

# RIVERSIDE LAWYER

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MAGAZINE

## IN THIS ISSUE:

The Importance of Advance Directives  
Distribution of Property without Probate  
The Outsourcing of Government



The official publication of the Riverside County Bar Association

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

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

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

## Membership Benefits

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

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

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

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

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

MBNA Platinum Plus MasterCard, and optional insurance programs.

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

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

*The material printed in 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

## MARCH

### 21 CLE Brown Bag Series

"Voir Dire"

Speaker: Judge Gloria Trask

Historic Courthouse, Dept. 4 – Noon

(MCLE)

### Inland Empire Federal Bar Association

"A Federal Practice Seminar for the Central District of California, Eastern Division"

12:00 p.m. – 1:30 p.m.

George E. Brown Courthouse, Riverside.

(MCLE)

### 23 Joint RCBA/RLPA General Membership Meeting

"The Seventh Amendment: Preserving the Right to Trial by Jury" Arbitration Clauses & the Law

Speaker: Michael Bidart, Esq.

RCBA Bldg., 3rd Floor – Noon

(MCLE)

### 28 Inn of Court

Victoria Club – 6:00 p.m.

### 29 RCBA/SBCBA "So You Want To Be A Judge"

RCBA Bldg., 3rd Floor

5:00 p.m. – 8:30 p.m.

RCBA/SBCBA Members \$30; Non-Members \$40

MCLE: 3.0 Hrs (includes .50 hr. Ethics)

### 30 COURT HOLIDAY (Cesar Chavez Day)

## APRIL

### 2 Continuing Legal Ed Committee

RCBA – Noon

### 3 Joint RCBA/SBCBA Environmental Law Section

"Global Warming & Other Current Environmental Issues"

Speaker: Judge LeRoy Simmons, Ret.

RCBA Bldg., 3rd Floor - Noon

(MCLE)

### 4 Bar Publications Committee

RCBA – Noon

### 10 Joint RCBA/SBCBA Landlord-Tenant Law Section

"Policies & Procedures in D-201, Moreno Valley Court"

Speaker: Commissioner Rob Nagby

Cask 'n Cleaver, Riverside – 6:00 p.m.

(MCLE)





## President's Message

by David T. Bristow

A crisis is looming over the courts of this county, one of unprecedented scope and consequence.

If left unchecked, this crisis will potentially affect the rights of all who seek redress in our courts – every person, every business, every public and private organization – for years to come. At a time when our elected officials boast of our region's growing clout and significance, the abandonment of our county's court system threatens to undermine all the gains we have all worked so hard to achieve, and will leave us weakened, vulnerable and unable to compete with our neighboring counties.

Already, we are paying the price for ignoring the dysfunction of our judicial system. Our civil courts have endured official moratoriums on trials – shutdowns – twice in the past two years, and are presently experiencing an unofficial moratorium. Civil trials have become the exception, not the rule, shunted aside as our courts try to manage a crushing backlog of criminal cases. These criminal cases receive priority of assignment over civil cases, regardless of their respective magnitude. This gross imbalance in our courts has worked to significantly impinge upon our ability to enforce our most basic civil rights.

The right to a civil trial in this county is all but suspended, our civil courts having been conscripted to resolve criminal cases. The result? The people's courtrooms have been taken from them, and with those courtrooms goes the ability to protect our rights, our property and our freedoms.

For those who disbelieve the magnitude and import of this ominous development, consider these simple facts: Our court system

provides us with the means for enforcing our rights, which are reflected in our laws, both civil and criminal. Without access to our civil courts, we are powerless to protect our rights – any of our rights – which means we are powerless to protect our families, our homes, our property, and ourselves. Powerless to protect ourselves from intrusion by the government, and also powerless to enforce our government's civil laws.

Our civil courts are where accident victims obtain redress from those at fault. Where business owners protect their contracts and their investments. Where employers and employees resolve their disputes. Where foreclosures are carried out or stopped. Where our cities and our county enforce their ordinances. When we seek emergency relief, it's where we turn. When we want to adopt a child, or change our name, or clarify who owns a piece of real estate, we do so through our civil courts. Without a well-functioning civil court system, our ability to enforce each of these rights, as well as countless others, is threatened.

Quite simply, we appear to have forgotten how important our courts are to our system of government. Our great nation rests upon the brilliance of our constitution, which mandates three branches of government: The executive, the legislative and the judicial. Yet in our county, we have allowed our judicial branch to wither.

As the President of the Riverside County Bar Association, it is my obligation, as well as that of our members, to reverse this trend and to help ensure the soundness and sanctity of our court system. Every lawyer in this county has sworn an oath to uphold the law as an officer of the court, and as such officers, we must ensure our courts remain a beacon of justice, accessible to all.

*(continued on page 4)*

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**President's Message** *(continued from page 3)*

The present crisis has transcended a simple lack of judicial resources. As we should all know by now, the two counties of the Inland Empire are grossly understaffed by judicial officers. This problem has resulted from the explosive growth of our region, as well as a lack of attention to the courts by our local elected officials. In fairness, this latter point was unanticipated. When control of the courts was shifted from the counties to the state within the past decade, no mechanism was created to retain local oversight over our county's judicial health. This failure has led to our current situation, for as the crisis has worsened, our county supervisors and state representatives have remained silent. Because there is no such mechanism for identifying, much less solving, any problems

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with our county judicial system, the current crisis spins farther and farther out of control. But our problem is not shared by our neighbor: While San Bernardino County suffers from a greater lack of judicial resources than does Riverside, its civil courts have remained able to cope with their caseload. Why? Because the major participants in the judicial system and the judiciary have been able to work together to ensure that justice is dispensed in an orderly and efficient manner. Unfortunately, those same participants in Riverside County have not collaborated in a similarly productive fashion.

The tragic irony of the current crisis is that Riverside County was created out of respect for our courts. Our county was born out of a dispute with San Bernardino over a courthouse, and our own Historic Courthouse holds such a singular place in our collective hearts that it is the symbol chosen to grace our county seal. In a county where our courthouse is literally the symbol by which we identify ourselves, we have allowed it to become a mockery of justice.

The time has come for our supervisors to act, and to act swiftly. Without the immediate intervention of our Board of Supervisors, along with our state representative, this crisis will fester and worsen. Disputes that remain unresolved by our courts will be resolved in less civilized fashion. Businesses, unable to secure the most basic protection of their property rights and investments, will migrate to neighboring counties with properly functioning court systems.

In a nation in which we are all created equal, and in which we are all assured of our inalienable rights, Riverside County stands out as an exception, a place where those rights have, unfortunately, been alienated. Our access to civil justice in this county has become unacceptably delayed, and justice delayed is justice denied. Either we step forward and reclaim our judicial system and the means to ensure our freedoms, or we face the prospect of losing those rights that so many have fought to defend.

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*David T. Bristow, President of the Riverside County Bar Association, is a Senior Partner with the law firm of Reid & Hellyer in Riverside.*



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by Michael J. Cappelli

## As I See It

I was at Starbucks reading my stack of *Daily Journals* when I overheard a pod of grown men talking about the new *King Kong* movie. I remember watching the original (American) version of this flick when I was a kid. Monkey is hijacked to America. Monkey is put on display and falls in love with Fay Wray. Monkey is shot down from atop Empire State Building. Monkey dies, but is then resurrected to kick the crap out of another behemoth in *King Kong vs. Godzilla* (the Japanese classic).

Anyway, these old dudes are discussing the movie like Ebert and Roeper, comparing notes, disagreeing about “crucial plot points” and marveling at the technology. One old dude said that *KK* was the “greatest movie ever made.” Another remarked that Jack Black’s character was “retarded and not believable.” Still another noted that the steamer that Kong was shipped on was filmed “out of scale” when compared to the size of the King; he found that part of the movie to be “unrealistic.” All were sad to see *KK* croak at the end, but expect a future resurrection through cloning, cryogenics, or some yet-undiscovered technology. All in all, the dudes gave the movie “7.5” thumbs up (one guy had had an accident with a skill saw some years back). Interestingly, it was clear to me that, if they watched the movie again, they expected a different ending!

My legal assistant’s son is a corporal in the Marines. He is on his third tour in Iraq. He was home for a few weeks and came into the office, all 145 pounds of him. He looked 16 (he was only 20) and was more of a man than I will ever be. I thanked him for his service to our country and then broke down. I don’t know, maybe it was the youth in his

face or the truth in his eyes that made me cry. Whatever it was, there was no doubt about his commitment to his mission and our country. I wish I could say the same for our world leaders, who redefine truth for convenience and spin every issue like a top to the point that they make Einstein’s Theory of Relativity look like a dime-store board game. The postmodern translation of “let your yes be yes and your no be no” has become “let your yes mean *maybe, possibly, perchance, conceivably, I don’t know, I don’t care, or just a flat-out no!* – and your ‘no’ mean *maybe not, possibly not, perchance not, conceivably not, I don’t know, I don’t care, or just a flat-out yes!*”

Does a suicide bomber get sick leave? And what about his or her employer’s duty to provide a safe working environment? The Ninth Circuit will be deciding this case in the fall.

You know we live in three dimensions of space and one dimension of time. Physicists can prove the existence of as many as twelve string dimensions. This means we can’t see eight of them, though their very existence may be all around us. Use this theory to assuage your next client who goes to prison or is hammered in a civil lawsuit.

I’m tired of arbitrations and mediations. Surely, there are some great intermediaries out there who can and do facilitate resolutions of our disputes. It’s just that these people often fly under the radar, and we are left with the same guessing game we’ve been playing with courts and judges forever. Are they fair? Are they predisposed? What is their background? How many matters have they successfully mediated or arbitrated? What makes them qualified to “judge” my case? One can hardly go a day without receiving an invitation to a mediation or arbitration seminar. Are these proceedings commercially reasonable substitutes for a trial, or just another expensive step in a process that we “believe” we must avail ourselves of until we settle on the eve of trial? What’s next – coin-flipping, arm-wrestling? Personally, I think some form of poker will emerge as the next way of distancing lawyers and their clients from the practice of the lost art of “common sense.”

I was vacationing in Tijuana when I saw this ad: “Wanted, illegal immigrants available for immediate employment in the United States. Fully armed border-crossing escort service to be provided by Mexican

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Army.” Me and this homeless dude from L.A. thought about applying, until we realized that we were overqualified to do back-breaking labor at minimum wage with no benefits.

I used to think that music transcended generation gaps. I mean, once you hear a Bach fugue, a Beethoven symphony, Caruso, the Duke, Ella, Elvis (both the King and Costello), the Beatles, the Stones (how does Keith remain standing and Mick keep that figure?), Segovia’s guitar, Van Halen’s riffs, Smokey Robinson’s silky voice, Dylan’s poetry, the righteous anger of 50 Cent, Eminem and Kanye West – it’s all good – right? Then *American Idol* came along and killed music dead – once and for all.

As I finish my triple latte with an add-shot, at a cost of six bucks, I muse at the profound opinions expressed on the back of my Starbuck’s cup. I wonder why I just don’t see things “the way” they “see it.” Come on, am I really that interested in the philosophies of Mary Chapin Carpenter, Quincy Jones, Chuck D, and Al Franken (whom, by the way, I find very funny)? I could always shroud the message in the biodegradable cardboard sleeve. I wonder if could get on the back of a coffee cup – my legacy preserved for millions of caffeine addicts for billions of years? I can see it now . . . .

True Story: I read that Starbucks is cutting back on the number of full-time employees it has, choosing instead to hire slews of part-timers, so it doesn’t have to provide benefits like health insurance. Hmmm? This cup of coffee I’m drinking cost me six bucks. There’s a line of people out the door. The caffeine content of a regular cup of Starbucks coffee will keep you coming back until your eyes pop out of your head. The decaf has about the same kick as twenty NoDoz. Now relax, and picture, if you will, the serenity of a glacial lake. If you can, you obviously got this cup for free and you will be identified. If you can’t, then picture this: a never-ending stream of money flowing from your wallet to that of some

joker in Seattle. Then multiply that by millions of people like yourself, and there you have it, whatever “it” is. This is the author’s opinion, not necessarily that of Starbucks (or anyone important, for that matter).

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*Michael J. Cappelli, a member of the Bar Publications Committee, is the Director of Judicial Staff Attorney Services with the Riverside County Superior Court.*



# LITIGATION UPDATE

**Barrett v. Rosenthal** (2006) \_\_\_ Cal.4th \_\_\_: The defendant posted a copy of an article, which accused one of the plaintiffs of stalking, to two Internet newsgroups. Held, under the Communications Decency Act of 1996 (47 U.S.C. § 230), a plaintiff who claims that he or she was defamed in an Internet posting can recover only from the original source of the statement, not from a defendant who merely republished it. This is also true even if the republisher knew or should have known that the posting was false. Moreover, this is true even though the defendant was a user rather than a service provider.

**Prince v. Pacific Gas & Elec. Co.** (2006) \_\_\_ Cal. App.4th \_\_\_ [2006 WL 3423835] [Sixth Dist.]: A 10-year-old boy was injured when he tried to use an aluminum pole to dislodge his kite from a power line that ran through an easement on a neighbor's property. He sued the power company, but the power company was held to have statutory recreational-property immunity. (Civ. Code, § 846.) He then sued the neighbor, who cross-complained against the power company for implied contractual indemnity under the written grant of the easement to the power company.

Held, a defendant who is not liable to the plaintiff can nevertheless be liable on a cross-complaint for implied contractual indemnity. The principle that "there can be no indemnity without liability" applies only to tort-based equitable indemnity, not to implied contractual indemnity. "[The power company] has contractual duties to [the neighbor] that are separate and distinct from the general duty of care to [the boy] that is the subject of section 846. [The neighbor's] claim for implied contractual indemnification does not rely on, or seek to enforce, the duty that is limited by section 846, but instead relies on duties arising from the easement."

**Doe v. Luster** (2006) \_\_\_ Cal.App.4th \_\_\_ [2006 WL 3410813] [Second Dist., Div. Seven]: Held, an order denying attorney fees to a plaintiff who successfully opposes a special motion to strike under Code of Civil Procedure section 425.16 ("anti-SLAPP motion") is not immediately appealable. This is true even though (1) an order denying an anti-SLAPP motion is immediately appealable, and (2) a plaintiff who successfully opposes an anti-SLAPP motion may be entitled to attorney fees. "The special motion to strike and the motion for attorney fees present the trial court with separate, albeit related, issues . . . . [Citation.] If the motion for fees . . . is filed after the trial court rules

on the special motion to strike as it was in the case at bar the order awarding or denying those fees is not an 'order granting or denying a special motion to strike'; and no plausible argument can be made that such an order is immediately appealable under section 425.16, subdivision (i). There similarly is no creditable argument that combining the two motions . . . somehow transforms the nonappealable order into one that is appealable."

**Miller v. Bank of America, NT & SA** (2006) \_\_\_ Cal. App.4th \_\_\_ [2006 WL 3353983] [First Dist., Div. Three]: A bank could legally set off Social Security and other public benefits that had been deposited into a customer's checking account against overdrafts and fees arising out of that same account. *Kruger v. Wells Fargo Bank* (1974) 11 Cal.3d 352, which held that a bank could not exercise a setoff against such public benefits, is distinguishable, because in *Kruger*, the setoff went to cover the account holder's debt on a separate credit card account.

**Goold v. Superior Court** (2006) \_\_\_ Cal.App.4th \_\_\_ [2006 WL 3354009] [Fourth Dist., Div. One]: A husband was found to be in contempt for violating automatic temporary restraining orders prohibiting him from transferring property during divorce proceedings. Held, the husband was liable for the wife's attorney fees in connection with the contempt proceeding. Code of Civil Procedure section 1218, subdivision (a) governs contempt in general; it allows an award of attorney fees. Code of Civil Procedure section 1218, subdivision (c) governs contempt in family law proceedings; it does not refer to attorney fees. However, these subdivisions are cumulative, not exclusive.

Also, even though the trial court ruled orally at a January 16, 2004 hearing that the marriage would be dissolved "effective today," it did not enter a judgment to that effect until August 4, 2004. Accordingly, in February, April and May, 2004, when the husband made the challenged transfers, the automatic temporary restraining orders were still in effect.

**Oakland Raiders v. Oakland-Alameda County Coliseum, Inc.** (2006) \_\_\_ Cal.App.4th \_\_\_ [2006 WL 3334402] [Third Dist.]: A football team alleged that a stadium had used negligent misrepresentations to induce it to enter into a long-term contract. After the team discovered the true facts, however, it had entered into a new contract with the stadium that had "incorporated," "supplemented," "clarified, and "modified" the

original contract. Held, the team impliedly waived any right to damages for the alleged misrepresentations. “California law has, for more than a century, recognized that a plaintiff claiming to have been induced into signing a contract by fraud or deceit is *deemed to have waived* a claim of damages arising therefrom if, after discovery of the alleged fraud, he enters into a new contract with the defendant regarding the same subject matter that supersedes the former agreement and confers upon him significant benefits. [Citations.]”

**Day v. Collingwood** (2006) 144 Cal.App.4th 1116 [2006 Daily Journal D.A.R. 15,110] [Fourth Dist., Div. One]: A party can avoid sanctions under Code of Civil Procedure section 128.7 by withdrawing or correcting the challenged pleading within 21 days after service of a motion for sanctions. (Code Civ. Proc., § 128.7, subd. (c)(2).) As a result, if a motion for sanctions is not served *or* filed until after entry of judgment, the trial court cannot consider it. Here, however, the motion for sanctions was *served* at least 21 days before entry of judgment, although not *filed* until after entry of judgment. Therefore, the trial court still had jurisdiction to consider it.

**Nelson v. Superior Court** (2006) 144 Cal.App.4th 689 [50 Cal.Rptr.3d 684, 2006 Daily Journal D.A.R. 14,740] [Third Dist.]: A water company alleged that a gasoline additive had leaked into its water system. Held, the water company could sue the gasoline refiner on a strict products liability theory, even though the water company was not the ultimate user or consumer of the gasoline. “[S]trict liability broadly extends to products that have left control of the manufacturer and are placed on the market. Thus, foreseeable uses of gasoline reasonably include stor-

ing it at a gas station, transferring it through gas pumps into a vehicle, and storing it in a vehicle’s tank before it is actually burned as fuel. Permitting injured third parties or ‘bystanders’ to recover for damages associated with any of these uses is consistent with strict liability doctrine in this state.”

**Grants of review:** The California Supreme Court has granted review in the following cases (the issues presented are as stated by the court):

**In re Tobacco II Cases** (2006) 142 Cal.App.4th 891 [47 Cal.Rptr.3d 917] [Fourth Dist., Div. One], review granted November 1, 2006 (S147345): (1) In order to bring a class action under Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.), as amended by Proposition 64 (Gen. Elec. (Nov. 2, 2004)), must every member of the proposed class have suffered “injury in fact,” or is it sufficient that the class representative comply with that requirement? (2) In a class action based on a manufacturer’s alleged misrepresentation of a product, must every member of the class have actually relied on the manufacturer’s representations?

**Shin v. Ahn** (2006) 141 Cal. App.4th 726 [46 Cal.Rptr.3d 271] [Second Dist., Div. Two], review granted October 25, 2006, S146114: Is the doctrine of primary assumption of the risk applicable under the circumstances of this case, in which defendant allegedly hit a golf ball from the tee without ascertaining the location of another golfer in his party and the ball struck and injured the other golfer?



# THE IMPORTANCE OF ADVANCE DIRECTIVES

*by Robyn A. Lewis*

**I**n October of 2006, my family was faced with terrible news. My maternal grandmother had suffered a massive stroke just weeks before her 78th birthday.

Unfortunately, my grandmother did not provide her primary doctor with any detailed advance directives. She was placed on life support until my mother and her brother were able to locate a document that cursorily indicated her wishes to terminate that kind of assistance. We all flew in to be with her and my grandfather when the support was removed. As we stood around her bedside in the small ICU room, we waited for her to take her last breath. Miraculously, however, she was able to breathe on her own.

What was an instant moment of joy for us all was very short-lived as we faced a new reality. Instead of preparing for my grandmother's funeral, we were now faced with making incredibly difficult decisions, because, sadly, my grandmother was not meant to recover mentally from her stroke. We learned from the neurologist that she was virtually brain-dead. While her body appeared to be functioning, she would never again regain any quality of life. She would never again be able to smile, or talk to us, or even know that we were there, holding her hand.

What truly made this situation complicated was the fact that my grandmother had not articulated, in written form, what her wishes were for critical or end-of-life care. And I never really thought to ask her. She was a college graduate and a former assistant to one of the chief executives at AT&T. She was business-savvy and had done a decent job of accumulating a nest egg for her and my grandfather by playing the stock market and buying bonds. How could she not have prepared for the worst? And how could I, as both her granddaughter and an attorney, have failed to make sure that she was prepared?

After having gone through this experience, I cannot emphasize enough the importance of having an advance directive in place. An advance directive means your life on your terms. Whether you are 18 or 80, documenting your wishes today means that your family won't have to make heart-wrenching decisions later on. Through advance directives, such as living wills and durable powers of attorney for health care, a person can make legally valid

decisions about his or her future medical treatment. I am sure that my grandmother would have wanted to avoid personal and family suffering as a result of artificially prolonging her life when she was in a vegetative state and there was no hope for recovery. If she had had an advance directive in place, she would not have been placed on life support and likely would have passed away almost immediately. Instead, the life support gave her body an opportunity to recover, even though she had lost almost all brain function. It was a very eye-opening experience, to say the least. And one that has actually prompted me to write this article.

My family was in no way prepared to make the decisions that needed to be made in the hours and days that followed my grandmother being taken off of life-support. Suddenly, we were being pressured into putting her in a nursing home, without any time to consider what our options were. The moment she was moved from critical care to a regular hospital room, we felt helpless. As an attorney who handles elder abuse cases, I knew about the horrors of nursing homes, but I knew nothing about the bureaucracy that is involved when one deals with placing a loved one in a nursing home or exercising the right to consider alternatives to nursing homes. I felt incredibly frustrated as my family looked to me and my husband, as the attorneys in the family, to help them make the right decision for my grandmother.

One of the things that came to my mind was hospice care. Knowing that my grandmother would not want to go into a nursing home, I knew that there were other forms of care available that were more suited to this type of situation. A hospice provides care and support for terminally ill persons so that they can live as fully and comfortably as possible. My grandmother would be made comfortable, and family members could be with her 24 hours a day, but no life-extending measures would be taken. However, my grandmother's doctor refused to certify her for a hospice, at first, and was pressuring us to put her in a nursing home, where she could survive for another 20 years. We were handed a big booklet and told to pick out a nursing home; we were also asked to bring all of my grandparents' financial information to the hospital, as Medicare would be paying only a portion of the cost.

My family sat down and had a discussion to weigh the pros and cons of skilled nursing care versus hospice

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care. We unanimously decided that hospice care was the most in keeping with what my grandmother would have wanted. Knowing that she was never coming back to us, we also had my grandfather to consider, as having my grandmother in a nursing home would be an incredible drain on him emotionally, physically and financially.

Since we were not being provided with any information or help from the hospital, I contacted Legal Nurse Consultants of Southern California. Legal Nurse Consultants is staffed by two retired nurses who specialize in litigation assistance for attorneys who handle elder abuse and nursing home cases. They have helped me on countless elder abuse cases and were gracious enough to help me in a true time of need.

They explained to me that Medicare assigns a social worker, who will work with the family in situations like ours to decide the best course of action for the patient. They also advised me that every hospital has a patient representative or patient advocate, who is there to help advocate for the family or the patient's wishes. As soon as I was armed with that information, a meeting was scheduled with our family, the patient representative and the social worker, at which we stated our decision to have my grandmother go to a hospice. Knowing that I had the ability to demand that the doctor respect our wishes, and with the support of the social worker and the patient representative, I spoke with him again, and finally was able to have him certify her for hospice care.

After three weeks of pure hell, my grandmother was transferred to an amazing hospice facility. The staff treated my family with such care and respect that I will always be grateful. My grandmother passed away peacefully in her sleep in the morning of October 21, 2006.

I only wish that I had thought to have what is certainly a difficult conversation with her so that perhaps some of this emotional turmoil could have been avoided. I would urge each of you to consider what you would want if this was happening to

you. Make sure that your wishes and the wishes of your family are memorialized now, instead of when it is too late.

For more information, go to [www.caringinfo.org](http://www.caringinfo.org), the web site of the National Hospice and Palliative Care Organization, which offers free state-specific advance directives and advice for communicating wishes to family and close friends. Information is also available from the American Hospital Association at [www.putitinwriting.org](http://www.putitinwriting.org), the AARP at [www.aarp.org](http://www.aarp.org), and Aging with Dignity at [www.agingwithdignity.org](http://www.agingwithdignity.org).

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# DISTRIBUTION OF PROPERTY WITHOUT PROBATE

by *Tiffany Dou*

When a California resident dies holding property titled in his or her own name, a formal probate proceeding is not always necessary. This article discusses a few frequently used procedures to distribute an estate without probate.

## Value of the Decedent's Property

The transfer of an estate valued at \$100,000 or less may be done without a formal probate by an affidavit procedure (without a court hearing) or by court order. The method available depends on the character of the property and the value of the estate. The value of the estate does not include property located outside California, property as to which the transferee is determined by the form of title (for example, joint tenancy with right of survivorship, community property with right of survivorship, or property that passes by beneficiary designation such as life insurance or an IRA), property in a revocable trust, most vehicles and other state-registered property, amounts due the decedent for serving in the U.S. armed forces, and salary up to \$5,000. The value of the property is determined as of the decedent's date of death and without regard to any encumbrances against it. (Prob. Code, §§ 13050, 13052, 13100.)

## Transfer of Personal Property by Affidavit

An affidavit procedure may be used to transfer personal property in California if the decedent's real and personal property in California is valued at \$100,000 or less. (Prob. Code, § 13100.) Forty days must have elapsed since the death of the decedent. The 13100 affidavit may not be used to transfer real property.

The affidavit must be signed by all of the successors in interest to the property. A guardian or conservator may execute the form on behalf of a minor or incapacitated successor in interest. An inventory and appraisal must be attached to the affidavit if the estate includes real property.

The completed affidavit is presented to the holder of the property. On presentation of an affidavit that satisfies the requirements of the Probate Code and reasonable proof of identity, the successors in interest are entitled to have the property transferred to them. If the holder of the property refuses to transfer the property within a reasonable time, the successors in interest may bring an action to



*Tiffany Dou*

compel the transfer. The successors in interest are entitled to attorney fees incurred in bringing the action against the holder of the property if the holder acted unreasonably in refusing to transfer the property. (Prob. Code, § 13105, subd. (b).)

## Summary Court Determination of Succession to Real Property

A court order can be obtained to determine that real property passed to the decedent's successors in interest if the decedent's real and personal property in California is valued at \$100,000 or less. (Prob. Code, § 13151.) Forty days must have elapsed since the death of the decedent. The petition may also request an order that personal property has passed to the successors in interest. However, this procedure may not be used to determine succession to personal property only.

Judicial Council form DE-310 must be used. The decedent's real and personal property must be appraised by a probate referee. The petition must be signed by all successors in interest to the property. If the successors in interest claim their interest under the decedent's will, a copy of the will must also be attached.

The petition is filed with the court, and required notice is given. Absent objection at the court hearing and on approval of the petition by the court, the court will issue an order transferring the real property to the successors in interest. The order should then be recorded in each county where the real property is located.

## Transfer of Real Property Valued at \$20,000 or Less by Affidavit

It is also possible to collect real property by affidavit – without obtaining a court order – if the gross value of all of the decedent's real property in California does not exceed \$20,000. (Prob. Code, § 13200.) This procedure looks only at the gross value of the real property in the decedent's estate. This means that this procedure may be used even if the combined real and personal property in the estate exceeds \$20,000. To use this procedure, six months must have elapsed since the decedent's death.

Judicial Council form DE-305 must be used for the affidavit and must be signed by the decedent's succes-

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sors in interest. The decedent's real property must be appraised by a probate referee. If the successors in interest claim their interest under the decedent's will, a copy of the will must be attached. The affidavit is filed with the court clerk and a certified copy is issued, which is then recorded with the county recorder to transfer record title to the real property to the successors in interest.

## **Transfer of Property to Surviving Spouse or Domestic Partner**

If a person dies leaving property that passes to a surviving spouse or domestic partner under intestate succession, or dies with a will that leaves all or part of his or her property to a surviving spouse or domestic partner, the property can pass to the survivor without administration. The survivor may file a petition to request an order that formal probate of all or part of the estate is not necessary because the property passes to the survivor. (Prob. Code, § 13650.) When the property is passing to the survivor, a 13650 petition is often preferable to a 13151 petition because there are no limits on the value of the property that can be transferred.

Judicial Council form DE-221 must be used and must be signed by the surviving spouse or domestic partner. If the property passed by will or if there was a property agreement between the decedent and the survivor, a copy of the

will and/or property agreement must also be attached to the petition. The petition is filed with the court and required notice is given. Absent objection at the hearing and on approval of the petition by the court, the court will issue an order determining that the property passed to the survivor. The order should then be recorded with the county recorder if real property is involved.

## **Conclusion**

All of the procedures discussed here involve less time and expense than formal probate administration. They can be very useful to transfer or collect property of small value that was inadvertently left out of a revocable trust, to transfer assets to a surviving spouse or domestic partner, or to transfer assets of a small estate without a formal probate. Unlike in a probate, however, the successors in interest take the property subject to the liabilities of the decedent. If it is anticipated that the decedent may have significant liabilities, a formal probate should be considered to invoke the probate creditor claim procedures.

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*Tiffany Dou is an associate with Gresham Savage Nolan & Tilden, PC and a member of the RCBA.*



# JUSTICES VISIT NORTH HIGH SCHOOL

by Robyn A. Lewis

*Photos courtesy of Robyn Lewis*

On February 1, 2007, Presiding Justice Manuel A. Ramirez, along with Justice Thomas E. Hollenhorst, Justice Betty A. Richli, Justice Jeffrey King, and Justice Douglas P. Miller, participated in an innovative court-community program called "Outreach Plus" at John W. North High School.

The justices heard oral arguments in a criminal appeal and a delinquency appeal in the high school's J.W. North Theater. Oral arguments were followed by a 30-minute question-and-answer session conducted by the justices for the audience of students, faculty, and local officials.

The first oral argument featured a case in which the two defendants were involved in a single incident of false imprisonment and torture. Their sentences included life with the possibility of parole. In the appeal, the defendants raised a number of issues, including the admission of uncharged-crimes evidence, jury instructions defining torture and on the use of uncharged-crimes evidence, prosecutorial misconduct, and ineffective assistance of counsel.

The second oral argument dealt with a delinquency case in which the minor smashed a car window with a sledgehammer a couple of years ago and more recently threatened to injure a teacher. For the first offense, the minor had been adjudged a ward of the court and placed on home probation. Wardship and home probation were

continued as a result of the second offense. On appeal, the minor argued that insufficient evidence had been presented that she intended to threaten the teacher, affected the teacher's performance, or had the ability to carry out any threat.

Before the first oral argument session, the justices met with student body leaders and other top students, and with local officials and representatives of city and county



*Justices Hollenhorst, King, Richli and Miller*

government. After oral argument and the question-and-answer session, justices, appellate court staff, and RCBA attorney members were assigned to teams and dispersed into various classrooms around the campus to speak with students. Those sessions were used to inform students about the importance of graduating from high school, careers in the legal field, and the roles of trial and appellate courts. Justice Ramirez later remarked: "As I looked at the faces of the young people of North High School during the oral argument presentation, it struck me afresh how important it is for us who have achieved some measure of success to share with these young people the importance of hard work and education."



*Justice Ramirez*



*Attorney volunteers and students during session*

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# THE RCBA ELVES PROGRAM 2006

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*by Brian C. Pearcy*

On December 24, 2006, the RCBA's Elves Program concluded its fifth and most successful year so far. This season, your Elves purchased, wrapped, and delivered gifts to 21 families throughout Riverside County. Since the program's inception, it has grown from assisting six families and 24 individuals in 2002 to assisting 21 families and 97 individuals (65 children and 32 adults) this year.

This was the third year that your Elves Program worked with the Child Abuse Prevention Center of Riverside County (CAP Center). As in previous years, the CAP Center staff was very helpful and supportive of the program. To give us a second source of eligible families for our program, the Elves also partnered with the Carolyn E. Wylie Center for Children, Youth & Families.

The success of this program is due to the great support and generosity we have received from our membership. In many instances, as in past years, some members wore two and three Elves' hats! Participation has also grown beyond the immediate membership, since some Elves have their staff, their families, and their clients join them in our activities. This is truly a great way to share the joy of the holiday season.

## **The Money Elves:**

The Money Elves donated a significant amount, allowing for the purchase of gifts for each family member, along with a \$50 Stater Bros. gift card to be used for Christmas dinner. The funds raised consisted not only of personal donations but also of money raised at RCBA events, including the Annual RCBA Golf Tournament and the RCBA Holiday Social held at the Historic Courthouse.

Thank you to the following Money Elves for their support: Bernard Donahue, Michael DiVita, the Honorable Becky Dugan, Micheal Fortino, Douglas Frost, Dan Hantman, Kathleen Jacobsmeyer-Guzetta, James O. Heiting, Harry Histen, the Honorable Dallas Holmes, David Ilten, the Lawyer Referral

Service of the Riverside County Bar Association, Sandra Leer, the Honorable Michele Levine, the Honorable Roger Luebs, Tracy Macuga, Michael Montalbano, Judith Murakami, Amanda Nash Owen, Chris Oliver, Peach & Weathers, the Honorable Jeffrey Prevost, Roth & Roth LLP, Annette Havina Shane, Madeline Tannehill, Frank Tetley, the Justice Connection, the Honorable Gloria Connor Trask, former District Attorney Grover Trask, Cindy Trask, Mary Violasse, the Honorable Edward Webster, Robert Willey, and Roma Financial Corp. of Riverside. This program would not be possible without the generous support of these financial contributors.

## **The Shopping Elves:**

The Shopping Elves spent over three hours selecting individualized gifts at the Big Kmart in Mission Grove, Riverside. Kmart's store manager provided incredible support and dedicated four staff members to ringing up, bagging, tagging, and loading the purchases. Big Kmart assisted in maximizing our funds by providing an additional 10% discount on all items purchased.

This year's Shopping Elves were: Amanda Owen, Jesse Male, Meg Hogenson, Judith Runyon, Judith Murakami, Vanessa Lewis, Megan Boling of Dennis M. Sandoval APC, Rina Gonzales, Raychele Sterling,

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Kimberly Valencia, Anika and Michael Montalbano of Rizzio Nelson & McGuire, Karen Wesche and family, Tera Harden, Lisa Yang and Judy Yang of the RCBA, Brian C. Percy, and Veronica Reynoso of the Law Offices of Brian C. Percy, APC, and her family.

### **The Wrapping Elves:**

This year the Wrapping Elves were a model of efficiency, wrapping 302 packages over a period of two evenings. Their wrapping skills would make them the envy of any fine department store.

This year's Wrapping Elves were: the Honorable Dallas and Pat Holmes, Connie Younger and family, Laila Kepler, Susan Jones of Creason & Aarvig, Karen Wesche, Allyson Wesche, Michelle DeJohnette of Geoffrey H. Hooper & Associates, Dan Hantman, Joshua Hunter of Criminal Defense Lawyers, Tera Harden, Linda Martin of Rinos & Martin, Karen Griffith of Dennis M. Sandoval APC, Brian C. Percy, and Veronica Reynoso of the Law Offices of Brian C. Percy, APC.

### **Delivery Elves:**

The RCBA Elves made deliveries to Banning, Corona, Hemet, Riverside, San Jacinto, Temecula and a number of unincorporated areas scattered throughout western Riverside County.

The Delivery Elves who donated their time and gas were: Linda Martin of Rinos & Martin, Karen Wesche and family, Kimberly Valencia and Anika Montalbano of Rizzio Nelson & McGuire, Michelle DeJohnette of Geoffrey H. Hopper & Associates, Joshua Hunter of Criminal Defense Lawyers, Jennifer Roman of Roma Financial Corp., Rosetta Runnels, Donis Borks, Chris Oliver, Ana Foster of the Law Offices of Erik J. Bradford, Jenna Acuff, Christina Sovine, and Veronica Reynoso of the Law Offices of Brian C. Percy, APC.

### **Special Thanks:**

I would like to give a special thank you to my assistant Veronica Reynoso, whose dedication and organizational skills made this one of the most streamlined shopping, wrapping and delivery experiences we have ever had. Thank you to Veronica's husband Marcos and their two children, Krystal and Marcos, Jr., not only for participating, but also for being extremely patient during Veronica's absences on those extra-long days when she kept everybody moving in the right direction. To the RCBA staff, especially Lisa Yang and Charlotte Butt, thank you for all of your energy, skill, and dedication. Thank you to the management team and social workers from the CAP Center and the Carolyn E. Wylie Center for Children, Youth & Families. Additionally, a very big "thank you" to the wonderful manager and staff at the Big Kmart in Mission Grove in Riverside.

And, finally, thank you to the Elves. Your wonderful spirit and camaraderie (which you can see in the photos accompanying this article) were evident throughout all the events.

Thank you again for your support, and a happy and successful New Year to you all!

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*Brian C. Percy, a sole practitioner in Riverside, is Chair of the RCBA Elves Program and a past president of the RCBA.*



# JUDICIAL PROFILE: COMMISSIONER MARK PETERSEN

by Donna Johnson Thierbach

Commissioner Mark Petersen confirmed some things that I have always suspected. There are a lot of very wonderful people in the legal profession who are more than willing to assist new lawyers. Also, behind every successful lawyer is at least one lawyer who served as his or her mentor and inspiration.

Commissioner Petersen grew up in the Inland Empire and has known since junior high school that he wanted to be a lawyer. I immediately thought someone in his family must have been an attorney, but his father was a pharmacist and his mother was a doctor's office assistant and stay-at-home mom. So how did he know he wanted to be a lawyer? Commissioner Petersen said he was just fascinated with the legal profession and thought it would be a very interesting career. Once he made up his mind, it was full steam ahead. After he graduated from high school, he attended California State University at Long Beach with the primary goal of going on to attend law school. He said at first he was a business major, but he had difficulty with math, a subject that I think plagues many attorneys, so he switched to criminal justice. After graduating, he went directly into law school, attending the first school that accepted him, Western State University in Fullerton.

In May 1986, when Commissioner Petersen was nearing graduation from law school, he received the American Board of Trial Advocacy (ABOTA) fellowship in trial advocacy from the Orange County Chapter. This fellowship allowed him to intern for one month each with a personal injury firm, the Orange County judges and a defense firm. Commissioner Petersen said it was an amazing experience because of all the advice, help and mentoring he received from other lawyers. Commissioner Petersen said the personal injury firm offered him a job when he graduated from law school, which he accepted. The firm handled medical malpractice, wrongful death, and serious injury cases and cases arising out of the Lincoln Savings & Loan debacle in the late 1980s. Commissioner Petersen said working for the firm was extremely satisfying and everything he could have hoped for, because the firm accepted him as a lawyer, even though he was fresh out of law



Commr. Mark Petersen

school and knew nothing. He said the lawyers at the firm worked with him, trained him and valued his opinions. Commissioner Petersen credits this firm for providing him with much-needed advice for a young lawyer. After three years with the firm, he moved to a law firm in San Bernardino as a senior attorney. There he handled personal injury and worker's compensation cases. Commissioner Petersen was certainly driven to achieve great things, because after a year and a half, he decided it was time to go into private practice. Commissioner Petersen worked with another attorney for two and a half years, and then as a sole practitioner for six years. So, if my math is right, that was a total of 13 years in civil litigation.

But wait! I first met Commissioner Petersen in 2000, when we both worked at the Riverside Public Defender's office. So how and why does someone go from private civil practice to criminal practice with the government? Commissioner Petersen said that, in 2000, he was ready for a break from the daily operations of running a full-time practice. While in law school, he had clerked for criminal defense lawyer Don Steier, when he was in the middle of a murder trial. Commissioner Petersen said they worked together day and night on the Orange County case, and he loved the experience. It was this opportunity that would lead and inspire Commissioner Petersen to work in criminal defense years later. Since Commissioner Petersen's wife works in Riverside, as a criminalist with the Department of Justice, he applied to the Riverside County Public Defender's office, and accepted a position with the office. He was there five and a half years and served in both misdemeanor and felony trials, handling a large number of violent and serious felonies.

Commissioner Petersen said being a commissioner is everything he dreamed of. He said it is especially satisfying, because he now has the opportunity to give back to the community. Commissioner Petersen is currently assigned to Department 22, which has a misdemeanor arraignment and trial calendar. He said he really enjoys the assignment and enjoys seeing new attorneys behave professionally. He also enjoys working with the pro pers in misdemeanor court. He said his goal is that, when they leave the courtroom, they leave satisfied that they have been treated well and with respect by the court system,

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regardless of the outcome of their case. Commissioner Petersen said he models himself after many of the bench officers he has appeared before and worked with over the years. Commissioner Petersen said he also enjoys the fact that, as a commissioner, he is no longer an advocate.

Speaking of professionalism, Commissioner Petersen is currently involved with the Inns of Court, which place an emphasis on professionalism, civility and ethical awareness. Commissioner Petersen believes that treating courtroom personnel with respect is paramount, and he appreciates seeing counsel treat the staff in his courtroom in that manner. The ongoing mentoring and advice given to the newer and younger attorneys by veteran and established attorneys is something that Commissioner Petersen enjoys observing in his courtroom.

Personally, Commissioner Petersen said his greatest satisfaction comes from being involved in his two sons' school and extra-curricular activities. He has served as a coach for numerous sports for both of his sons (ages 10 and 14), and he and his wife make every effort to attend games, events, music performances and awards ceremonies. Recently, Commissioner Petersen was present when his older son, after months of training, completed the Los Angeles Marathon. He also assists his son's marching band at competitions by helping with uniforms and with instrument set-up. Musical talent must run in the family, because in high school, Commissioner Petersen was in the band, and he played the saxophone, clarinet and flute. However, Commissioner Petersen's hobby is not music, unless you count the song, "Take Me Out to the Ballgame." He follows baseball avidly. He attends spring training in Florida almost every year and is a big Dodger fan.

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*Donna Johnson Thierbach was formerly a Deputy Public Defender with Riverside County and is currently the Director of the Adult Division of the Riverside County Probation Department.*



# OPPOSING COUNSEL: GROVER TRASK, THE END OF AN ERA

by Donna Johnson Thierbach

I still remember the first time I met District Attorney Grover Trask. In 1991, I was a probation officer assigned to the arraignment calendar. Grover Trask was “the DA,” but a few days each year, he would come to court and handle the calendar. Needless to say, I was very intimidated, but he was so professional and genuine that it quickly became an enjoyable (and memorable) experience.

As I think back, I realize Mr. Trask has not only been with the District Attorney’s office for 33 years, but has been “the DA” for the past 24 years.

When Mr. Trask announced he was not seeking a seventh term, it occurred to me that Mr. Trask had been the District Attorney longer than I—and probably most of the deputy district attorneys in Riverside County—had worked for the county. So I wondered, is this the goal he envisioned as a child?

When I interviewed him recently, Mr. Trask said there were no lawyers in his family, but television shows—especially Raymond Burr in Perry Mason—made them look glamorous and interesting, so the seed was planted. Thus, in high school he made the decision to pursue a career in law.

Mr. Trask said he had no burning desire to be a prosecutor, but was focused on getting into the courtroom. Since he was raised in San Diego, he attended San Diego State, majoring in Political Science. Directly after college, he attended the University of San Diego, School of Law. Upon graduation, he looked into the San Diego District Attorney’s and Public Defender’s offices, but they were not hiring. He then applied to the Riverside County District Attorney’s office. The office was very small when he was hired, and the attitude of the office was that it was the training ground for private practice. Initially, he planned to stay three years, get some experience and return to San Diego. However, he developed a real passion for the job and absolutely loved what he did. Mr. Trask said the three years seemed like three days, so he stayed.

Mr. Trask described 1981 as the turning point in his career. He said that year, District Attorney Byron Morton decided not to run for reelection, and the most senior prosecutors in the office also were not running. When two local attorneys announced their intention to run, Mr. Trask decided it was probably time to leave the office. Fortunately, some friends convinced him to stay and run himself, since he had a lot of ideas about the office. At that time, he was the Supervising Deputy District Attorney of Superior Court Operations. He did not have any political know-how or backing, and his only constituents were police officers and judges. However, he thought the future of the office was



Grover Trask

too important for him not to try, so he continued to perform his job duties while trying to raise money and campaign.

Mr. Trask said his wife Cindy has always been very supportive. When they moved to Riverside, all they had was a VW with all their possessions in the trunk. When he decided to run for district attorney, she was his right hand, and they did all the fundraising together. He still recalls their first fundraiser, which was with their college friends in San Diego.

Mr. Trask said he had a vision for the office, which remains the same to this day: To develop a career district attorney’s office. Before, the office was thought of as a training ground; the good attorneys left after gaining experience. His goal was to change the image of the office and develop career prosecutors. Mr. Trask said it did not make sense to spend money on training new attorneys over and over again. After he took office, he went to the Board of Supervisors to ask for better pay for the deputy district attorneys, so the office could become competitive with those in other counties. He then pushed to get good people and to develop young lawyers. Randy Tagami, Assistant District Attorney, said Mr. Trask was the first department head to bring a mission statement and guiding principles to their office. Mr. Trask created the office’s first annual report, as well as the Pride Program, in which attorneys are acknowledged for their work. Mr. Tagami said Mr. Trask created an atmosphere of a professional district attorney’s office, so that now it has an excellent reputation and is known nationally. Mr. Trask said he is the most proud of that accomplishment.

Mr. Trask said another priority when he took office was to develop a program for victims. He said at that time, assisting victims was totally left up to the deputy district attorney assigned to the case. However, due to the high turnover of deputy district attorneys, victims really were not assisted at all. He said now the office has one of the best victim programs in the state. In 2005, with the cooperation of other agencies, the office was able to open the nation’s first regional interagency Family Justice Centers. These centers provide “one-stop” services to sexual assault and domestic violence victims and their families. Mr. Tagami said Mr. Trask brought a different view of the criminal justice system to the office. He said 30 years ago, the system recognized only the criminal, and there was no place for victim or witness rights in the process. He said the Family Justice Centers and the way things are done now are a revelation.

Mr. Trask said when he took office, he also felt it was important to develop partnerships with other agencies. He said



*Trask family (left to right): Natalie, Grover, Cindy and Trey*

partnerships benefit everyone and help accomplish mutual goals. For example, the Youth Accountability Team (YAT) is a program that tries to keep children out of the criminal justice system. This program could not have been created without the participation of the schools, probation, law enforcement and the district attorney's office.

Mr. Trask said he does not consider himself a politician, but rather a career prosecutor. He said when he first took office, there were 60 attorneys; now there are 256, in three main offices and seven satellite offices. Mr. Trask said a good leader prepares for the future and has confidence to develop leaders in the office who are ready to take over. Since he has been serving for six terms, he has had the opportunity to develop younger leaders and to make a slow transition. He has mixed emotions about leaving, because his heart and soul have

been in the office for 33 years, and it is his passion. However, it is time to pass the torch and for the next generation to step to the plate.

Chief Deputy Kevin Ruddy described Mr. Trask as that rare individual who has a strong sense of right and wrong and of fairness, not only in how he deals with employees, but in prosecuting criminals. Chief Deputy District Attorney Mike Lomazow summed it up when he said, "Grover is the epitome of what a DA should be. He is above reproach, impervious to political pressure, and an honest and decent man." He said Mr. Trask understands the political nature of the job, but all he ever wanted to do was be the best district attorney he could be.

Mr. Trask said the time at the District Attorney's office went by fast. There was never a dull moment, and with each day came a different challenge. Mr. Trask said he has been going fast and furiously for 33 years, and has been in a high-profile position for the past 24 years, so he was not ready to move into full retirement "cold turkey." The next journey in his life is to go to Best Best & Krieger, and he hopes to provide great service to them.

What about free time? Mr. Trask said he enjoys playing racquetball and hopes to have time now for golf. As District Attorney, he said, he would travel frequently while serving on California and national committees. Occasionally, he would take an extra week while on one of those trips, but he never had the time to take just a plain old vacation. Mr. Trask said he just recently returned from a very enjoyable family trip to Italy, and he hopes to do more traveling in the future.



# HISTORIC RIVERSIDE: M.H. SIMONS UNDERTAKING CHAPEL

by Bruce E. Todd

It was probably the only courtroom in California from which the occupants had to be suddenly evacuated after feeling the effects of formaldehyde fumes emitting from an embalming procedure in the adjacent morgue. But that's the kind of thing that could occur in the old days, when Department 10 was located in the historic M.H. Simons Undertaking Chapel at the corner of 11th and Orange Streets in Riverside.

The structure, which was designed by noted architect G. Stanley Wilson, was built in 1925. Melvin H. Simons moved his mortuary business into the building that same year. The edifice, which has now been designated as Riverside Cultural Heritage Board Landmark No. 80, was part of a 1920s effort to create a Mission revival image for the city.

In approximately 1974, the county purchased the building so that it could be used as the morgue for the coroner's office. Prior to that time, the coroner rotated monthly between seven local city mortuaries. The county bought the building so that all of the coroner's duties could be handled at one site.

In 1982, the county started using a portion of the building as a courtroom (designated as Department 10). Judge Robert Timlin was the first to preside in the department. He was followed by Judge Ronald Diessler, Judge Victor Miceli and Judge Jay Hanks. The county eventually stopped using the site as a courtroom in 1991.

During its tenure as Department 10, several noteworthy cases took place inside the ivy-covered walls of this somewhat eerie structure. Locals will undoubtedly remember the "Gloria Ramirez" case. As blood was being withdrawn from Ms. Ramirez, who eventually succumbed to cancer, several people were overcome by mysterious fumes. This incident resulted in several lawsuits. Department 10 also was witness to the "Dora Kent" case. Ms. Kent's head had been severed from her body and then frozen, to be cryonically preserved for the future. The District Attorney's office filed a motion to have the head thawed out to determine whether murder charges might be applicable. Judge Miceli, who presided over the hearing, obtained an opinion from the county coroner that, even if the head were thawed out, the coroner could not determine whether murder had occurred. In light of this situation, Judge Miceli denied the request by the D.A.'s office to thaw out the severed head.

Another noteworthy aspect of this building is that, for a time, it was the actual residence of one of the newest members of our bench. In 1973, long before he became a judge, Douglas Weathers moved into the upstairs portion of the building to work as an apprentice embalmer. This was during the time that the coroner's office rotated between the local mortuaries. When business was slow, Judge Weathers would do everything from waxing and polishing the pews in the funeral parlor to mowing the outside lawn. When it was the M.H. Simons Mortuary's turn in the rotation to handle the coroner functions, however, business would boom. Judge Weathers would perform numerous tasks, such as driving in the middle of the night to transport a corpse back to the morgue, and then later performing an embalming procedure upon that same corpse. When the mortuary was eventually sold to the county, Judge Weathers helped empty the contents. "I can remember moving the furniture from the building to the mortuary's new location, the Preston & Simons Mortuary near the corner of Mission Inn Avenue and Lime Street," recalled the judge. The local bar is fortunate that the esteemed Judge Weathers, who obtained an embalmer's license in 1975, decided to leave the world of corpses for the practice of law.



Judge Vic Miceli



Recently, Judge Miceli was kind enough to give this reporter a tour of the building. We were accompanied by Art Fong, who is the building services engineer for the county. During our visit, Mr. Fong had to use some of his work crew to unbolt the door to the embalming rooms within the building, since that area has long been shuttered.

The interior of the building has a certain spookiness to it. Although the county is currently using the building for storage purposes, there are numerous reminders of

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its heyday as a county morgue. The freezers where the bodies were stored are still intact. In one room, there is an overhanging scale which was used to weigh the corpses. In this same room, there is a floor drain through which the body fluids of a corpse would be drained into the sewer as part of the embalming procedure (a process that, for obvious environmental reasons, is no longer legal). In an upstairs room, a hand-operated elevator was present to lower the stored caskets down to the first floor for use. In the rear of the building, the remnants of the doors to the garage where the hearses would be parked are still visible.

Judge Miceli recalled that, when Judge Timlin was presiding over a trial in Department 10, he had to call for a recess because

the jurors were being overcome by formaldehyde fumes from an embalming procedure in an adjacent room. It was during this time that the building was serving as both the coroner's office and a courtroom.

There are plans afoot to renovate the structure to serve as a jury assembly room. Currently, potential jurors assemble within the nearby Hall of Justice building. Judge Miceli stated, "There is a crying need for more courtrooms. By moving the jury assembly room and lounge out of the Hall of Justice, we would have enough room to add two more courtrooms."

*(continued on page 28)*

# JUSTICE IN A BOX

*by Richard Brent Reed*

Jury duty is an obligation of citizenship. The jury pool is drawn from society at large, using lists from the Registrar of Voters, the Department of Motor Vehicles, and the phone book. Doctors, plumbers, engineers, housewives, house-husbands, scientists, executives, and attorneys are all called for jury duty. Even judges like Ronald George, Chief Justice of the California Supreme Court, serve on juries.

The petit jury, or trial jury, usually consists of 12 jurors, although in Scotland, there are 15. Once assembled, the jury pool is culled in groups of thirty or so and herded into various courtrooms to be examined by judges and attorneys to determine their fitness to serve on a particular jury. This vetting process is known as “voir dire” (“vwahr deer”). The term is Old French for “to speak the truth” and refers to the process of questioning prospective jurors before empanelling the jury. The practice was introduced into English jurisprudence by the Normans, who wanted to make sure that the king’s flunky or the plaintiff’s cousin weren’t sitting on the jury. In England and Wales, the process consists of the single question: “Can you give a fair hearing to both the Crown and the defense?” Any prospective juror who answers the question affirmatively is empanelled.

On the untamed frontier of the American West, jury selection was a simple matter: The judge would send the sheriff out into the street to round up the first twelve people he found. After some brief questions, the jury would be empanelled and the trial would begin.

Originally, the privilege of challenging a juror was intended to provide a way to weed out people from the jury pool who might have a bias created by a material or social interest. This is known as a “challenge for cause.” Later, the challenge-for-no-reason-at-all, or the “peremptory challenge,” was introduced, permitting attorneys to demographically cherry-pick jurors with a favorable bias created by a material or social interest. There are some who maintain that we have more justice now with the current, crabbed, convoluted, constipated mode of jury selection than we had with the jury round-up of the Old West, but there is little evidence of that.

## **The History of the Jury System**

The modern jury system derives from English common law and has a remarkable, if not distinguished, pedigree:

### **399 B.C.: The Trial of Socrates**

In ancient Greece, the Assembly of Athens charged Socrates, a stone mason and itinerant teacher, with corrupting the morals of Athenian youths and encouraging

them to question their religious beliefs. That body offered him the choice of leaving the city or drinking hemlock. He drank.

### **61 A.D.: The Trial of Paul**

The Apostle Paul, a/k/a Saul of Tarsus, was tried by the Sanhedrin for proselytizing outside the state religion. After skillfully dividing his accusers, pitting Sadducees against Pharisees over a controversial theological point, he was convicted. He appealed to Caesar and was taken to Rome for retrial.

Over the next two centuries, the Roman courts became less and less reliable, since many of the judges were subject to {patrimony} and other forms of influence peddling. Consequently, the citizens of Rome lost faith in their local magistrates and began to look to a disenfranchised, disinterested, ethically committed minority for justice. Rather than entrust their civil disputes to Roman courts, they sought out arbitrating judges from a routinely persecuted monotheistic sect called the Nazarenes, or, as the Romans derisively referred to them, Christians. Basically, the polytheistic Romans decided that they could trust judges who believed that you could go to Hell for lying. This was the beginning of ecclesiastical courts and courts of equity. (It should be noted that men offering evidence in Roman courts swore to tell the truth by raising their right hand to heaven and placing the other hand on their private parts. After swearing on his testicles, a witness would “testify” or give “testimony.” Later, when Bibles were available, witnesses swore on the testament.)

### **476: The Fall of Rome**

The Dark Ages (476-1400 A.D.) earned their name by dispensing with fact-finding tribunals, deferring to trial by ordeal and trial by combat. In trial by ordeal, the accused was subjected to some mystical test, usually involving fire or water, to determine his or her guilt. In trial by combat, each party in a dispute would choose a champion. The two champions would meet at tournament (at tourney) and joust (or just) by tilting (galloping at each other with lances, maces, and battle axes). Later, the battling knights were dispensed with and the shield-bearer (the squire) would argue the case before the king’s court.

### **1066: The Norman Conquest**

William the Conqueror, Duke of Normandy, invaded England. The victorious Normans established a system of courts that would decide legal questions. The Normans

being French, all pleading had to be done in a foreign language, largely unintelligible to the native Saxons. Our judicial system adheres to this practice, even to this day.

### **1215: The Signing of the Magna Carta**

After trying to usurp the throne of England from his brother, Dick Plantagenet (Richard the Lion-hearted), the notorious Prince John was exiled to France, due largely to the efforts of the outlaw Robin Hood, Baron of Locksley. Following his brother's death, he was brought back from France to fill the vacancy. John turned out to be even worse as the rightful king than he was as an unlawful usurper, by routinely confiscating the property of the landed aristocracy, mostly barons, and giving the property, as political plums, to his cronies. In John's mind, robbing the rich and giving to the toady was a proper public use. The barons had different ideas.

In 1215, the English barons invited King John to hunt deer on an island at Runnymede. There was only room in the boat for John and the barons, so the king's guard stayed behind until the boat could be sent back for them. The boat was never sent back. Once they had John isolated on the island, the barons whipped out a document that limited the king's power, guaranteeing, among other things, the right of petition and the right to trial by jury. The barons were all lords – or “peers” – so they wanted to be tried by a jury of their equals. The barons would keep John on the island until he signed the Great Charter. He signed. Thus, a bunch of English barons tired of losing property to the Crown petitioned the king, at gunpoint, to sign the Magna Carta, guaranteeing them the right of *habeas corpus*, the right to petition the government and the right to trial by jury.

### **1670: The Trial of William Penn**

William Penn was a Quaker and the founder of the American colony and, later, state named after him: Pennsylvania. Rumor has it that he is also the man on the box of Quaker Oats. In the fall of 1670, he was arrested for preaching to an unlawful, seditious, and riotous assembly (you know how rowdy those Quakers are). On September 1, 1670, he was tried by a jury of his peers. Penn asserted the illegality of the prosecution, but the judge had him removed from the courtroom. Then a curious thing happened: The jury refused to find the assembly unlawful and merely convicted Penn of “speaking in Gracechurch Street.” When the court refused to accept the jurors' verdict, they ignored the judge's decision and found Penn simply “not guilty.” This was the first judgment *non obstante veredicto* or, more accurately, the first verdict notwithstanding the judge.

The court did not take kindly to being reversed by its own jury and fined the jurors forty marks apiece for their insubordination. The jurymen refused to pay and were thrown in jail. Jurymen Bushell and other jurors appealed

the decision to the Court of Common Pleas and were vindicated by that court, whose twelve judges found the jurors' imprisonment to be illegal.

### **1692: The Salem Witch Trials**

The testimony of ten girls in Salem, Massachusetts got 19 people – mostly women – hanged for the practice of witchcraft, which was, then, a crime. No one was burned at the stake: That was an exclusively European remedy. During this witch hysteria, a farmer named Giles Corey was crushed to death under torture. One woman was spared because she was pregnant: Her unborn child, being an innocent party, was, under English common law, beyond the court's jurisdiction. In fact, the whole sordid business was simply a land-grab by one of Salem's prominent citizens, Thomas Putnam. He knew that, once a person was convicted of witchcraft, the land owned by the condemned escheated to the state. Putnam was the only person in the community with enough money to buy the forfeited land, which he picked up for a song. The governor of Massachusetts, eventually, pardoned several hundred condemned prisoners. No jury was involved in the trials, just a tribunal.

### **1789: The Drafting of the Constitution**

The Englishmen who colonized America were accustomed to having the right to trial by jury, usually twelve men of voting age. After breaking away from England, the Americans wrote the right to trial by jury into the Constitution's Sixth Amendment: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .”; and in the Seventh Amendment: “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . .”

Jury selection has evolved over the centuries. Some countries have dispensed with juries, relying upon a tribunal – a panel of three or more judges – to mete out justice. In this country, the reluctance of citizens to serve as jurors has resulted in a sort of judicial Darwinism in which the clever can escape service through increasingly artful excuses, abandoning the jury pool to those who can't come up with a convincing argument or those who simply have nothing better to do. Despair over what is perceived as a dumbing-down of juries has prompted many legal experts to suggest that the courts should employ professional jurors.

The judicial scheme set up by the country's founders was not designed to function in the face of apathy. Unless citizens – even clever, successful citizens – take their civic duty seriously, the system is bound to fail. We may yet have to resort to professional juries. The jury is still out on that.



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## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 30, 2007.

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**Kimberly Burke** – Burke Lewis & Ham, LLP, Upland

**Michael Caldwell (A)** – DK Global, Inc., Redlands  
**Sophia H. Choi** – Office of the County Counsel, Riverside

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**Coreen R. Walson** – Borders McLaughlin & Associates, Irvine

*(A) Designates Affiliate Member*



### Historic Riverside (continued from page 25)

With its marvelous redwood ceilings and historic doors, windows and light fixtures, the old morgue, once renovated, would certainly serve well as a location for a jury assembly room. Although there have been some past discussions about razing the edifice, Judge Miceli indicated that city preservationists have long fought to preserve the structure. Based upon the tour which I was given of the building, it would be a shame to ever dismantle such a historic structure. To the contrary, the notion of someday serving as a juror in this hallowed structure seems quite exciting.

*Bruce E. Todd, a member of the Bar Publications Committee, is with the law firm of Ponsor & Associates in Redlands.*

