

RIVERSIDE LAWYER

May 2007 • Volume 57 Number 5

MAGAZINE

YOUR VOTE COUNTS

Nominees for RCBA Board of Directors
2007-2008

RCBA ANNUAL ELECTION - BOARD OF DIRECTORS

BALLOT

Daniel Hantman, President-Elect 2006-2007, will automatically assume the office of President for 2007-2008.

Officers – One Year Position
(Sept. 1, 2007 to Aug. 31, 2008)
VOTE FOR ONE FOR EACH OFFICE

PRESIDENT-ELECT	VICE PRESIDENT
<input type="checkbox"/> E. Aurora Hughes	<input type="checkbox"/> Harry Histen
<input type="checkbox"/> _____	<input type="checkbox"/> _____
CHIEF FINANCIAL OFFICER	SECRETARY
<input type="checkbox"/> Harlan Kistler	<input type="checkbox"/> Daniel Katz
<input type="checkbox"/> _____	<input type="checkbox"/> Robyn Lewis
	<input type="checkbox"/> _____

Directors-At-Large – 2 Year Position
(Sept. 1, 2007 to Aug. 31, 2009)
VOTE FOR TWO

<input type="checkbox"/> Yoginee Braslaw	<input type="checkbox"/> Rina Gonzales
<input type="checkbox"/> Jacqueline Carey-Wilson	<input type="checkbox"/> Chris Harmon
<input type="checkbox"/> Susan Exon	<input type="checkbox"/> John Higginbotham
<input type="checkbox"/> Chad Firetag	<input type="checkbox"/> Richard Reed
<input type="checkbox"/> _____	<input type="checkbox"/> _____



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RIVERSIDE LAWYER

MAGAZINE

C O N T E N T S

Columns:

3 **President's Message** by *David T. Bristow*

5 **Barristers** by *Charles P. Boylston*

6 **Litigation Update** by *Mark A. Mellor*

COVER STORY:

9 **Nominees for RCBA Board of Directors 2007-2008**

Features:

14 **There's a New Sheriff in Town**
by *Dorothy L. Honn*

16 **A Modest Proposal**
by *Richard Blumenfeld*

20 **Congestion in the Court**
by *the Hon. Richard Fields*

22 **Pet Probation Conditions**
by *Donna Johnson Thierbach*

24 **Judicial Profile: Commissioner Kenneth Fernandez**
by *Donna Johnson Thierbach*

26 **Why You Should Join the Criminal Law Section**

27 **RCBA Golf Tournament**

Departments:

Calendar 2

Membership 28

Classified Ads 28

MISSION STATEMENT

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

Serve 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.

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 6th 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 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

MAY

15 Family Law Section

“Family Law Ethics”

Speaker: Janet Hunt, California State Bar
RCBA Bldg., John Gabbert Gallery – Noon
(MCLE – 1 hour Ethics)

RCBA Board of Directors

RCBA – 5 p.m.

16 RCBA Past Presidents’ Dinner

Victoria Club – 5:30 p.m.

18 General Membership Meeting

“Federal Litigation: A Growth Industry”

Speaker: Chief Judge Alicemarie Stotler,
U.S. District Court
RCBA Bldg., John Gabbert Gallery – Noon
(MCLE)

19 Annual Law Day at the Mall

Moreno Valley Mall – 10 a.m. to 4 p.m.

22 DRS Mediation Seminar

“The Perfect Storm that Could Sink the
Good Ship Mediation”

Speaker: Peter Robinson, Esq., Straus
Institute for Dispute Resolution
Canyon Crest Country Club – 5:30 p.m.
(MCLE – 1 hour Ethics)

23 Estate Planning, Probate & Trust Law Section

“Real Property Transfers: Minimizing
Reassessments”

Speaker: Ted Pauw, Esq.
RCBA Bldg., John Gabbert Gallery – Noon
(MCLE)

28 HOLIDAY – Memorial Day

31 The James Wertz Distinguished Speakers Series

Inaugural Speaker: Justice John Gabbert,
Ret.

Mission Inn Music Room – 6 p.m.

JUNE

6 Bar Publications Committee

RCBA – Noon

13 Barristers

Cask ‘n Cleaver – 6 p.m.
(MCLE)





President's Message

by David T. Bristow

To follow up on a previous column, apropos of the nationwide observation of Law Day (May 1), I thought it would behoove us to reflect on our past. One of the reasons the practice of law is such a gratifying aspect of my life is its reverence for history. It's easy to forget that each day, we as lawyers go about our business using laws, concepts, procedures, statutes, cases and words that, in many cases, are centuries old. Our legal system in California is a beautiful amalgamation of English common law and Spanish and Mexican colonial law, as well as our own state and federal laws.

Years ago, quite by accident, I stumbled across a wonderful source of California legal history in a place I would never have guessed to look. It occurred while I was engaging in one of the habits – some might call it a bad habit – that I picked up in law school. In my first year at McGeorge School of Law, as part of the self-imposed study regime we all crafted for ourselves as first-years, I would go to the library every night to study. Once there, it took about 15 minutes for me to start looking for a distraction – any distraction. Law libraries being what they are, my options were somewhat limited. So, one day, I just randomly pulled a volume of California Reports off the shelf and opened it – oddly – to an old probate case, which, of course, was entitled “Estate of” something or other. (Actually, I suppose it was Estate of Someone, rather than of Something. But I digress.) I don't recall anything about that case, other than that I couldn't put it down. I was hooked by the human drama that poured out from it, and it fascinated

me enough to look for another probate case. As I was just learning the first knot in the ropes of legal research, I figured out that the case index of each volume – located in the front – would immediately tell me whether any given volume had a rich vein of probate cases or not, as all of the “Estate of” cases were lined up under “E.”

Thus, my *modus operandi* became: Try to study, get bored, walk to the stacks, find the California Reports, pull down a random volume, flip to the front, find the Es in the index, and then flip to the various probate cases contained therein. I would then be regaled with tales of hidden fortunes, greedy children, scheming spouses and, generally, abominable human behavior. My habit took root and remains with me to this day.

After graduating from McGeorge, and while practicing as a young lawyer, I chanced to pull down Volume I of California Reports to look for a probate case and kill some time. This time, though, since I held the very first volume of reported cases in California history, I thought I would read the very first reported case (which, by the way, is *People v. Smith* (1850), and involves “felonious charges” against the defendant arising out of the murder of several Native Americans in “Nappa Valley”). I also discovered the preface to Volume 1, as well as the appendix and the index (which is really a glossary), all of which address the underpinnings of the California legal system. The preface provides an excellent perspective on the history and creation of the state's legal framework, while the appendix contains excellent in-depth discussions of the *alcalde* system of justice, which flourished

(continued on page 4)

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

in the state under the rule of Mexico, as well as accounts of San Francisco and its provisional government and a report on civil and common law. Finally, the glossary provides a sort of abridged Black's Legal Dictionary, with the definition of various 1850 legal terms.

In short, Volume 1 of California Reports holds a treasure trove of information relating to California legal history and, much like Blackstone's Commentaries, provides a basic legal framework and background for the California practitioner.

I mention all of this for two reasons. First, I think it's fascinating, and something that any lawyer in the state would be interested in reading.

But second, and far more importantly, Volume 1 will be the springboard for an address to be given by our own living legend, Justice John Gabbert, who will present the inaugural installment of the James Wortz Speakers Series on Thursday, May 31, at 6 p.m. in the Music Room of the Mission Inn. The Wortz Address, as I've previously men-

tioned, is intended to raise funds for the RCBA's programming, as well as to educate our members and the public on legal topics. We could not ask for a better speaker than Justice Gabbert, and he will provide an in-depth presentation on California legal history. I hope that all of our members will try to attend the first of what promises to become one of the annual highlights of the RCBA, and I look forward to seeing you there.

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



by Charles P. Boylston

Civility and Strategy: An Overview of Litigation

On March 12, 2007, the Barristers were treated to two renowned speakers expressing their views on the litigation process. Steve Geeting of Duncan and Geeting Law Association and Michael Marlatt of Thompson & Colegate LLP took the fortunate attendees through the litigation process from the client interview to closing arguments.

The overall theme of the presentation was one of strategy and civility. Both defense and plaintiff's counsel acknowledged that, although our obligation as attorneys is to zealously advocate for our clients, it is also important to be civil to one another, to be reasonable, and to treat your adversary with respect. It was important to both of the speakers that at the end of the trial they be able to shake hands with opposing counsel.

The meeting offered insight on strategy and generally how to handle a case through litigation. Mr. Geeting and Mr. Marlatt worked well together, each presenting his view on initial interviews, voir dire, examination, cross-examination, and closing argument.

During the initial interview of a client, Mr. Geeting noted, one of the most important things was credibility. The credibility Mr. Geeting referred to was the credibility of the potential plaintiff as a witness and the credibility of the story he or she had to tell. A plaintiff's practice, once established, grants the luxury of turning away cases where credibility is questionable.

Mr. Marlatt, speaking from a defense perspective, acknowledged that he did not always have that luxury. Although credibility is important, when the defense client comes in, you are evaluating the case to determine potential exposure, not necessarily determining whether it is a case your firm will take. In

many cases, especially if your firm works with insurance carriers representing insureds, cases with horrendous facts may come through the door that simply cannot be turned away. Your job on the defense side then becomes essentially one of damage control, which begins even in the initial interview process, as you assess weaknesses and strengths, as well as potential limitations that may be available for the purpose of limiting exposure.

The barristers in attendance were rewarded with firsthand accounts – “war stories” Mr. Geeting and Mr. Marlatt had garnered as they developed their techniques through years of practice. In a day and age where most matters do not go to trial, the attendees were given a glimpse into the mystery that is voir dire. This included practical tips, such as using post-it notes on the inside of a manila folder to represent jurors, so those jurors can be removed and replaced during the jury selection and process. Mr. Marlatt also gave examples of threading the theme of his case into the voir dire questioning.

The evening continued with helpful hints on the examination of witnesses and a discussion of closing arguments – what they are and what they are not. For example, how should an attorney react when plaintiff's counsel through the course of the closing argument asks a series of pointed questions directed at perceived weaknesses in the defense's case? The answer, if I may paraphrase Mr. Marlatt, is essentially don't. In many cases, defense counsel is better served by focusing on his or her own closing and making the closing argument that best ties together the facts established in trial in favor of his or her client.

Barristers are appreciative of Mr. Geeting and Mr. Marlatt donating their time and wisdom to the organization. It is clear why they both are excellent litigators, based not only on the practical information provided, but also on the ease of their presentation and their ability to involve each listener.

Barristers strives to offer such opportunities along with the chance to rub elbows and socialize in a less formal setting with peers and learned colleagues. Barristers meets monthly, on the second Wednesday of the month at 6 p.m. at the Cask 'n Cleaver, located at 1333 University Avenue in Riverside.

Hope to see you there!

Charles (Chad) Boylston, Vice President of Barristers, is with the law firm of Geoffrey H. Hopper & Associates in Redlands.



LITIGATION UPDATE

by Mark A. Mellor

Proposition 64 applies to cases pending when it was adopted. Along with the California courts of appeal in all but one case, the California Supreme Court has now ruled that Proposition 64 applies to all pending cases, including those filed before November 3, 2004, the effective date of the proposition.

Proposition 64 limited the right to sue for unfair competition (Bus. & Prof. Code, § 17200 et seq.) to plaintiffs who, in fact, suffered injury from the tort, and then only if they could meet the requirements for a class action suit. In *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223 [46 Cal.Rptr.3d 57, 138 P.3d 207, 2006 DJDAR 9607], the court ruled that, although the usual presumption is that statutes operate prospectively only, application of the proposition to pending cases was required because the effect of the statute is prospective, i.e., it is "a statute that establishes rules for the conduct of pending litigation without changing the legal consequences of past conduct."

In the companion case of *Branick v. Downey Sav. and Loan Assn.* (2006) 39 Cal.4th 235 [46 Cal.Rptr.3d 66, 138 P.3d 214, 2006 DJDAR 9612], the court held that, even though Proposition 64 applies to pending cases, the trial court has discretion to permit the filing of an amended complaint substituting a new plaintiff who qualifies under the proposition.

How not to conduct yourself in litigation. *Kreeger v. Wanland* (2006) 141 Cal.App.4th 826 [46 Cal.Rptr.3d 790, 2006 DJDAR 9690] [Third Dist.] demonstrates the disastrous consequences that ensue when lawyers lose sight of the objective of litigation and become personally embroiled. If nothing else, the costs to the lawyers should dissuade us from engaging in this type of misconduct.

Foreign tax returns are not subject to evidentiary privilege. Civil Code section 1799.1a prohibits disclosure of information obtained from federal or state income tax returns. This does not apply to a tax return filed in other countries. For this and other reasons, *Firestone v. Hoffman* (2006) 140 Cal.App.4th 1408 [45 Cal.Rptr.3d 534, 2006 DJDAR 8611] [Second Dist., Div. One] held that the trial court improperly sustained plaintiff's objections to the production and introduction of his Canadian tax return.

The "can't eat your cake and have it too" rule of judicial estoppel. Plaintiff asserted in a legal malpractice action that he had lost specified marital assets as a result

of his lawyer's negligence. He settled the case and then sought to recover these assets, claiming they were community property, in an action for partition against his former wife, in whose name the assets were held. The doctrine of judicial estoppel precluded him from asserting these inconsistent positions and summary judgment against him was affirmed. (*Levin v. Ligon* (2006) 140 Cal.App.4th 1456 [45 Cal.Rptr.3d 560, 2006 DJDAR 8639] [First Dist., Div. Two].)

For another look at the doctrine of judicial estoppel in cases where the court refused to apply the doctrine, see *Gottlieb v. Kest* (2006) 141 Cal.App.4th 110 [46 Cal.Rptr.3d 7, 2006 DJDAR 8995] [Second Dist., Div. One] and *Jogani v. Jogani* (2006) 141 Cal.App.4th 158 [45 Cal.Rptr.3d 792, 2006 DJDAR 9033] [Second Dist., Div. One].

Sexual conduct is subject to discovery in HIV infection case. Where former wife sued husband alleging he infected her with HIV, she was permitted to obtain discovery of his medical records and his prior sexual conduct. (*John B. v. Superior Court* (2006) 38 Cal.4th 1177 [45 Cal.Rptr.3d 316, 137 P.3d 153, 2006 DJDAR 8738].) Unfortunately, the majority opinion is silent with respect to the important issue of whether plaintiff may discover the names and addresses of defendant's other sexual partners. In Justice Kennard's concurring and dissenting opinion, she indicates that this issue was not before the court.

Assignee of bad faith claim is entitled to attorney fees. In *Brandt v. Superior Court* (1985) 37 Cal.3d 813 [210 Cal.Rptr. 211, 693 P.2d 796], our Supreme Court held that in a tort action against an insurer for breach of the covenant of good faith and fair dealing, the insured was entitled to recover, as damages, attorney fees attributable to efforts to recover policy benefits. In *Essex Ins. Co. v. Five Star Dye House, Inc.* (2006) 38 Cal.4th 1252 [45 Cal.Rptr.3d 362, 137 P.3d 192, 2006 DJDAR 8819], the same court held that this right to attorney fees was assignable and the assignee of the bad faith claim was thus, entitled to recover such fees.

SLAPP-back statute applies to pending cases. In 2005, the Legislature adopted Code of Civil Procedure section 425.18, exempting SLAPP-back suits from certain procedures otherwise applicable to motions to strike under the anti-SLAPP statute. The anti-SLAPP statute (Code Civ. Proc., § 425.16) provides expedited procedures for dismissing actions based on constitutionally protected conduct, including the filing of lawsuits. A SLAPP-back

suit is an action for malicious prosecution based on a prior action that was dismissed under the anti-SLAPP statute.

In *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260 [46 Cal.Rptr.3d 638, 139 P.3d 30, 2006 DJDAR 9839], our Supreme Court held that the SLAPP-back statute applies to cases pending before the adoption of section 425.18. Subdivision (h) of the SLAPP-back statute precludes the use of the anti-SLAPP statute where the prior cause of action, from which the SLAPP-back arises, was “illegal as a matter of law.” Here the underlying action, which was dismissed under the anti-SLAPP statute, asserted causes of action for, among other things, malicious prosecution, defamation and breach of fiduciary duties. Although the claims asserted in that action were found to be without merit, the court refused to characterize them as “illegal as a matter of law” under subdivision (h). The court concluded that illegality as a matter of law applies where defendant’s assertedly protected constitutional activity has been “indisputably” determined to be illegal. As examples, the court cited cases involving charges of illegal campaign contributions and held that it is plaintiff’s burden to establish such illegality.

In a companion case, *Flatley v. Mauro* (2006) 39 Cal.4th 299 [46 Cal.Rptr.3d 606, 139 P.3d 2, 2006 DJDAR 9854], a suit based on an attempt to extort money from a celebrity with the threat of making rape allegations, the court held that since extortion was illegal, the communication was not constitutionally protected and hence not subject to the anti-SLAPP statute.

No attorney fees where SLAPP action dismissed before anti-SLAPP motion is filed. A defendant who prevails on an anti-SLAPP motion is entitled to attorney fees and costs. *Major v. Silna* (2005) 134 Cal.App.4th 1485 [36 Cal.Rptr.3d 875] held that even though plaintiff dismissed the action after defendant filed an anti-SLAPP motion, defendant was nevertheless entitled to recover attorney fees incurred in connection with the motion. But when the motion is filed after the SLAPP complaint has been dismissed, defendant is not entitled to fees.

(*S.B. Beach Properties v. Berti* (2006) 39 Cal.4th 374 [46 Cal.Rptr.3d 380, 138 P.3d 713, 2006 DJDAR 9913].)

Also, where lawyers representing themselves succeeded in having a complaint stricken under the anti-SLAPP statute, they were not entitled to recover attorney fees. (*Witte v. Kaufman* (2006) 141 Cal. App.4th 1201 [46 Cal.Rptr.3d 845, 2006 DJDAR 10079] [Third Dist.].) The court noted, however, that attorneys representing themselves may retain counsel to assist them and be compensated for that expense.

No “adverse interest” where contingent fee contract provides for a charging lien. Rule 3-300 of the California Rules of Professional Conduct deals with a lawyer acquiring a pecuniary interest adverse to the client. The rule imposes requirements including written advice to the client that the client is entitled to obtain the advice of an independent lawyer. The rule applies where a lawyer obtains a charging lien in a contract for hourly fees. (*Fletcher v. Davis* (2004) 33 Cal.4th 61 [14 Cal.Rptr.3d 58, 90 P.3d 1216].) But the State Bar’s Standing Committee on Professional Responsibility and Conduct, in a formal opinion, has declared that the rule does not apply to contingent fee contracts because such liens are inherent in such contracts. (State Bar Standing Com. on Prof. Responsibility & Conduct, Formal Opn. No. 2006-170 [2006 DJDAR 10246].)

Mark A. Mellor is a partner of The Mellor Law Firm specializing in Real Estate and Business Litigation in the Inland Empire.



NOMINEES FOR RCBA BOARD OF DIRECTORS 2007-2008

The RCBA Nominating Committee has nominated the following members to run for the RCBA offices indicated, for a term beginning September 1, 2007. (See below for their biographies.) Watch your mail for ballots. Election results will be announced at the RCBA General Membership meeting in June.



Daniel Hantman, President-Elect 2006-2007, will automatically assume the office of President for September 1, 2007 to August 31, 2008.



E. Aurora Hughes
President-Elect

Thank you for taking the time to read the candidate statements. This is our opportunity to tell you a little about ourselves.

It is my desire to continue to serve our membership in the capacity of President-Elect of the RCBA. I have had the honor of serving on the Board, currently as Vice President, and in the past as Chief Financial Officer, Secretary and as a Director-at-Large.

My RCBA involvement has included serving on the Publications Committee and the CLE Committee and as the Legislative Committee Chair. As a member of the Board, I have served on the Personnel Committee and have participated in various projects and programs as requested by the President.

I am deeply committed to serving our membership and ask for your support.



Harry J. Histen, III
Vice President

I am a sole practitioner and make my office in Riverside, California and have done so since June of 1977. I have a fairly broad, general practice, with an emphasis on wills and trusts and general business law. I also do probate and conservatorship matters, family law matters, general civil litigation and real estate matters.

I was born in 1942 and am a "second career" lawyer and a graduate of Western State University Night Law School in Fullerton, California. Prior to becoming a lawyer, I had my major in mathematics and worked as a Computer Programmer/Systems Analyst for Rockwell, International on the Apollo and Space Shuttle Programs.

I was very active in bar activities as a younger lawyer and belonged to several panels and served on the Lawyer Referral Service Committee. I have served on the California State Bar Resolutions Committee. I have trained as a mediator both by experience and by taking mediation courses at the University of California at Riverside. I mediate privately and through the RCBA Dispute Resolution Service, as well as on a voluntary basis through the Probate Departments and Family Law Bi-Monthly Voluntary Settlement Conferences.

I believe that what I can offer the Bar is my experience, and in particular, the diversity of my legal experience. I am currently the Chief Financial Officer on the RCBA Board.



Harlan B. Kistler
Chief Financial Officer

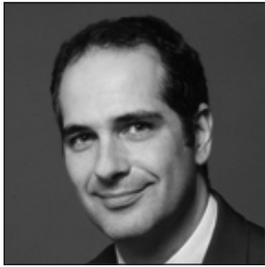
Harlan B. Kistler is a native Riversider who attended Notre Dame High School. He was a student athlete in college, attending UCLA, ASU and the University of Iowa. He obtained his law degree from the University of Iowa College of Law.

He spent seven years as an associate attorney with Reid & Hellyer, practicing business litigation and personal injury. In 1996, he established his own law practice and he has since focused primarily on the practice of personal injury law.

Throughout the years, he has been involved in Barristers and the Leo A. Deegan Inn of Court, and he has assisted the Mock Trial program as a scoring attorney. He has contributed his time preparing family law documents for clients of the Public Service Law Corporation. Presently, Mr. Kistler is assisting the Riverside Superior Court as a mediator through the RCBA Dispute Resolution Service. He has served many years as an arbitrator for attorney-client fee disputes, lectured on "Marketing Your Law Practice" at Barristers, published articles in the Riverside Lawyer and participated in the Civil Litigation Section.

Mr. Kistler is actively involved in the community as a volunteer head wrestling coach at Martin Luther King High School. He founded the OrangeCrest Crushers, which is a youth wrestling program in Riverside. Similarly, he has partnered with Singh Chevrolet to continue the Perfect Attendance Program for schools in Riverside. Mr. Kistler has also been involved in many community fundraisers and is a former Kiwanis member. Mr. Kistler has been married fifteen years to Lori and has two sons, Harlan II and Nolan.

Mr. Kistler is currently on the RCBA Board as Secretary.



Daniel E. Katz
Secretary

Daniel E. Katz is a litigation partner with the law firm of Reid & Hellyer in Riverside. Mr. Katz graduated from McGeorge School of Law with honors and has been with Reid & Hellyer since 1998. His practice areas include business litigation, real property litigation and appellate advocacy. Mr. Katz has been involved in litigating two cases that led to published opinions by the Court of Appeal – Frangipani v. Boecker (1998) 64 Cal.App.4th 860 and Coltrain v. Shewalter (1998) 66 Cal.App.4th 94.

Mr. Katz is a participating member of the Leo A. Deegan Inn of Court.

Currently, Mr. Katz is a Director-at-Large on the RCBA Board of Directors.



Robyn A. Lewis
Secretary

Robyn A. Lewis (formerly Beilin) is the managing attorney with the Law Offices of Harlan B. Kistler, which is located in Riverside. Since Ms. Lewis' admission to the bar in 1998, her practice has focused primarily on personal injury and elder law. She has been an active member of the RCBA since joining her firm in 1999.

Ms. Lewis is currently a Director-at-Large of the Riverside County Bar Association Board of Directors. She is a past President of Barristers, serving her term for that organization during 2005-2006. In that capacity, she has also served as a member of the RCBA Board. Ms. Lewis has chaired many Barrister/RCBA social events, such as the BMW Oldtimer's Event and the Holiday Socials, which have served to raise donations for the RCBA Elves Program.

In addition to her involvement with Barristers, Ms. Lewis is a contributing member of the Publications Committee and the Continuing Legal Education Committee of the RCBA, as well as a member of the RCBA Golf Tournament Committee. She is co-chair of Programming and is on the Executive Board of the Leo A. Deegan Inn of Court. She was the first recipient of the Louise Biddle Book Award in 2006, which is given to an Inns of Court member for their dedication to the legal community and for their professionalism. Ms. Lewis is a former Mock Trial Coach for Santiago High School.

A graduate of Seton Hall University School of Law, Ms. Lewis is originally from the state of New Jersey. She is married to Jonathan Lewis of J. Lewis and Associates, who is also an attorney and has a civil litigation practice in Riverside.



Yoginee Patel Braslaw
Director-at-Large

Yoginee Patel Braslaw is a Senior Research Attorney for the Court of Appeal, Fourth Appellate District, Division Two, in Riverside. She has been working in that capacity since January 1999. Prior to that, she worked as a law clerk for Haight, Brown & Bonesteel, LLP, from 1994 to 1998, in various departments, including products liability, malpractice defense, and appellate, at its former Santa Monica office. She was also an extern for the Honorable Consuelo B. Marshall of the United States District Court for the Central District of California. She also briefly worked as an immigration attorney for a law office in the downtown Los Angeles area.

Since moving to Riverside in 1999, Ms. Braslaw has been an active member of the RCBA as well as the local community. In 1999, she joined the Publications Committee of the RCBA as a writer and photographer for the Riverside Lawyer, and she is still a contributing member. She is also a current member of the Leo A. Deegan Inn of Court as well as a board member and mentor for VIP Mentors, Inc. Throughout the years, she has participated in the Mock Trial program as a scoring attorney. She was also a member of this year's and last year's RCBA Golf Tournament Committee.

In addition, Ms. Braslaw is an active member of the Junior League of Riverside, where she serves as a committee member for the Ball Committee and the Preschool Enrichment Program. She is also active in assisting her husband Steve in fulfilling his dream of becoming a restaurateur. They own a Subway franchise in San Bernardino, along with The Pizza Kiln in Moreno Valley

and Pizza Time in Riverside. These businesses have kept them active in the community, and have sponsored several events at Martin Luther King High School, the Riverside Children's Theatre, and various elementary schools and sporting events in the Orangecrest area. Ms. Braslaw is also involved in activities relating to her two children, Deven (6) and Maya (4). She has volunteered at JFK Elementary School and Temple Beth El Child Development Center, and as an AYSO assistant coach and soccer mom.

Ms. Braslaw grew up in Chatsworth, California, and is a graduate of the University of California, Los Angeles, and Whittier Law School.

Ms. Braslaw is running for the Director-at-Large position because she likes working for the RCBA and enjoys the camaraderie that comes along with the position. She finds the Riverside legal community to be unique and extraordinary in building lasting professional relationships as well as friendships.



Jacqueline Carey-Wilson
Director-at-Large

Jackie has practiced both criminal and civil law, and now specializes in appellate work. She was previously a research attorney at the Court of Appeal and is currently employed as a Deputy County Counsel in San Bernardino. After graduating from California State University, Fullerton with a Political Science degree, she was a field representative for Congressman George Brown in Colton. Jackie then attended Southwestern University School of Law and was admitted to the bar in 1995.

Jackie has been an active member of the Riverside County Bar Association since 1996. In 1997, she joined the Publications Committee of the RCBA as a writer and photographer for the Riverside Lawyer. Currently she is the editor; she coordinates each month's publication, recruits writers, and reviews the content of the magazine. In addition, for the last year she has served on the RCBA Board as a Director-at-Large.

Since March 2001, Jackie has been a Director of the Volunteer Center of Riverside County; she served as President of the Board of Directors from September 2004 through September 2006. The Volunteer Center is a nonprofit agency that provides services to seniors, youth, people in crisis, court-referred clients, and welfare-to-work clients.

Jackie has co-chaired the Red Mass Steering Committee of the Inland Empire Communities for the last three years. The Red Mass is for members of the legal community and

their families to invoke God's blessing and guidance in the administration of justice.

In October 2005, Jackie was appointed to the State Bar's Public Law Section Executive Committee. As a member of the Executive Committee, Jackie assists the Public Law Section in educating attorneys who represent cities, counties, school boards, and special districts.

Jackie has been a Director of the Inland Empire Chapter of the Federal Bar Association since November 2005, and now serves as Treasurer. Jackie assists in coordinating events for the FBA and has written for the Federal Lawyer.

For the last two years, Jackie has served as a member of the Advisory Board for VIP Mentors. VIP Mentors recruits attorneys to serve as mentors for men and women on parole to assist with their transition back into the community.

Jackie resides in the City of Riverside with her husband, Douglas Wilson, and their three daughters, Katie (14), Julia (10), and Grace (6). Jackie's purpose in running for the Board is to support the RCBA's members by offering more educational opportunities and to strengthen the RCBA's relationship with the community.



Susan Nauss Exon
Director-at-Large

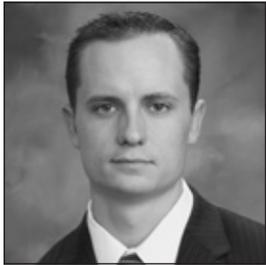
Susan Nauss Exon is a Professor of Law at the University of La Verne College of Law. She teaches Civil Procedure, ADR, Mediation, Negotiation, Professional Responsibility and related seminars. In 2006, Susan received her LL.M. in Dispute Resolution from Pepperdine School of Law. In 1989, she received her J.D. from the University of Wyoming College of Law, where she was on the staff of the Land and Water Law Review.

Prior to becoming a professor at the University of La Verne, Susan served as the Director of Law and Public Policy at UCR Extension, where she developed legal and law-related courses and CLE seminars and taught paralegal students. She also practiced law for six years at Best Best & Krieger LLP, focusing on business and public law litigation.

Susan has been a member of the RCBA since the early 1990s. She is a frequent speaker on ethics and ADR topics and speaks regularly at the Bridging the Gap program. Susan has served on the RCBA's Education Committee from 1996 to 1998 and again from 2004 to the present. She has contributed several articles to the Riverside Lawyer magazine. Susan has enjoyed her involvement with the RCBA and believes the time is right to take the

next step and become more involved as a member of the Board of Directors. Believing that community service is an integral part of our lives, Susan wants to focus her efforts on RCBA activities. As a law professor rather than a practitioner, she looks forward to bringing a different perspective to the Board and serving as a liaison between the RCBA and the legal education community.

Susan resides in Riverside with her husband, Duffy, and their two children, Viktoria (11) and Nikolas (6).



Chad W. Firetag
Director-at-Large

Chad Firetag is a partner in the law firm of Grech & Firetag. During his time with the office, he has represented numerous clients, both private and indigent, on a number of different criminal matters ranging from drug offenses to white collar crimes.

Mr. Firetag graduated cum laude and Phi Beta Kappa from the University of California at Riverside in May 1998 with a B.A. in Political Science and a minor in History. He received his J.D. in 2001 from the University of California at Davis. During law school, he served as the Editor-in-Chief of *Environs: The U.C. Davis Environmental Law Journal*, was elected to the Order of the Barristers and was given the American Board of Trial Advocates Student Advocate of the Year award.

Mr. Firetag is currently the co-chair of the Criminal Law Section of the Riverside County Bar Association and a member of the Leo A. Deegan Inn of Court. He is also active in the Riverside County Mock Trial Competition, having served on the Steering Committee and volunteered as a coach.



Rina M. Gonzales
Director-at-Large

Rina Gonzales is a Deputy City Attorney for the City of Riverside. Before joining the City Attorney's office, Rina worked as an associate with the law firm of Best Best & Krieger LLP, where she assisted in representing the cities of Colton, Redlands, Fontana and San Jacinto. Rina is currently the Board President for the Inland Empire Latino Lawyers Association's Legal Aid Clinic. She was appointed by the Riverside County Bar Association to serve as a board member for Inland Counties Legal Services. Rina is also a board member of the Inland Agency. Rina has taught Legal Research & Writing I for UC Riverside Extension

and regularly speaks to pre-law students at UCR's Annual Pre-Law Conference.

In 2002, Rina earned her Juris Doctorate degree from the University of California, Davis School of Law. While at UC Davis, she was a teaching assistant for Civil Procedure, Legal Research and Legal Writing, and for the Chicana/o Studies Department at the UC Davis undergraduate campus.

Rina graduated with honors from the University of California, Riverside with a degree in Political Science and a minor in Ethnic Studies in 1999. She is a Lifetime Member of the UC Riverside Alumni Association and is also active with the RCBA's Giving Back Elves Program.



Christopher B. Harmon
Director-at-Large

Chris Harmon is a partner in the Riverside firm of Harmon & Harmon, where he practices exclusively in the area of criminal defense. Mr. Harmon has been an active member of the Riverside County Bar Association since 2000 and currently serves as the Co-Chairman of the Bar's Criminal Law Section. He also serves on the Board of Directors of the Riverside Leo A. Deegan Inn of Court. He has coached and assisted with various Riverside schools in the Mock Trial program, and is a past Executive Committee member of the Riverside chapter of Volunteers in Parole.



John D. Higginbotham
Director-at-Large

John D. Higginbotham is a partner at Best Best & Krieger LLP, and has lived and practiced in Riverside since 1999. His practice emphasizes business, employment and construction litigation.

John has served on the Barristers Board for the past several years, and currently serves as Barristers President. As Barristers President, John also sits on the Board of the Riverside County Bar Association, and as a member of the Judicial Evaluation Committee.

In addition to his service to the Bar, John serves on the Board of Directors of the Riverside Chapter of the American Red Cross, and chairs its Human Resources Committee. John and his wife Heather live in Riverside with their two children, Michael and Hailey.



Richard Brent Reed
Director-at-Large

I was born in Houston, Texas on February 3, 1951. My father was transferred to March Air Force Base in 1958, where I lived until my family moved into Riverside proper. I attended Poly High School, but graduated from Ramona High School in 1968. I attended California Baptist College (now California Baptist University), where I received a Bachelor of Arts degree in English in 1972. Three years later, at the University of California at Riverside, I completed a double minor in History and Theater Arts and acquired a Lifetime Teaching Credential.

I taught at the secondary level in the Riverside Unified School District for over 10 years. The subjects included Theatre Arts, English, American History, and World History. In the 1980s, I left teaching to operate an acting troupe that performed for schools all over Southern California. It was also during that period that I managed the

“Arts in the Parks” program for the Riverside Arts Council. I was also an active member of Riverside Community Players from 1976-1990. Currently, I belong to Evergreen Masonic Lodge No. 259 and the San Bernardino Scottish Rite, where I am a 32nd degree Mason.

In 2000, I graduated from California Southern Law School. I joined the Riverside County Bar Association in 2001 and immediately sought out the Publications Committee. I have been writing for the Riverside Lawyer magazine ever since. After passing the bar exam, I hung out my shingle, deciding to focus on business and entertainment law. Since then, I have practiced just about everything.



THERE'S A NEW SHERIFF IN TOWN

by Dorothy L. Honn

Last November, the Riverside County Board of Supervisors created a new county department, Code Enforcement. This department falls under the umbrella of the Transportation & Land Management Agency (TLMA). The board selected attorney Jay Orr as the director of the new department.

Jay started his legal career with the Riverside County Public Defender's office in December of 1987, working for Joe Taylor and sharing an office with another Deputy Public Defender, Rick Fields (now the Presiding Judge of the Riverside Superior Court). He moved to the Riverside County District Attorney's office in December of 1988. During his tenure with the D.A., Jay worked in Economic Crimes and Major Fraud and was the Supervisor of the Environmental Crimes Task Force. He progressed through the ranks and became an Assistant Deputy District Attorney in 1999. Jay was not only an excellent career prosecutor, but demonstrated his capabilities in other areas, such as administration.

Jay is married, and his wife Dorinda is a kindergarten teacher in Corona. They have three children: Michael is a sophomore at Wheaton College in Illinois, Dianne is a sophomore in high school and Christine is a seventh-grade student. When asked about his hobbies, Jay mentions his vintage fountain pen collection, which started with a graduation gift from his grandfather. He has over 100 restored vintage pens displayed in cases and available for use. In his spare time, Jay and his children help Dorinda do her prep work (handouts, items for the bulletin board, etc.) for her kindergarten class. He also enjoys watching his son play college football.

Commenting on the selection of Jay Orr to head up this new department, John Tavaglione, Chairman of the Board of Supervisors, stated: "For many years, our Board of Supervisors had worked closely with Assistant District Attorney Jay Orr in his capacity as the 'financial guru' with the District Attorney's Office. Jay was the man who was the District Attorney's 'designated hitter' each year at budget time, when the D.A. needed to walk the board floor to convince (or attempt to convince) the individual board members that their proposed budget request was worthy of approval. And Jay definitely served the D.A. well! He was professional in his approach, always well-prepared, intelligent, and very obviously a strong manager and leader. Most importantly, it was his honesty and integrity that stood out for all of us. At the end of each budget cycle deliberation, it was Mr. Orr who convinced the board and our Executive Office that their requests were worthy, and in most cases, they were approved. Whoever takes Jay's position at the D.A.'s office will have huge shoes to fill."

Tony Carstens, the Director of TLMA and Jay's immediate boss, stated: "About Jay: He's a natural for the position of Director of the TLMA Code Enforcement Department. His law background, including a stint as head of the Special Prosecution Unit with the D.A., gave him experience in pursuing and obtaining compliance in matters of environmental violations. He has a very professional demeanor that's already apparent in his make-



Director Jay Orr and Assistant County Counsel Pam Walls and the new Code Enforcement vehicle

over of the Code Enforcement Department. He's taken what used to be a unit within the Building and Safety Department and has built it into its own new department."

In September of 2006, the County Board of Supervisors began the restructuring of County Code Enforcement. According to Board Chairman John Tavaglione, they wanted to create a new "division," with "more independence in its ability to operate an efficient organization, while at the same time creating a stronger and more noticeable presence within the unincorporated communities it serves within the county . . . [I]t was very clear to all of us involved in code cases that along with the organizational restructuring, a complete and thorough review of our county's codes and ordinances needed to occur in order to give our code officers and county lawyers the needed tools and ability to fiercely enforce the numerous (and flagrant) code violations seen throughout the county. Focus on the law was critical to this effort!"

What is code enforcement? The issues dealt with by this new department are those that affect the daily life of county residents. Some examples are substandard structures, junkyards, unauthorized land use, surface mining, excessive trash accumulation, construction without permits, excessive animals, public nuisances, disabled parking, parking on private property without permission, abandoned vehicles, nuisance vehicles,



Jay Orr and his wife Dorinda, son Michael and daughters Dianne (right) and Christine (left)

garage sales, graffiti, vandalism, temporary signs, crowing roosters, noise and fireworks.

There are approximately 23 county ordinances enacted to deal with these issues. Code enforcement also responds to complaints of imminent danger, including threats to public health or safety such as unfenced swimming pools, open and unprotected septic tanks, unprotected excavations and dangerously dilapidated buildings.

In order to efficiently handle the high volume of code enforcement cases that will be generated by the department, Jay will work closely with the Office of the County Counsel, and particularly with Pam Walls, Assistant County Counsel. Pam and Jay are old friends; they attended the University of California at Santa Barbara at the same time, and also worked together a number of years ago, when Jay was at the District Attorney's office supervising the Environmental Crimes Task Force while Pam represented the county in code enforcement cases.

The Office of the County Counsel has recently hired attorneys to handle the influx of cases that will be generated by the additional code enforcement staff, and presently has eight attorneys assigned to code enforcement. These deputies will process cases through administrative abatement, citation and criminal court actions; they will also seek inspection and seizure warrants, civil penalties and injunctive relief. The philosophy is that the sooner these matters are handled, the better it is. Ordinances will be reviewed and revised when necessary, and new ordinances may be drafted. "We want to clean up Riverside County, enhance the quality of life for its residents, keep property values up, and

make it a beautiful place to live," states Assistant County Counsel Pam Walls.

When asked about his new job, Jay's enthusiasm and excitement are palpable. He believes that both his criminal prosecution background and his administrative abilities well-suit him for the job. He is excited about the innovations he can bring. The department has hired a number of new code enforcement officers and staff, bringing it to around 150 employees. A majority of the new employees come from law enforcement backgrounds. A two-week training academy has been initiated, which will be followed by field training and on-the-job training. Code enforcement officers will need to qualify and be signed off by a superior on each aspect of the job. This training will also help enhance officer safety. With the additional staff, the department will be able to move cases quickly, resolving problems and lessening the impact on the community.

The county has purchased new Ford Explorers with four-wheel-drive that are marked "County Code Enforcement" and come equipped with front and side light bars. These vehicles are not only practical for the assignment, but constitute visual deterrents to violators. Code officers will wear identifying uniforms. The department will work closely with the Riverside County Sheriff and other agencies to resolve many issues. Undercover officers will also be assigned to each district. The Department of Code Enforcement has its main office in the County Administrative Building and offices in each supervisorial district.

The county encounters unusual and unexpected issues that need a quick response, such as "fiestas." A fiesta occurs when someone decides to throw an unauthorized and uncontrolled party on property that does not belong to them, such as a large plot of vacant land. An email is sent out or notice is posted on the internet regarding the location, tents are quickly put up and thousands of people arrive. Alcohol is sold; there is cock-fighting, unauthorized sales of CDs and DVDs, and loud music, but no sanitary facilities. The fiesta springs up in one day, and by the time anyone knows what is happening, everyone has dispersed, leaving the property an unsanitary mess. Presently, code enforcement along with a task force of other enforcement agencies are dealing with such problems.

Recently, a number of homeless people were living in the Santa Ana River bed. They built unsafe and unsanitary shacks, where they were living with others and with their pets. There were a number of health issues. The county gave them notice of relocation assistance and then participated with an intervention team, including other departments, to transport these people, their pets and their belongings to shelters and to assist them in finding jobs. The county also works with Catholic Charities and other nonprofit agencies to place people who can no longer remain in unsafe structures.

Jay says the issue is regulating the quality of life. The east end of the Coachella Valley is in transition from agricultural to urban, people are moving here with high expectations and sometimes the uses affect property values or pit neighbor against neighbor. Illegal dumping, off-road vehicles and surface mining are also constant problems.

(See New Sheriff on page 23)

A MODEST PROPOSAL

by Richard Blumenfeld

As I have just left the Public Defender's office for private practice, it seems an appropriate time to weigh in on the so-called "court congestion problem." First, a disclaimer: I am not at all convinced that simply appointing more judges or building more courtrooms is the answer, as many people seem to think. Another thing we don't need is a 28-member Court Congestion Committee. Unless and until the principal players in this ongoing drama – Rod Pacheco, Gary Windom, and the judges of the criminal court system – are willing to take a hard look at their own complicity in contributing to the congestion, more judges and courtrooms are only a temporary fix.

The Problem

Judges are as much to blame for the morass as anyone. The Master Criminal Calendar Department is a microcosm of what is wrong with the system. Presiding Judge Gary Tranbarger has insisted on calling the trial calendar at 11:00, as opposed to say, 9:30, thereby bringing a number of ongoing trials to a screeching halt at mid-morning so that counsel can appear for trial call. Not infrequently, counsel are unable to get away, which occasions much speculation and colloquy by and between Judge Tranbarger and whoever is called upon to stand in for the attorney in question about when counsel is expected to finish his or her present trial. This, in turn, all too often leads to the morning trial call spilling over into the afternoon, with a concomitant delay in trial assignments and the further interruption of ongoing trials.

Add to the foregoing the loss of from one and a half hours to half a trial day in every case assigned out by virtue of the belated trial call, and you have built-in delay right from the get-go. To paraphrase Everett Dirksen, a half a day here, a half a day there, and pretty soon it adds up to real time. Judge Tranbarger would probably say that he uses the time between 8:30 and 11:00 for TRCs (trial readiness conferences). But TRCs are little more than a vestigial remnant of days gone by, when individual prosecutors had discretion to settle cases and judges had the intestinal fortitude to give indicated sentences. They take up time and space on the criminal calendar to no particular purpose. We don't need TRCs. We need more trial days.

We also need a master calendar court that is willing to enforce defendants' rights to a speedy trial, as enunciated in the seminal case of *People v. Johnson* (1980) 26 Cal.3d 557, which essentially holds that appointed counsel for

indigent defendants – deputy public defenders and conflicts defense list (CDL) attorneys – may not continue A's case in order to try B's case without A's consent. Presently, Judge Tranbarger is ignoring the rule of *Johnson* – without objection on the part of defense counsel – and telling A he has no choice but to wait until counsel finishes B's trial. Not only is this not the law, but it is calculated to prevent dismissals of criminal cases for speedy trial violations, which are a blot on the escutcheon of any master calendar judge. In effect, the court is helping the prosecution avoid dismissal by sub silentio continuances with the complicity of defense counsel. Delay and congestion are the byproducts of this unholy alliance.

However, in order to appreciate the true meaning of the words "waste" and "delay," one need look no further than Department 61, the Preliminary Hearing Master Calendar court. Nowhere are more attorney hours wasted on a daily basis than here. Every morning from 8:30 to 10:00, one can see prosecutors, defense counsel and police officers cooling their heels in this courtroom, waiting for Judge Janice McIntyre to take the bench so that they may continue their cases to yet another day. Very few cases actually go to hearing on a given day. The first hour of the calendar call is routinely devoted to continuances. There are several reasons for this. First, in order to continue a case, whether it is set for preliminary hearing or for what is euphemistically called an FSC (felony settlement conference), the prosecution customarily requires the defendant to waive time for 15 additional court days (three weeks in real time) beyond the date to which the matter is being continued. Why? Most deputy prosecutors can't or won't say, beyond "That's the way we do it." In fact, there is no reason, other than that they don't want to do anything unless or until they absolutely have to. If pressed, they will say that they have to resubpoena their witnesses, but this is nonsense. For one thing, absent a waiver of the defendant's right to a speedy preliminary hearing, they have only ten court days from the date of arraignment to subpoena witnesses for the hearing in the first place. If the case is already on for prelim, the only witnesses they need are the same police officers already cooling their heels in the courtroom, who can be ordered back by the judge without the necessity of a further subpoena.

Another problem is the routine practice of defense counsel waiving the 10- and 60-day speedy trial rights. Once a defendant waives the right to a preliminary hearing

within 10 court days of the arraignment, the only remaining right is the 60-calendar-day right, regardless of whether the defendant agrees only to an intermediate continuance. The prosecution need not show good cause or otherwise justify any further delay within the 60-day period. Sadly, most defense counsel are unaware of this rule.

Once the defendant waives the 60-day right, there is no remedy this side of a writ of habeas corpus for the failure to hold a prelim within whatever additional period the defendant has agreed to. Again, most defense counsel don't know this. And while it is certainly convenient for the prosecution, nothing contributes to the congestion of the preliminary hearing calendar more than these routine time waivers.

As a practical matter, nothing, or next to nothing, is going to settle when there is an additional 15-court-day waiver beyond that date, whether it is set for prelim or FSC. There is simply no incentive for the prosecution to make its best offer, because it doesn't have to worry about a hearing anytime soon. The upshot of all of this is that Department 61 is a mill devoted primarily

to the manufacture of continuances and additional court dates. It is hardly a coincidence that the calendar is congested.

Why do these practices persist? The short answer is habit and inertia on the part of all concerned. It is not only prosecutors who don't want to do anything until they absolutely have to. The Public Defender's office is in a shambles: Deputy public defenders are not getting adequate training and supervision and are not going to the jail to interview their in-custody clients prior to the FSC or prelim, which is inexcusable. With the paucity of courtrooms available to hear prelims due to the trial backlog, the easiest thing for the court to do is grant seriatim continuances, which, of course, not only perpetuates the congestion, but makes it ever worse, since new cases are coming into the system faster than old cases are going out.

The Solution

One solution to the trial backlog is fairly obvious, but will be met with institutional resistance. The immemorial practice of having trial departments go dark on Fridays, ostensibly to handle motions in other cases, should be discontinued. If Judge Tranbarger's figures are accurate, we now face a backlog of some 1,000 criminal cases, up from a mere 400 two years ago. Let's say that there are 15 available full-time trial departments in the criminal court building and 50 trial weeks in a year, and that the average trial takes five court days (which is a bit on the high side). That's 750 trial days or 150 trials lost per year, conservatively, due to the no-trials-on-Friday rule.

Motion departments are already designated in every felony case. These are ordinarily trial departments that typically don't convene for

trial until 9:30 anyway. There is no reason why they couldn't entertain motions from 8:00 or 8:30 until 9:30 each morning, as needed. Our civil judges have been doing this for years.

The trial calendar should be called no later than 9:30. This would enable trial counsel to handle other business before the trial call, get assigned out and handle pre-trial matters in the same morning in most garden-variety felony matters, thereby saving half a trial day in each case.

Deputy public defenders should be required to see their in-custody clients prior to the date set for preliminary hearing – no ifs, ands or buts. Since Penal Code section 1050, subdivision (k) permits either side to continue the hearing to a date not more than 10 court days from the arraignment, the preliminary hearing should be set on day 8 or 9 and the prosecution's witnesses subpoenaed and/or placed on call for that date and the day or two following. There should be no separate FSC. The great run of cases should settle or go to prelim within the initial 10-day period.

If a case is to be continued, it should be for only as long as is reasonably necessary to obtain discovery, complete the preliminary investigation or accomplish some other specific purpose, and in no case beyond 60 calendar days in non-life cases, absent exceptional circumstances. Fifteen-court-day waivers should be abolished. These effectively open-ended waivers are a license to delay and temporize, at public expense in the form of repeated appearances by police officers getting time-and-a-half for sitting

in Department 61, defendants sitting in jail longer, and public employees wasting time.

None of this is rocket science, but it does work, at least as far as the preliminary hearing calendar is concerned. I know because I've been able to prevail upon Judge Becky Dugan and now-Presiding Judge Richard Fields in the Preliminary Hearing Calendar and Drug Courts, respectively, to implement some of these procedures in years past. Despite their initial skepticism, they saw their daily calendars cut by a third to a half of what they were before. In addition, because the courtroom is less crowded, the working environment is more congenial for all concerned, and more cases actually get resolved.

The definition of insanity is doing the same thing time and time again and expecting a different result. It's time to try something new. We have nothing to lose, other than a minimum of 150 trials a year from our bloated backlog.

Richard Blumenfeld is a graduate of Stanford University and Hastings College of the Law. He joined the Public Defender's office in 1989. Mr. Blumenfeld conducted hundreds of preliminary hearings and tried scores of criminal cases in more than 17 years with that office, the last five as a Supervising Deputy Public Defender in charge of Drug Court and Felony Trials. He is now a partner in the firm of Roth & Blumenfeld, LLC, concentrating on the defense of homicides and other serious criminal cases.



CONGESTION IN THE COURT

by the Honorable Richard Fields, Presiding Judge, Riverside County Superior Court

The issue of court congestion in the Riverside County Superior Court is well-known throughout the state. In fact, this point was brought out by Chief Justice Ronald George in his State of the Judiciary Speech to the California Legislature this past February. His express reference to the overburdened courts of this county stands as a monumental recognition of the magnitude of the problem that we face.

There should be no doubt that the courts of Riverside County are severely overburdened. Several years ago, the Research and Planning Unit of the Administrative Office of the Courts was directed by the Judicial Council of California to develop a new method for determining judicial needs in the courts of this state. In order to effectively accomplish this task, the Research and Planning Unit collaborated with the National Center for State Courts (NCSC).

In October 2001, the Research and Planning Unit reported to the Judicial Council that it had, in consultation with the NCSC, completed the California Judicial Needs Assessment Project. It also reported that it had developed a new method for determining judicial needs in California. This methodology had been used by the NCSC in conducting judicial workload assessments with over ten different states. The Judicial Council determined that this information would be used to prioritize the allocation of new judgeships.

In August 2004, using the new methodology, it was determined that Riverside County actually needed 121 judicial officers in order to “resolve disputes in a quality fashion.” At that time, our court had only 69 judicial officers. That means that we were a shocking 52 judges short of the number needed to deal effectively with our caseload. Since that time, our judicial need has increased to 135 judicial officers, leaving us 66 judicial officers short.

Given this shortage of judicial officers, it is nothing short of amazing that we have been able to continue to process the thousands of cases we see each year. I attribute this to the hard work of our dedicated judges, commissioners and staff. Our records show that we average approximately double the number of jury trials per judge in comparison with the surrounding counties. This does not mean that the other courts are not working hard. They are most certainly hard-working and industrious professionals. They simply have fewer cases going to trial or more judges to handle the trials that do proceed. All of

this means that in order to accommodate the phenomenal caseload and number of cases actually requiring trials, our judges must work at an extraordinary level of efficiency.

This shortage of judges must also be contrasted with the number of attorneys added to the Riverside County District Attorney’s office and the Riverside County Public Defender’s office. In December 2006, the Press-Enterprise reported that from 2000 to 2005, Riverside County had a population increase of 26%. From fiscal year 2000-01 to 2006-07, the number of deputy district attorneys increased from 144 to 255. During that same period, the number of deputy public defenders increased from 94 to 150. The court received only one additional judgeship during the same time frame.

Over the past several years, we have imposed a formal moratorium on the conduct of civil trials on two occasions. This action by the court was referred to as a “civil shutdown.” This term is an absolute misnomer. I refer to the court’s action as the “civil double-up.” We never shut civil down. Civil cases continued to be filed and processed through the system. Our civil judges have continued to handle their fast-track and law and motion matters, notwithstanding the fact they are regularly hearing criminal trials. This means that they are reading the civil motions at night and on the weekends.

Unfortunately, for the most part, we have not been able to provide the litigants in these civil cases the access to a jury trial or a court trial that they are entitled to and most certainly deserve. Sometimes, despite diligent efforts, the parties are simply unable to resolve their disputes. This is exactly why we have courts – to facilitate the resolution of disputes in a peaceable manner. We at the court find this situation completely unacceptable. Nevertheless, we understand and honor our obligation under Penal Code section 1050 to give criminal cases priority over civil cases.

Our number-one goal at the court is to provide access to justice to all the citizens of this county and other users of the court. Access means prompt, courteous and fair service and hearings to all coming before the court. Access means hearing the multiplicity of issues coming before the court – not simply criminal cases. This would include small claims, traffic, unlawful detainer, probate, guardianship, civil, family law, juvenile court and criminal cases.

In order to accomplish this goal, we will need a dramatic increase in our judicial resources. We at the

court have been active in the struggle to get the needed resources. Over the past several years, including this year, many of our judges have participated in the Bench-Bar Coalition's "Day in Sacramento." During those times, we have had the opportunity to stress to our legislators the compelling need in California to have the resources necessary to effectuate the court's business.

After all, our business deals with the most important and fundamental issues affecting the lives of those appearing before us. Sometimes those issues are life and death issues. Sometimes they involve the decision of whether to terminate parental rights. Sometimes they involve the decision of whether to issue a restraining order. (By the way, protective orders are available 24 hours a day, as we always have a magistrate on call.) The importance of the matters appearing before the court must never be understated.

We have also been active in contacting our local legislators and speaking with many groups to seek their support of legislation for new judgeships. In April, I will be testifying before the Assembly Committee considering the new judgeship bill. Chief Justice Ronald George and the Administrative Office of the Courts have also been very active in supporting the creation of new judgeships. I am happy to report that our local legislators are keenly aware of the problem and have been very supportive.

The Judicial Council has the goal of securing 150 new judgeships over a three-year period. Last year, we were successful in getting the California Legislature to pass S.B. 56. This resulted in the creation of 50 new judgeships. This represents the first 50 of the 150 goal.

One significant fact about this legislation is that it permitted the Judicial Council to make the allocation of judges. That body made the allocation based upon need, and thus 7 of the 50 judgeships were allocated to Riverside County. Recently, the Judicial Council increased Riverside County's allocation of the 150 proposed new judgeships from 19 to 20. This reallocation was made to ensure that the courts identified as having the greatest need for judicial officers receive the new judgeships.

We expect the first seven appointments to be made this year. The current judgeship bill is A.B. 159. This bill, if passed, would result in the creation of 50 new judgeships for fiscal year 07-08. Your support for this bill is critical at this time. We urge you to contact your local legislators in support of this bill.

We are committed to doing everything within our power to provide the litigants and the bar with full and complete access to our courts. We will not rest until this goal is accomplished.



PET PROBATION CONDITIONS

by Donna Johnson Thierbach

Since this is the Criminal Law edition, we thought it would be fun to include an article about probation conditions. The word “fun” seems to work here, because often when a client reads his conditions, he is heard to utter the words, “Is this a joke?” For example, San Bernardino Probation had a condition that stated, “Keep the Probation Officer informed of place of residence, cohabitants and pets...” Yes, you read it right, pets.

Recently, an unhappy probationer convicted of possession of cocaine base for sale appealed the condition. Although the opinion (*People v. Staves*) was not published, it provided the basis for some interesting discussions. That being said, there have been a wide variety of probation conditions that have led people to ask, “Can the court really impose that?”

The formulation of a trial court's power to impose probation conditions is taken from *People v. Lent* (1975) 15 Cal.3d 481, 486, where the California Supreme Court stated, “A condition of probation will not be held invalid unless it ‘(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality’ [Citation.]” The test is conjunctive; that is, the three factors must all be found to be present in order to invalidate a condition of probation. (*People v. Balestra* (1999) 76 Cal.App.4th 57, 65, fn. 3.) In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.)

Some probationary conditions are easy to understand, because the condition relates to the crime or to conduct that is criminal. For example, if a person is convicted of possession of cocaine base for sale, a condition

directing the individual not to possess controlled substances would relate to the crime and to conduct that is criminal. If a person is convicted of animal cruelty, then to forbid the person from owning pets would relate to the crime; but why a pet condition when the person is convicted of possession of cocaine base for sale? The theory behind the condition is officer safety. When a probation officer comes to a home, the officer would like to know in advance that he or she will be greeted by a large pit bull. The natural question that follows is, which of the three factors of the *Lent* test would this fulfill?

Although the trial court's discretion is broad, it is not without limits. A condition of probation must serve a purpose specified in the statute. In addition, the courts have interpreted Penal Code section 1203.1 to require that probation conditions that regulate conduct “not itself criminal” be “reasonably related to the crime of which the defendant was convicted or to future criminality.” (*People v. Lent, supra*, 15 Cal.3d at p. 486.)

The key here is “future criminality.” For example, a piranha would seem pretty harmless, since it must be confined to a fish tank. However, something tells me that inside the tank might be a good place to hide contraband. Similarly, a large aggressive dog could delay or prevent a probation officer from entering a residence, thereby allowing a proba-

tioner time to conceal or destroy contraband within the home. Thus, ownership of certain pets may have a relationship to future criminality.

I could continue this discussion into eternity, but fortunately for you, I am allowed only a limited number of words per article. (Though I suppose for some, it may seem like an eternity just reading this article.) That being said, for now I must settle for sharing the basic rules, so you can formulate an argument no matter which side of the fence you find yourself on. For now, all I know is, I do not want to be on the same side of the fence as that pit bull!

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



New Sheriff (continued from page 15)

Jay made it clear that, while he is the Director of Code Enforcement, he will be instituting a community improvement program that will help to build community pride and create energy and involvement from the affected people. This is the softer side of code enforcement, and a tool that he is very interested in.

“With only six weeks or so on the job, Jay has more than stepped up to the challenge, with the support of Pam Walls in our County Counsel’s Office and a reenergized and increasing code staff, and we are already seeing marked improvements in our code activity and enforcement. Complaints from the community are already on the decline, and board members and their staff are encouraged and enthusiastic about Code’s future,” comments Board Chairman John Tavaglione.

We do have a new sheriff in town. As the Director of Code Enforcement, Jay Orr’s duties are similar to those of a sheriff, i.e., he is the principal official charged with enforcing county ordinances.

Dorothy L. Honn, a member of the Bar Publications Committee, is deputy county counsel for the County of Riverside.



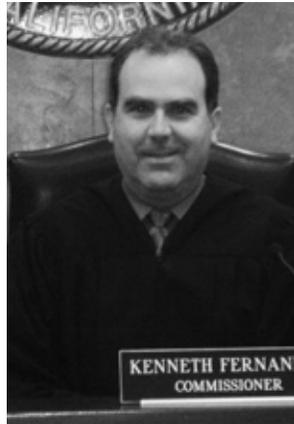
JUDICIAL PROFILE: COMMISSIONER KENNETH FERNANDEZ

by Donna Johnson Thierbach

I am still amazed at the many different avenues taken to the practice of law. Commissioner Fernandez never watched lawyer shows (not even my beloved *Perry Mason*), and his parents were not lawyers. Shoot, he did not even major in Political Science! In fact, Commissioner Fernandez thought he wanted to join the Foreign Service. To achieve that goal, he attended the University of California at Berkeley, majoring in Social Science and specializing in American Foreign Policy and International Relations. However, when he was graduating, he learned what the job really entailed. At the age of 21, being transferred country to country reviewing visas (after all, it was the 80s) did not seem very exciting or important.

As luck would have it, Commissioner Fernandez had a friend who was taking the LSAT, so on a whim, he decided to take it, too. When he did well, and the University of California at Davis accepted him, his fate was sealed. He had already decided to take a year off after undergraduate school to pay bills and travel through Spain and Portugal. Now he knew what he would do upon his return.

Now that we have that settled, how does a boy from San Jose end up in Riverside as a commissioner? Commissioner Fernandez said that during his first summer in law school, he was a law clerk at a civil firm in San Jose. The firm handled small corporate governance issues and corporate litigation. He said one summer at that firm was enough. Plus, he had become very interested in working as a Deputy District Attorney, due to the influence of his evidence and criminal procedure professors and his experiences in mock trial. However, the next summer, no northern counties were hiring, while both the Los Angeles and Riverside District Attorney's offices were recruiting clerks. Los Angeles had over 1,000 attorneys, and the offices were spread over a wide area. Riverside was a smaller office, and at that time, attorneys were hired for either the eastern or western end. Additionally, he had family in the Inland Empire, and he had spent most holidays and vacations in the Inland Empire when he was growing up, so Riverside was more appealing. He said clerking for the Riverside District Attorney's office that



Commissioner
Kenneth Fernandez

summer in 1991 was such a positive experience that he knew he wanted to return.

Commissioner Fernandez graduated from law school in 1992, took the bar that summer and started in the Riverside District Attorney's office in January 1993. When he and his wife moved to Southern California, they just immediately took to it, and they have never considered leaving. Commissioner Fernandez said they had no long-term plans when they came; they just did not think that far ahead. Wait a minute, did I say wife? Commissioner Fernandez said he met his wife in chemistry class when they were juniors in

high school. They both attended UC Berkeley, but then they had a long-distance relationship while in graduate school. Commissioner Fernandez attended UC Davis while his future bride attended USC. She received her master's in physical therapy, and they married in 1991, before his last year of law school. What is truly amazing is that the couple survived the final year of law school and all that studying for the bar!

As a Deputy District Attorney, Commissioner Fernandez seems to have had virtually every assignment. He had assignments in misdemeanors, preliminary hearings, juvenile, writs and appeals, felony trials and family support. Commissioner Fernandez said he had no thoughts of applying to be a commissioner until he was encouraged to do so by some judges.

As a commissioner, Commissioner Fernandez said, he enjoys not being an advocate for either side. He has been assigned to misdemeanors, drug court, traffic, back-up small claims and, since August 2006, dependency court.

Commissioner Fernandez said dependency court has been a great challenge, especially as he never practiced dependency law as a lawyer. He said it is an awesome responsibility, in that the decisions that are made affect children for the rest of their lives. He said it was also a shock to him that some people want to give up their children. He said in dependency court, it is obvious that drug crimes are not victimless, because many of the cases relate back to methamphetamine use. Commissioner Fernandez recalled how recently, one addicted mother gave up her child voluntarily. He said her statement showed she had a lot of insight into her problems, and it was so moving that everyone in the courtroom was crying.

Contributing to the community is very important to Commissioner Fernandez. As an attorney, he was on the board of the Rape Crisis Center for six years and served as president for one year. Currently, he serves on the California Judges Association Ethics Committee and, as a result, handles hot-line calls from judges and commissioners all over the state of California. He also teaches the Qualifying Ethics Course for Judges and Commissioners through the statewide Administrative Office of the Courts (AOC) Center for Judicial Education and Research (CJER).

Commissioner Fernandez is also the chair of the Superior Court Commissioners Committee and a member of the Court Community Planning Committee.

Commissioner Fernandez has been married for 15 years, and he and his wife have two children. Their hobbies revolve around their children, including scouting, youth group activities, karate, sports and dance. He said that, although he loved soccer as a child, his children seem to prefer dance and karate. Oh . . . and he still does not watch lawyer shows!



WHY YOU SHOULD JOIN THE CRIMINAL LAW SECTION

The RCBA Criminal Law Section has once again been holding regular quarterly meetings. This year, we have had two successful meetings with informative and insightful speakers. The Criminal Law Section hopes to provide talks on useful topics that will assist both the experienced criminal practitioner and the novice alike.

In our first meeting, the section met to discuss DMV *per se* hearings. One of the most common cases that lawyers in private practice encounter is that of a friend, relative or acquaintance who has been arrested for driving under the influence. And most of the time, the person arrested has no idea about his or her legal rights, and the lawyer has no idea about how to advise a client with respect to the DMV. Thus, this seminar centered on the DMV process as well as on strategies and tactics for effectively defending your clients.

Our second meeting focused on our local drug court and the various nuances involved in representing a client in a drug case. Attorney Chris Oliver gave a very detailed and informative seminar regarding the various sentencing alternatives, such as “drug diversion,” Penal Code section 1000, Proposition 36, the ROC program, and the many other programs that attorneys who handle drug cases should be familiar with.

It is our hope and desire that in the future, the Criminal Law Section will have joint meetings with other groups. The appellate section has already contacted us in hopes of conducting a joint session regarding appellate criminal issues. We hope that you will be interested in attending our seminars in the future. If you or anyone you know has an interest in criminal law, we strongly recommend that you look for our announcements in the RCBA’s monthly mailers or contact either Chad Firetag or Chris Harmon.



RCBA GOLF TOURNAMENT

Photographs courtesy of Robyn Lewis.

The Riverside County Bar Association would like to acknowledge all the sponsors and volunteers that made the Golf Tournament possible (February 19, 2007).

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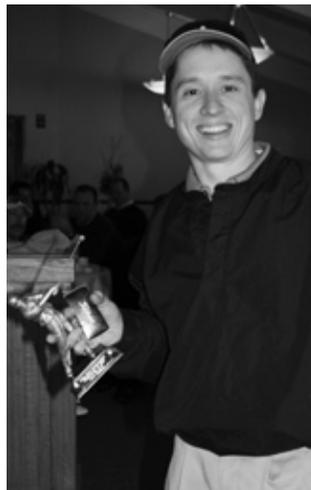
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First Place Team (Chris Carter, Ron Danieri, Robert Rinehart, Steve Moran)



*Second Place Team (John Higginbotham, not pictured:
Paul Snowden, Kyle Snow)*



*Third Place Team (Bill Bratton, Judge Michele
Levine, Michael Clepper, Erik Bradford)*



*Best Putts and Longest Drive Winner,
Greg Praytor*



Closest to the Hole Winner, Mike Kerbs



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Office Space – San Diego, Wyndham Emerald Plaza

Suitable for Satellite Office – Single, double or more available, 24th Floor. Spacious window offices with views and adjacent secretarial stations; Conference room, kitchen, law library access and all amenities. Contact Misha Schreiber at (619) 239-4340 or mschreiber@bacalski-ottoson.com for information.

Executive Suites Downtown Riverside

Executive Suites Available. Tower Professional Building is on the corner of Lime and 13th in Downtown Riverside within walking distance to all courts. Building has receptionist and many amenities. Please call Carole at 951-686-3547 or email towerpm@sbcglobal.net for more information.

Office for Rent – Full Service

Inns of Court Law Building, 3877 Twelfth Street, Riverside, CA 92501. One block from Court House. Call Vincent Nolan at (951) 788-1747.

Probate/Estate Planning Attorney Position

Heritage Law Offices (fka Law Offices of Herb Chavers) has an opening for an associate attorney position. Practice areas include Estate Planning and administration, including uncontested probate court matters (probate, guardianship, conservatorship, and trust petitions). Experience in estate planning or probate court matters is a plus. Please submit a resume to herb@heritagelawoffices.com.

Attorney – Riverside

Riverside law firm seeks associate attorney with 2-5 years of experience in civil litigation. Salary is commensurate with experience. Please fax resume to: Phil Jump, 951-274-7794.

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Conference Rooms Available

Conference rooms, small offices and the third floor meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance, by contacting Charlotte at the RCBA, (951) 682-1015 or charlotte@riversidecountybar.com.

MEMBERSHIP

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

Suzanne Bryant – Moreno Valley City Attorney's Office, Moreno Valley

John Joseph Buckey, Jr. – Sole Practitioner, Corona

Jorje Chica – Riverside County Superior Court, Riverside

Michael DesJardins – DesJardins & Panitz LLP, Riverside

Paul J. Early – Moreno Valley City Attorney's Office, Moreno Valley

Winnifred Love (A) – Winnifred Love Bail Bonds, Winchester

Lori Ann Myers – Sole Practitioner, Riverside

Matthew T. Poelstra – Green Bryant & French LLP, Palm Desert

N. Thomas Sheahan – Geomatrix Consultants Inc., Corona

Jillian I. Sidoti – Sole Practitioner, Temecula

Wade J. Skalsky – Law Offices of Wade J. Skalsky, Riverside

Warren J. Small, Jr. – Law Office of Warren J. Small, Riverside

Robert M. Tessier – Centres for Excellence in Dispute Resolution, Los Angeles

Nicholas Van Parys – Van Parys Law Office, Los Angeles

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