting in part from land speculation.<sup>18</sup>

The next major efforts at developing the mountain were undertaken upon the formation of the Huntington Park Association in 1905, whose members included lead investor Henry Huntington (the nephew of railroad supermagnate Collis P. Huntington), Mission Inn founder Frank Miller, and Charles Loring, a Minneapolis business who enjoyed spending winters in Riverside and became the largest stockholder in the Loring Building and Loring Theater.<sup>19</sup> The purpose of the group was to develop a park on the top of Mount Rubidoux in order to entice people to purchase lots in a planned subdivision below.<sup>20</sup> In early years, the group led efforts to build a reservoir system on the Mountain, beautify the park with thousands of trees and plants, and construct bridges and roads. Some land was allocated to a citrus research center (now occupying larger space near the University of California, Riverside.)<sup>21</sup> A plan to install a rail system that would take trolley cars on Seventh Street to the top of the mountain appears to

have been short-lived, although the Millers soon were able to promote to hotel guests automobile road tours in "elegant cars" driven by "experienced chauffeurs."<sup>22</sup>

Commercial development may have been in the minds of the early Mount Rubidoux promoters, but with time civic motivations took hold. Mount Rubidoux became a Riverside focal point for numerous city events and ceremonies.<sup>23</sup> It attracted famous visitors, including Theodore Roosevelt, William Howard Taft, Warren G. Harding, Herbert Hoover, John Muir, and Booker T. Washington,<sup>24</sup> but like today, the mountain became a destination for the less famous who used the mountain for family and recreational outings, and even wedding ceremonies.

Visitors new to Mount Rubidoux always are astonished at the plaques and shrines littering the landscape that honor, mostly, civic leaders responsible for the development of the mountain. These range from a plaque to Frank Miller at the park entrance, a shrine honoring Charles Loring, the mountain's "tree planter," approximately half-way up the "up trail," and a tablet, unveiled by William Howard Taft in 1909, commemorating Father Junipero Serra (who, despite some historic accounts, never visited the mountain). The Peace Tower and Bridge, also dedicated to Frank Miller, certainly impress newcomers and especially children who climb on the surrounding steps and rocks. The ultimate destination for many visitors, however, is the cross at the mountain's peak, originally dedicated to the memory of Father Junipero Serra.<sup>25</sup> The first cross, a wooden one made of "heavy cedar logs,"<sup>26</sup> was replaced first in 1959 by another wooden cross made by Riverside Public Utilities from old utility poles, and then by a concrete cross in March of 1963.<sup>27</sup>

## Fauna and Flora

The Friends of Mt. Rubidoux website lists 18 different mammals that one might encounter along the mountain's trails.<sup>28</sup> I have seen many of them but note that elephants are not among them. However, exactly 100 years

<sup>12</sup> Wenzel, p. 193.

<sup>13</sup> Wenzel, pp.205-206.

<sup>14</sup> Wenzel, p. 206, citing *Riverside Enterprise*, March 28, 1921.

<sup>15</sup> See T. Sheridan, "Easter Sunday: Faithful attend sunrise service on Mount Rubidoux (Update 3)," *The Press Enterprise*, March 28, 2016, at <http://www.pe.com/articles/service-798204-rubidoux-mountain.html>.

<sup>16</sup> Wenzel, p. 193.

<sup>17</sup> Wenzel, pp. 17-18.

<sup>18</sup> *Id.*

<sup>19</sup> Wenzel, pp. 28-29. The Loring Building, located on the northwest corner of Seventh and Main, currently houses Citizen's Bank on its main floor.

<sup>20</sup> Wenzel, p. 28.

<sup>21</sup> Wenzel, p. 36.

<sup>22</sup> Wenzel, pp. 28; 36 (citing *Riverside Daily Press*, March 7 & 8, 1907).

<sup>23</sup> Today most Riverside residents associate the mountain with the annual fireworks 4th of July celebration. However, the fireworks were only moved to Mount Rubidoux in 1964. Wenzel, p. 135.

<sup>24</sup> See generally, Wenzel Index, pp. 314-323. Wenzel's book includes numerous photographs and postcards, including many from the author's personal collection, that depict the famous and less famous Mount Rubidoux visitors. The photograph of President Taft, from the Mission Inn Foundation and Museum collection, depicts Taft sitting somewhat comfortably in the back of a touring car notwithstanding his large size. Wenzel, p. 91.

<sup>25</sup> Wenzel, p. 59.

<sup>26</sup> Wenzel, p. 58, citing *Los Angeles Times*, April 27, 1907.

<sup>27</sup> Wenzel, p. 60.

<sup>28</sup> See <http://mt-rubidoux.org/>.

ago, during the winter of 1916-17, the elephant keeper of the Cole Brothers' Circus decided to exercise the herd to prepare the animals for their season-opening Riverside parade by walking them from fairgrounds north of Fairmount Park to the top of the mountain.<sup>29</sup> Newspaper accounts reported that tourists in automobiles on the one way road "had the misfortune of getting in behind" the herd, which stopped frequently to graze "on sage and other green things."<sup>30</sup>

For sure, coyotes, skunks, and raccoons are relatively plentiful in the early morning hours as they are in much of Downtown Riverside. Squirrels, too. Desert cottontail rabbits seem to bounce around the mountain. Foxes are rare but not unknown. Various types of mice dart across the road. My neighbor refuses to climb the mountain because of a fear of snakes, and indeed there are some small ones that leave their hiding places beneath rocks and sun themselves on the walking paths in the heat of the afternoon sun. On one occasion, I viewed a strange little critter, low to the ground, mostly brown in color, with an unusually long, stick-like tail that extended at least the distance of his body. Curious, I went to the San Bernardino County Museum, which houses a large collection of area stuffed animals, to determine if I could identify the animal. No luck. However, a display at the Riverside Municipal Museum helped me to identify the long-tailed weasel.

The mountain is home to numerous types of trees and plants, many of which are catalogued on the Friend's website. Some are remnants of the early beautification efforts undertaken largely by Charles Loring,<sup>31</sup> including pepper and eucalyptus trees and various desert plants. The original idea was to plant large trees on the lower level of the mountain, where they could be watered by a now-dismantled reservoir system, and yucca, cactus, and other native plants at the upper levels because they did not need watering.<sup>32</sup> Walkers entering the park will be struck by the vast nopal cactus plantings that flourish at the mountain's base. Signs in English and Spanish warn against cutting the cactus, the "pads" of which are a common ingredient in soups, stews and omelets. The signs have not stopped mountain-goers from scratching graffiti into the flat, dish-like pads.

## Riverside Gold

In 1955, the family of Frank Miller, who continued to own and maintain Mount Rubidoux after Miller's death in 1935, officially deeded the property to the City of Riverside. The City opened the Frank A. Miller Mount

<sup>29</sup> Wenzel, p. 73.

<sup>30</sup> *Id.*, citing *Riverside Daily Press*, March 5, 1917.

<sup>31</sup> Wenzel, p. 61-2.

<sup>32</sup> Wenzel, p. 62.

Rubidoux Memorial Park that same year. Harry Truman advised would-be walkers that "(i)f you are going to take a walk for your physical benefit, it is necessary that you walk as if you are going someplace."<sup>33</sup> That someplace for me has been Mount Rubidoux; the walking has enhanced my personal health and fitness, and by providing a mental break, the long, solitary walks have enhanced my law practice.

There is no record of any gold discovery at Mount Rubidoux.<sup>34</sup> But Riverside residents continue to be enriched by the presence of the mountain in their city.

*The author is employed by the United States Department of Justice as an Assistant United States Trustee in the Riverside Office of the United States Trustee Program (USTP). The mission of the USTP is to protect the integrity of the nation's bankruptcy system and promote the efficiency of its bankruptcy laws. The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice. The photographs accompanying the essay were taken by the author in January 2017, using a cell phone camera.*



<sup>33</sup> See Product Description of Harry S. Truman NHS Hiking Stick Medallion, at eParks, The Official Online Store of America's National Parks, at <http://www.eparks.com/store/product/78463/Harry-S-Truman-NHS-Hiking-Stick-Medallion/>.

<sup>34</sup> Wenzel, p. 124.

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# IN MEMORIAM: HON. DOUGLAS WEATHERS

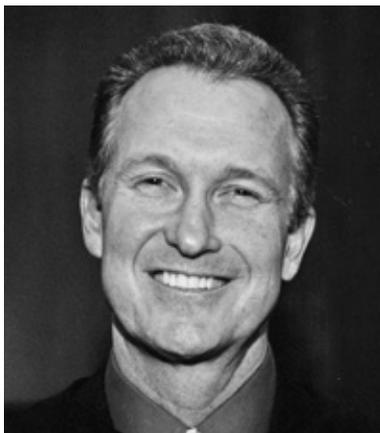
## Life Sketch of Douglas Edward Weathers

The Honorable Douglas Edward Weathers, Ret., passed away on October 24, 2016 from early onset Alzheimer's at age 61. Doug was born on November 29, 1954 in Loma Linda, CA to William and Dorothy Weathers. At the age of five, Doug moved to Riverside when his father took a job as a Deputy Sheriff for the Riverside County Sheriff's Office. One of his earliest memories was playing with his older brother on the steps of the Historic Courthouse while his father worked. Little did he or his family dream that one day he would be presiding over a courtroom there as a judge.

After graduating from La Sierra Academy, Doug studied at UCR and La Sierra University in the mid 70s. When his brother graduated from Western State University College of Law in 1977, Doug was inspired to follow and enrolled in the accelerated J.D. Program, also at Western State, where he graduated and was admitted to the bar on December 16, 1980. Doug's first job as an attorney was at the law firm of Rose, Klein & Marias, where he had been clerking during law school. As an associate attorney in the firm's San Bernardino office, he focused primarily on personal injury and third-party cases.

It was during this time when Doug met his future wife, Theresa, at a deposition, where she was the court reporter. When she accepted an invitation to lunch that very day, it was the start of a romance and life together, marrying just nine months later in 1983. With Theresa's support, Doug was able to practice law, work and study hard and became one of the premiere trial attorneys in the Inland Empire. In 1985 and 1988, respectively, Doug and Theresa welcomed a son, Clayton, and daughter, Emily into their home. It was well-known among family and friends that Doug adored his children and loved being a father.

In 1984, Doug teamed with a law school friend (also to become a fellow judge), Mac Fisher, to found the firm of Fisher & Weathers and by the end of that year, Steve Geeting also joined the partnership which then became Fisher, Weathers & Geeting. Doug's career soared and he became known not just for his trial skills but for his professionalism and courtroom civility, as one of his



*Hon. Douglas Weathers*

colleagues, Paul Grech, described him "a lawyer's lawyer." He became active in many legal organizations, such as Barristers, the Consumer Attorneys of California, the Los Angeles Trial Lawyers Association, and the Riverside and San Bernardino County Bar Associations. In 1995, Doug joined the American Inns of Court as a member of the Leo A. Deegan Inn in Riverside, serving on the executive board of the Inn for several years before becoming its President in 2002. He also became involved in the American Board of Trial Advocates (ABOTA), an organization dedicated to preserving the 7th

Amendment.

When the partnership of Fisher, Weathers & Geeting was dissolved in 2003, Doug joined the firm of Peach & Weathers, where his childhood friend, Tim Peach, and his brother, Bill Weathers, partnered in a general personal injury practice, Peach and Weathers, then forming the firm "Peach and Weatherses," as Doug liked to call it. Even though Doug admitted he had occasionally had fleeting thoughts about submitting an application for a judicial appointment in the past, after having lunch with a former colleague, now a judge in San Bernardino and hearing him describe his job as the "greatest in the world," Doug was motivated, along with encouragement from Theresa and his law partners, to submit an application, and in 2005 the appointment was confirmed. Initially, he was assigned to the criminal division by the then Presiding Judge Sharon Waters, where he made the transition from civil attorney to the criminal trial bench, initially for a little less than two years, at which time he was reassigned to the civil courthouse, overseeing civil cases.

At his enrobement ceremony on January 27, 2006, Doug promised to be the best judge he could be and explained later that becoming a judge was an honor that he greatly cherished and a responsibility he did not take lightly. Jeff Raynes, a fellow attorney and friend, noted at the enrobement ceremony that "years from now, when we look back on this day . . . Judge Weathers will be a leader of this community . . . a judicial leader among his peers, much like he has been a leader of our bar." Doug's enthusiasm and devotion to his new position left little doubt as to those prophetic words. When Doug was diagnosed with early onset Alzheimer's just five short years

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after taking the bench, he was already well-respected and known for his commitment to the bench and serving the public and the lawyers appearing before him.

Although Doug's professionalism was well-known and admired, he was equally known to be a true friend and developed many treasured relationships lasting from childhood until the end of his life. All those who knew Doug appreciated his ability to be the life of the party, quick-witted and a loyal friend. Those who knew Doug loved him and he loved them back. Doug leaves his beloved wife, Theresa, who devoted herself lovingly to his care after he was diagnosed with Alzheimer's in 2010 and the devastation of the effects of this debilitating disease. Doug also leaves his son, Clayton, daughter Emily and her partner Jennifer, along with his brother Bill Weathers, wife Terry, nieces and nephew.

On November 12, 2017, a Celebration of Life Memorial Service was held for family and friends at 2:00 p.m. at the Mission Inn, followed by a reception at the Historic County Courthouse. In lieu of flowers, donations in memory of Douglas Weathers were asked to be made to the Alzheimer's Association: [www.alz.org/donate](http://www.alz.org/donate).

*Terry Weathers*

## Remembering a Brother

When Doug was born in 1954, our parents lived in La Sierra, then a small community consisting primarily of Seventh Day Adventists near what is now La Sierra University. Doug and I attended La Sierra Elementary School and Academy, with Doug graduating in 1972. We grew up knowing many of the families in the area and lived within walking distance of school and most of our classmates' homes. In 1963, our parents bought our home from Bob Macomber, a future Riverside Superior Court judge, whose sons were our classmates.

When the Sheriff's Department had offices in the Historic Courthouse basement, occasionally Doug and I would play on the courthouse steps and lawn while our father, then a deputy sheriff, attended to off-duty work. We also were present for President Johnson's rally at the courthouse in 1964, just steps from the courtroom where Doug would later preside as a judge.

After high school, Doug first attended Mortuary College and became a licensed embalmer, later working and living at Preston & Simon Mortuary. Doug and I also shared high school and college jobs, including working at the college poultry ranch, working on the back of a trash truck in La Sierra and Corona, and doing construction work.

Doug was attending La Sierra University in 1977 when I graduated from law school and took the bar

exam. He was close to completing his bachelor's degree when we learned in December I had passed the bar. Doug said, "That's it, anybody can do it," and he immediately withdrew from college and enrolled at Western State in January 1978.

In 1980, while he was studying for the bar, Doug and I bought a house together in San Bernardino. Several weeks after moving in we met our neighbor, Pat Magers, also a future Riverside Superior Court judge. During this time, Doug became my "client" after his detention on a FTA over a misunderstanding on a traffic ticket. He was upset I came to see him first rather than posting bail, but I wanted the experience of using my bar card to actually visit a client in jail. We lived together until his marriage to Theresa in 1983.

Doug and I were friendly competitors practicing personal injury law in the I.E. for many years until Fisher, Weathers & Geeting dissolved and he joined Tim Peach and me at Peach & Weathers (P & W), where he remained until his judicial appointment in 2005. Doug was an outstanding lawyer and our time together at P & W was a highlight of my career.

Our families bought a duplex in Newport Beach in 1997 and in 2010, when he was diagnosed with Alzheimer's, we were in the process of rebuilding the property into two condos. Doug and Theresa moved to the beach in 2011, and almost every weekend thereafter, until his move to a residential facility in 2014, he and I would alternate days riding bikes to either the Wedge or the Huntington Beach pier. Those rides often included a stop for breakfast, lunch or a beer, along with many laughs.

It's heartbreaking to see anyone deteriorate mentally, but especially someone in their mid-fifties, with the intellect and quick wit Doug possessed; that sense of humor continued on occasion almost to the end. As I continued to visit him almost weekly at Silverado in Costa Mesa, I would sometimes wish for a more rapid progression of his disease, but I now realize how much I treasure the "long goodbye" and the hundreds of times I was able to hug Doug and tell him I love him. I miss my brother every day.

Theresa and I, along with our families, wish to thank the legal community for the outpouring of sympathy and the wonderful expression by so many of their respect and affection for Doug.

*Bill Weathers*

## A Lifelong Friend

It was 1975 after meeting his brother Bill, I was soon introduced to Doug Weathers, quick witted, happy, industrious and genuine. I knew, I just met a life-long

friend and I wasn't wrong. His likable and outgoing personality was infectious, being around Doug was fun. Seems he laughed and included his friends in everything from the Halloween parties at the mortuary where he worked in college, to camping, ski, river and all the trips we took. One thing that set Doug apart from so many was he never lost track of his friends, never took them for granted. When getting together with Doug, you were getting with his closest friends from grade school up to law school. He always welcomed his friends and it was his wit and humor that drew everyone to him. Doug Weathers loved people and people loved Doug Weathers.

The relationship between Doug and Bill was truly special, they weren't just brothers, they bonded like few brothers do; they define the term, "Brotherly love." It was not surprising after college, Doug followed Bill's footsteps into law school which would provide the platform of his life. While humor radiated from Doug, his serious side surfaced. Meeting and falling in love with Theresa, their marriage went from two to four, with Clayton and Emily, yet the law was just a short distance behind his family. Doug's love of the law became the total focus of his life. The college and law school party animal we all knew graduated into an exceptional trial lawyer. Always so dedicated and devoted to his clients, he went to the end for them, so often only noticeable to those of us who actually saw the hours and hours of preparation, not so noticeable to the very clients to whom he was so dedicated to. Years went by with Doug's love of the law, family, and friends never wavering. The citizens of Riverside County were blessed when Doug was appointed to the bench, he was one of the county's own. A person who was just like those that appeared before him, a person whose integrity was impeccable, whose knowledge and understanding of the law was extreme and a person whose demeanor and character was without flaw. I joined Bill, Theresa and all of Doug's close friends (a long list) in being so prideful upon the Governor of California making a perfect appointment.

Doug's career on the bench, like his life itself was way too short. From the day we met, it was clear to me, Doug offered and gave more than he took or expected. He embraced people, all people with himself; he was always there for his family, as a dedicated lawyer, an honorable judge and to so many of us, and as a phenomenal, fun and unbelievable friend. While his love for Bill was unparalleled, Doug was a brother to many of us. As I watch the news every day, I can't help wonder how so many people in the world continue to live not deserving of the years, when there are people like Doug, who not only deserved more, the world would be a better place if more were given. I have pictures on the walls and in my

mind. I loved him like a brother, I'll always miss him. I'll never forget him.

*Bill Shapiro*

## **Partner and Colleague**

Doug (Dougie) Weathers and I met in law school in the late 70s. We clerked together, worked together in a restaurant and grew up together as young lawyers admitted to the bar in 1980. We were partners for many years. Even after we ended our partnership, we remained close friends and ultimately served on the bench together.

At Doug's memorial, I was privileged to offer some remarks about a remarkable life lost. In the legal community we knew Doug Weathers as a fantastic trial lawyer. He was fearless, determined and passionate. He fought for clients with dedication, but was likeable, approachable, civil and ethical to his opposition. Judges loved the attorney, Doug Weathers, as did juries.

Doug was a leader in the legal community as a lawyer, and he was destined for greatness as a judge when he was stricken with Alzheimer's disease at a young age. I have no doubt that he would have been a legend on the bench.

Most know that Doug and I were law partners early in our careers. Starting a law partnership with limited funds, children to support and turning it into a successful practice was a monumental part of my life. I will always be indebted to Doug and his wonderful wife Theresa, for allowing me to be a part of that. Those were good years for all of us at Fisher, Weathers and Geeting (adding Steve Geeting later as a partner).

Twenty-four years later, we became colleagues again as judges. We often talked about our jobs and how much we liked, if not loved, being judges. Having one of my best friends down the hallway from me in the Historic Courthouse was a dream come true. I still remember watching, in awe, Doug in action on the bench, when in fact I was a judge myself. He fit the description of what and how a judge should act and look. He was young, handsome, smart, respected and in control of the courtroom. That was a great time for both of us.

Doug loved life. He had a certain, some would say rigid, political view of the world. But he loved those who didn't agree with him, though not without argument. He liked to make money, but when he made "enough money" he wanted to be a judge to help others. As a senior lawyer, he donated time to mentoring young lawyers. Many times he reduced a fee for a client in need. He loved Judge Woody Rich, as we all did. But, he could imitate Woody better than anyone. He enjoyed golf, but loved to be out with the guys even more than being on

the course. Doug was always surrounded by countless friends, and he cherished his family. Life was fun to Doug, even when matters were serious. He never appeared obviously stressed, but to his closest confidants we knew how serious he was about being the best lawyer or judge he could be.

Thankfully, Doug felt that his best job was his last. That was serving as a judge.

I remember vividly when Doug came into my chambers in the Historic Courthouse to tell me about his irreversible diagnosis. We hugged; we cried. Everything from this point on would be different.

Doug was courageous as he gradually succumbed to Alzheimer's, a horrific disease. More often than not, he treated his disease with humor and love for Theresa, his children and friends. Theresa, in kind, faithfully and fearlessly cared for Doug to the end.

To his loving wife, Theresa, I say, "Well done!" We will all miss Doug, but we will never forget him.

*Judge Mac Fisher*

## Neighbor and Friend

I met Doug Weathers in 1985. We owned homes next door to each other and a fence had fallen between our yards. We split the cost of repairs and became fast friends. At the time, Doug was a rising star in personal injury plaintiff litigation. I would soon leave the District Attorney's Office and practice criminal defense.

Doug was a role model for young lawyers. He was bright, hardworking and talented. He had a powerful intellect and was a tireless advocate on behalf of injured victims. He had the courage of his convictions and was not afraid to take on large institutions on behalf of his clients.

Doug enjoyed the company of other lawyers. He had a razor sharp wit and a great sense of humor. He convinced me to join the Leo A. Deegan Inn of Court; an organization devoted to the advancement of ethics, civility and professionalism among lawyers. At that time, the meetings were interesting but it was the informal

gathering of lawyers and judges after the meetings that Doug enjoyed most.

In the early 1990s, he convinced me that we should try a six week civil trial together as co-counsel. We thought we had a good case. The defense thought we had nothing and that was their settlement proposal. Three weeks into the trial, the defense put a \$250,000.00 offer on the table. When I suggested we accept the offer, Doug and the client wouldn't hear of it. He told me, "We're never going to hit a home run if we're afraid to swing for the fences." Doug was brilliant in closing argument. At least two of the jurors were in tears.

The jury gave us nothing. But for the hours while they deliberated, we were young lawyers certain that our lives were about to change.

Doug would go on to try many big cases and win many large verdicts. He would also reach many large settlements. I learned from Doug that hard work and meticulous preparation separate the good lawyers from the great. I also learned that in our line of work, sometimes you just have to swing for the fences. Doug inspired me to do that in my own career. Although Doug was exceptionally competitive as a litigator he wanted something greater than being a respected adversary and advocate. That day came when he was appointed as a Judge of the Riverside Superior Court. As a former trial lawyer he was determined to create a collegial atmosphere where lawyers could try their cases. As a Judge, he eased the stress of litigation with civility and compassion. Although he started with no experience in criminal

## MEDIATION

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law he soon became a favorite trial judge of both prosecutors and defense lawyers. He was a quick study and a patient listener. Judge Weathers leaves behind a legacy of legal scholarship, wit and a big heart. Lawyers who appeared before him remember the courtesy he extended to all who appeared before him. His friends and colleagues will miss his generosity of spirit and wonderful sense of humor.

*Paul Grech*

## My Journey with Doug

My final journey with Doug started on the day he was diagnosed with Alzheimer's disease; it ended over six years later on the day of his death.

Our journey took place over many lunches, walks along a bluff overlooking the sea and visits with Theresa at their home. For the last two years, our journey continued with weekly visits at Doug's care center, Silverado.

At the beginning, our visits were difficult as I watched Doug's health decline. But I soon realized that as Doug was losing parts of his life, he was giving life lessons to me. Over these many months Doug became not only a friend, but a teacher.

In Doug's memory, I am pleased to share a few of the life lessons he taught me as we traveled the road to his final journey.

- **The serenity of acceptance.** Not once in six years did Doug ever complain about his condition. In fact, soon after his diagnosis he said "If I have to have a fatal demise, this is the one to have--I will feel no pain."
- **The joy of a deep and permanent love for Theresa.** When Doug could speak, he spoke about Theresa. When he could not speak, he said her name. When he could do neither, he would smile when I said her name.
- **Pride in his profession.** Doug loved his profession. Towards the end, I would pretend that I was calling his calendar. He always smiled.

- **The sustaining happiness of friendship.** When I mentioned to him the names of his close friends, he would smile. If he could not smile, he would squeeze my hand at the name of a special friend.
- **The joy of laughter.** Doug loved to laugh. When he could no longer laugh, his smile would ignite.
- **Touch as a form of communication.** Our journey was marked with progressions from hugs, to handshakes, to simply holding hands. When he could not hold mine, I held his. To the end, no matter what form of touch was communicated, I could tell that Doug felt my love and that I felt his.
- **The ability to speak without words—speaking with eyes.** In the end, when words could not come and touch was failing, if you looked into Doug's eyes, he would speak to you. Maybe a word, maybe a thought or maybe a simple thank you. When his eyes spoke to me, I heard them in my heart.
- **The value of the phrase "Thank you."** Even after Doug had seemingly lost the ability to speak, he would amaze me when we would walk around Silverado by occasionally thanking someone who had cared for him. I will always remember their happy reaction to those greetings.

By these lessons, Doug has so given to me and gifted each of us with his legacy. Thank you for teaching me the best of you, Dear Friend.

*Terry Bridges*



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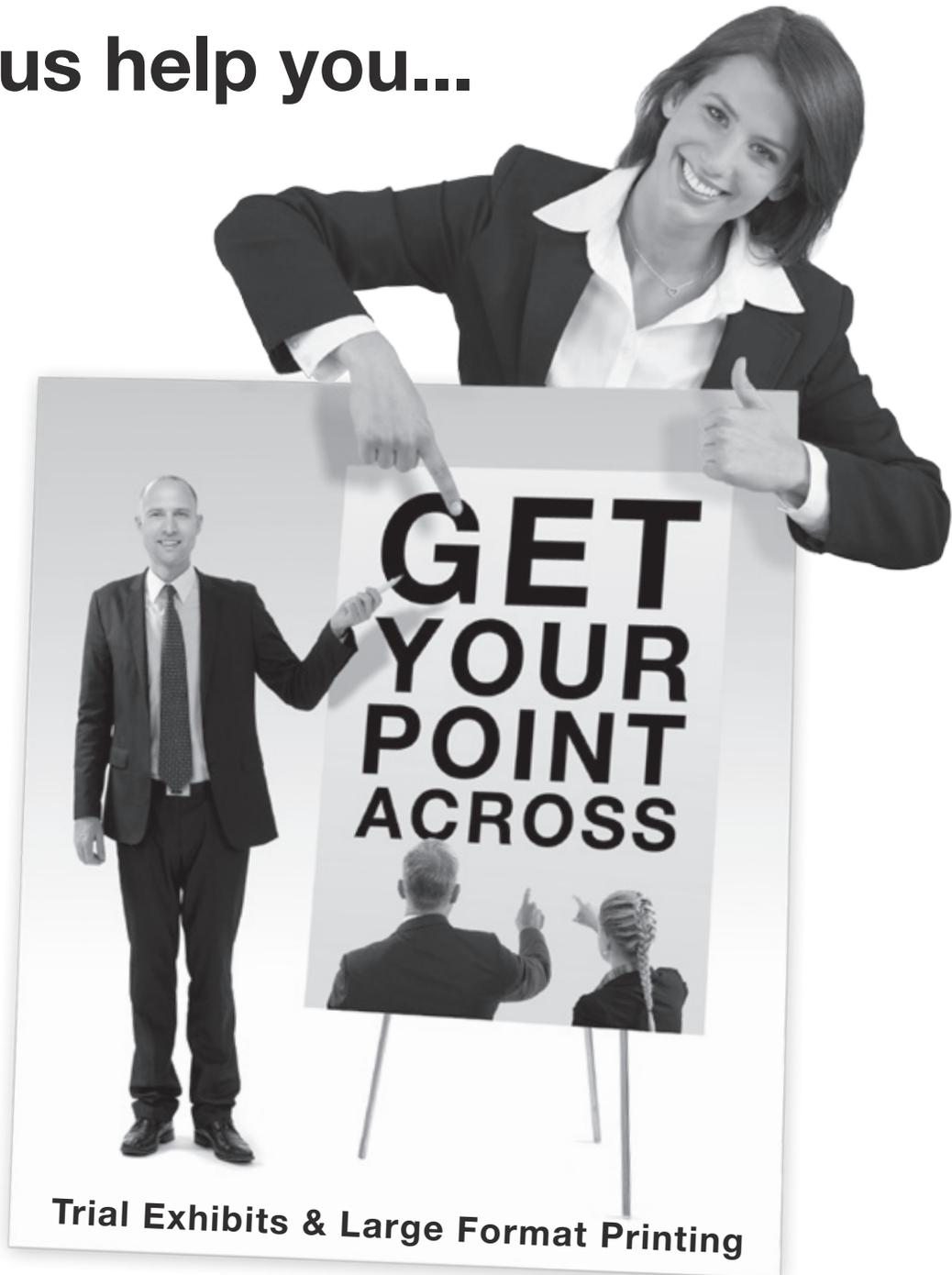


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# WHEN A SUPER-MAJORITY IMPOSES ITS WILL ON THE SUPER-MINORITY: PROPOSITION 56

by Mohammad Tehrani

## I. Introduction

Ninety-one % of California adults are non-smokers. This past November, California voters passed Proposition 56, imposing a two-dollar per pack cigarette tax. The measure passed by an overwhelming 63.3% to 36.7% vote.<sup>1</sup> Proposition 56 marked the first increase in California's state tobacco tax in nearly 20 years.<sup>2</sup> Proposition 56's proponents argued that the cigarette tax would be effective based on the finding that "[i]n every state that has significantly raised cigarette taxes smoking rates have gone down."<sup>3</sup>

Proposition 56 is an extension of the governmental long-standing use of tax policy to influence behavior. However, rather than promote an activity through legislative action, such as home ownership, the cigarette tax has been imposed by the super-majority of Californian voters upon a super-minority population with an unpopular vice. Proposition 56 raises questions about the role of government in determining personal choices.

## II. Using Tax Policy to Influence Behavior: The Mortgage Interest Deduction

Traditionally, the role of taxes has been to raise revenue to finance government spending on goods and services.<sup>4</sup> Starting in the 20th century, United States tax goals expanded from state maintenance to influencing personal choices.

The concept that taxes can influence behavior assumes the neoclassical economic model's assumptions that people are rational actors who act in their self-interest; for example, that individuals strive to make themselves as well as possible.<sup>5</sup> Simply put, people will consume more of something desirable if its price decreases, less of

something if its price increases, and would move towards a cheaper substitute whenever possible.

A prominent example of the government using tax policy to influence behavior is found in the federal home mortgage interest tax deduction. The home mortgage interest tax deduction allows taxpayers who own their home to reduce their taxable income by the amount of interest paid on the loan secured by their principal residence.

The apparent purpose of the deduction is to promote home ownership. As President Ronald Reagan put it: "Well, that is the thing, that deduction, that symbolizes, I think, that American dream."<sup>6</sup> The deduction is supposed to work because people will move towards home ownership because, due to the deduction, home ownership becomes relatively cheaper than renting a residence.

Research suggests that the deduction is not working. Rather than transform renters into homeowners, the more common effect of the tax has been to allow would-be owners to take on larger mortgages than their budget otherwise allows.<sup>7</sup>

Moreover, the deduction overwhelmingly benefits higher-income households. Of the over \$70 billion in deductions paid for by the U.S. government each year under this program, 77% goes to households earning over \$100,000 annually, and 35% of those benefits go to households earning \$200,000 annually.<sup>8</sup> Indeed, the bottom 40% in terms of household income of homeowners receive only 3% of the \$70 billion national boon.<sup>9</sup>

Notwithstanding the deductions failure to promote home ownership, it remains an untouchable tenant in the federal tax code. One explanation for its sacrosanct may be that it benefits a substantial portion of the populace.

1 Sami Leung, "California Proposition Results," *The Los Angeles Loyolan*, November 16, 2016, [http://www.laloyolan.com/news/california-proposition-results/article\\_b841ccaa-974a-5c39-9b9f-e99eb3d6bf61.html](http://www.laloyolan.com/news/california-proposition-results/article_b841ccaa-974a-5c39-9b9f-e99eb3d6bf61.html).

2 "California Approves Cigarette Tax Hike," *Associated Press*, November 9, 2016, available at <http://fox40.com/2016/11/09/california-approves-cigarette-tax-hike/>.

3 *Id.*

4 Vito Tanzi and Howell Zee, "Tax Policy for Developing Countries," *International Monetary Fund*, March 2001, available at <https://www.imf.org/external/pubs/ft/issues/issues27>.

5 See Anton D. Lowenberg, "Neoclassical Economics as a Theory of Politics and Institutions," 9 *Cato Journal* 3, 619, 621 (1990).

6 Michael De Groote, "Eliminating the Mother of all Tax Deductions," *Deseret News*, November 21, 2011, <http://www.deseretnews.com/article/700200108/Eliminating-the-mother-of-all-tax-deductions.html>.

7 Roger Lowenstein, "Who Needs the Mortgage-Interest Deduction," March 5, 2006, *New York Times*, <http://www.nytimes.com/2006/03/05/magazine/who-needs-the-mortgageinterest-deduction.html>.

8 Will Fischer and Chye-Ching Huang, "Mortgage Interest Deduction is Ripe for Reform," June 25, 2013, *Center on Budget and Policy Priorities*, <http://www.cbpp.org/research/mortgage-interest-deduction-is-ripe-for-reform?fa=view&id=3948>.

9 *Id.*

Nearly 65% of Americans own their home,<sup>10</sup> and of those roughly 71% hold a mortgage.<sup>11</sup> Thus, it may exist for the sole purpose to please the large number of constituents who benefit or hope to benefit in the future from it in at least some measure, even if the policy underlying its purpose has not been achieved.

### III. California's Cigarette Tax: Adding a Sail to a Motor Boat

Proponents offered multiple reasons why voters should vote for Proposition 56. First, the \$2 per pack tax rate is expected to reduce smoking from 9% to 7% by 2020 by combining revenue used for anti-smoking campaigns in addition to the increasing unaffordability of cigarettes resulting from the tax.

Second, Proponents touted the cigarette tax as a necessary change to keep up with a changing national landscape. In endorsing Proposition 56, the Editorial Boards for the *Sacramento Bee* and *San Francisco Chronicle* shamed Californians by noting that California's 87 cent per pack tax trailed most of the nation, ranking 37th, and far below its neighbors Nevada (\$1.80), Arizona (\$2.00) and Oregon (\$1.32).<sup>12</sup> Further, proponents asked that voters pass this tax directly, insinuating that state legislators had been paralyzed from imposing a tax because of campaign contributions by tobacco companies.<sup>13</sup>

Missing from Proponents positions was that California, despite ranking 37th in the amount of state cigarette taxes, ranked second (behind Utah) in fewest %age of smokers.<sup>14</sup> Further, despite no increase in cigarette taxes since 1988, California smoking rates declined from 18% in 2000 to 12% in 2014.<sup>15</sup> Then, from 2014 to 2016, again without any intervening state tax, California's smoking rate declined again, from 12% to 9%.<sup>16</sup> Thus, without any

10 Jed Kolko, "Why the Homeownership Rate is Misleading," January 30, 2014, *New York Times*, [http://economix.blogs.nytimes.com/2014/01/30/why-the-homeownership-rate-is-misleading/?\\_r=0](http://economix.blogs.nytimes.com/2014/01/30/why-the-homeownership-rate-is-misleading/?_r=0)

11 Ann Carrns, "Owning a Home, Mortgage Free," January 16, 2013, *New York Times*, <http://bucks.blogs.nytimes.com/2013/01/16/owning-a-home-mortgage-free/>

12 Ed. Bd., "Californians Should Vote Yes on 56 for Public Health," *The Sacramento Bee*, September 9, 2016, <http://www.sacbee.com/opinion/election-endorsements/article100932522.html>; Ed. Bd., "Chronicle Recommends: Yes on Prop. 56," *The San Francisco Chronicle*, August 23, 2016, available at <http://www.sfgate.com/opinion/editorials/article/Chronicle-recommends-Yes-on-Prop-56-9180531.php>.

13 *Id.*

14 "California Tobacco Facts and Figures 2016," *California Tobacco Control Program California Department of Public Health*, September 2016, available at <https://www.cdph.ca.gov/programs/tobacco/Documents/CDPH%20CTCP%20Refresh/Research%20and%20Evaluation/Facts%20and%20Figures/FactsFigures2016PrePrintEditionV2.pdf>.

15 *Id.*

16 Stanton Glantz, "California Undermines Big Tobacco, Raising the Cigarette Tax by \$2 in the State," *Salon*, November 14, 2016,

additional state taxes, cigarette smoking in California dropped by half in the last 16 years, and by a quarter in the last two years alone.

If the goal of the cigarette tax is to reduce smoking from 9% to 7% in the next three years, its implementation was likely unnecessary. Smoking rates are dropping at a faster rate even without a tax, and should have reached or exceeded 7% on their own. Like the mortgage interest tax deduction, a likely reason for its passing is not its effectiveness. Rather, its existence stems from its popularity among a more numerous group of people in comparison to the detriment to a less numerous group of people.

### IV. Conclusion: Who Should Choose?

One explanation for the fervor with which the cigarette tax was passed is the incredible majority of people who fail to be harmed by the tax. Only 9% of adults will be affected by the tax. Like the mortgage interest tax deduction, the popularity of the cigarette tax seems to be based on the large number of potential beneficiaries who, in this case, will observe a rise in the state's tax revenue.

Although the tax affects only a super-minority of the population, the tax displays the characteristics of a regressive tax which disproportionately burdens the less fortunate. Californians who make less than \$25,000 a year are more than twice as likely to smoke as Californians who make more than \$50,000 a year.<sup>17</sup>

Ultimately, those who already spend a greater %age of their income on cigarettes are being forced by – generally more wealthy – voters to pay a greater, and eventually impossible, share of their limited budget in a paternalistic effort to eradicate their habit. But if an adult is already willing to spend a large portion of their budget on cigarettes, and willing to endure the painful health effects, should non-family, non-friend, non-acquaintance voters be the party who forces them to quit? California voters asserted with Proposition 56 that the answer is yes.

*Mohammad Tehrani is an employee of the United States Department of Justice as a trial attorney in the Riverside Office of the United States Trustee Program (USTP). The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.*



<http://www.salon.com/2016/11/14/california-undermines-big-tobacco-raising-the-cigarette-tax-by-2-in-the-state/>.

17 Mat Levin, "How Would the Prop. 56 Tobacco Tax Really Affect Poor Smokers?," *Cal Matters*, <https://calmatters.org/articles/how-would-the-prop-56-tobacco-tax-really-affect-poor-smokers/>.

# JUDICIAL PROFILE: HON. MEREDITH A. JURY

by Franklin Adams

As the City of San Bernardino Chapter 9 bankruptcy case draws to a close, Bankruptcy Judge Meredith A. Jury looks forward to new opportunities in her life. Judge Jury became a bankruptcy judge for the Central District of California in 1997. Unlike many fine judges who started their judicial careers in the Riverside Division of the Central District and left to go to other parts of the District, Judge Jury has remained in the Riverside Division for her entire judicial career.



*Hon. Meredith A. Jury*

Judge Jury started her legal career as an associate with Best Best & Krieger. She later became the first female partner at the firm, working principally as one of the firm's litigators. While she enjoyed the practice of law, she found her home as a judge. Early in her career she had the opportunity to cover another judge's calendar. When she concluded the hearings, the clerk commented to her that it seemed like she had been doing this (judging) for years.

While serving as a Bankruptcy Judge, she has also served on the Bankruptcy Appellate Panel (BAP) for the Ninth Circuit. This court is comprised of regular bankruptcy judges selected from throughout the Ninth Circuit. Litigants in bankruptcy court may choose to appeal to either the District Court or the BAP from decisions of the Bankruptcy Court. Most often they go to the BAP. Since its inception in 1978, the reputation and respect for the BAP has increased among bankruptcy attorneys and the bench, as well as the Circuit and District judges. While its decisions are not binding on the bankruptcy courts, they are taken seriously and generally treated as precedential. It is no small job to balance a regular bench work load and sit as an appellate judge on the BAP. Judge Jury is currently serving as the Chief Judge of the BAP. Her term will expire in August of this year.

Over the years as a litigator, Judge Jury has observed many different courtrooms and how they were run by their respective judges. She learned what she liked and what seemed to work over those years. Upon taking the bench, Judge Jury has used those observations to model her courtroom and her demeanor on the bench. It seems to have worked. Over the years that

I have been able to observe her courtroom demeanor she has exemplified the best attributes of a good judge. One of her mottos is to "check your ego at the door." She is courteous to all who come to her courtroom – whether seasoned litigators or pro se parties who know nothing about how to act in a courtroom. Notwithstanding her calm demeanor, Judge Jury has a way of letting an errant party know that it is her courtroom and that she is in control. Maintaining a balance between exercising appropriate

control and appearing heavy-handed can be daunting, but she has mastered that skill. Perhaps because she has taken to heart her own advice of "checking your ego at the door," her courtroom is one where, if you are prepared, you will find a place where you can be a zealous advocate for your client and not offend the court. But, be prepared and know your case.

Judge Jury feels like her courtroom staff and clerks, past and present, are very much her family. She is concerned about them, both her regular staff as well as her BAP law clerk, the one perk she gets for her additional job. She is particularly interested in the careers of her clerks as they leave her chambers to enter the work force and takes great pride in their successes. Many of those stay in touch with her and visit as often as they can.

When asked about what advice Judge Jury would give to new attorneys, the response was essentially one word – "passion". Be passionate about what you do. In the case of one of her clerks, his latest success in finding a new and challenging position with a major Wall Street firm was a direct result of the passion that he demonstrated to his prospective employers. It is difficult today to be a "generalist." So, as she says, find what it is about the practice of law that you love and then follow it.

Judge Jury has taken that advice to heart as she plans for retirement. The date is not yet set but within the next year or so. There are projects at the court which she does not want to leave unfinished and will keep her on the bench until she is convinced that she can leave them. Judge Jury has become passionate about the protection of the elderly when less than

scrupulous people have taken advantage of them. Once she does leave, that will be part of her “retirement.” In addition, she would like to find a way to continue to mediate as she is well respected and sought after as a mediator.

In any practice you find judges and courtrooms where you enjoy practicing law. That satisfaction is rarely based upon whether you win or lose before that judge. It happens when you find a hard working judge who will read your papers, listen to argument and challenge you in the courtroom. Then, be fair with you. And, yes, fair does not mean always winning. You will find that professional satisfaction in the courtroom of Bankruptcy Judge Meredith A. Jury.

*Franklin C. Adams is Chair of the Bankruptcy and Insolvency Group at Best Best & Krieger.*



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### Riverside County Superior Court – Notice of Blythe Criminal Calendar Changes

Effective Tuesday, February 28, 2017, the Blythe Branch of the Riverside County Superior Court will make the following criminal and traffic calendar changes:

- Felony matters will be heard on Tuesdays at 8:30 a.m.
- Misdemeanor matters will be heard on Thursdays at 8:30 a.m.
- Traffic arraignments and traffic court trials will be heard on Thursdays at 1:30 p.m.
- Drug Court will be heard on the first and third Thursdays at 1:30 p.m.

There is no change to the Friday family law, civil, small claims or unlawful detainer calendar schedule.



## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective February 28, 2017.

**Tayaba Sarah Attar** – Solo Practitioner, Riverside

**Noelia Barajas** – Maline & McGee, Riverside

**Ankit H. Bhakta** – Varner & Brandt, Riverside

**Christopher L. Cummings** – Solo Practitioner, Riverside

**Patricia A. Gonzalez (A)** – Kennedy & Associates, Riverside

**Martha Granados (A)** – Kennedy & Associates, Riverside

**Tori Hernandez (A)** – Law of Stacy Albelais, Riverside

**Tiffany L. Hibbard (S)** – Law Student, Huntington Beach

**Richard M. Johnson, Jr.** – The Beverly Law Group, La Quinta

**Nancy Lambert (A)** – NL Vocational Services, Irvine

**Janet LaTourette** – Brown White & Osborn, Redlands

**Jessica Lyons** – Moynihan Lyons PC, Riverside

**Monrow A. Mabon** – Mabon & Associates, Riverside

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