RIVERSIDE LAWYER

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MAGAZINE

In This Issue

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 our members, our communities, and our legal system.

Membership Benefits

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

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

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

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

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

The Riverside Lawyer *is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 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 the* Riverside Lawyer.

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

Calendar

September

27 **RCBA Annual Installation of Officers Dinner**
Mission Inn – Grand Parisian Ballroom
Social Hour – 5:30 p.m.
Dinner – 6:30 p.m.

EVENTS SUBJECT TO CHANGE.
For the latest calendar information please visit the RCBA's website at riversidecountybar.com.

ATTENTION RCBA MEMBERS

If you are not getting email updates/notices from the RCBA and would like to be on our mailing list, visit our website at www.riversidecountybar.com to submit your email address or send an email to lisa@riversidecountybar.com

The website includes bar events calendar, legal research, office tools, and law links. You can register for events, make payments and donations, and much more.

ON THE COVER: March for Our Lives
photo courtesy of Jacqueline Carey-Wilson

President's Message

by L. Alexandra Fong

Here it is, my last message as president of the Riverside County Bar Association (RCBA). It has been an honor to serve as your president this past year. RCBA has done so many things this past year and I thought it would be a good idea to reflect on these, all of which I participated in.

Hosting the State Bar President: Michael Colantuono, the last president of the State Bar of California, spoke at the joint meeting of RCBA and San Bernardino County Bar Association (SBCBA) in December 2017. This meeting was held at the California Court of Appeals, Fourth Appellate District, Division Two. His term ended December 31, 2017, due to the changes to the State Bar of California. In January 2018, he was appointed chair of the State Bar of California's Board of Trustees.

The Elves Program: The Elves Program is one of the programs of Riverside County Bar Foundation, Inc. (the "Foundation"), the charitable arm of RCBA. This past year, the raised funds, supplemented by the Foundation, to assist 64 families, providing gifts and a holiday dinner to 252 individuals (163 children and 89 adults).

Swearing-In Ceremony of New Attorneys: Held in December 2017 and June 2018, this event is co-hosted with Presiding Justice Manuel Ramirez of the California Court of Appeals, Fourth Appellate District, Division Two. We met many excited individuals who have passed the July 2017 and February 2018 California State bar examinations and are eager to embark on their new careers as fellow attorneys. I, as well as my colleagues from the San Bernardino County Bar Association and the Inland Empire Chapter of the Federal Bar Association, spoke to these new attorneys and encouraged them to become active with their local bar associations.

Mock Trial: On Saturday, March 3, 2018, the 35th Annual Riverside County Mock Trial competition final was held in Department 1 of the Historic Courthouse. As president, I was one of the scoring attorneys in this final competition, along with Judge Helios Hernandez, District Attorney Michael Hestrin, Public Defender Steve Harmon, and defense attorney Paul Grech. Presiding Judge Becky Dugan presided over the trial. Martin Luther King High School defeated Poly High School in the final round.

Good Citizenship Awards: Good Citizenship is one of the programs of the Foundation. On April 27, 2018, RCBA and the Riverside Superior Court co-hosted the Good Citizenship Awards, which were held in Department 1 of the Historic Courthouse. Over 40 high school students from throughout the county were recognized for their good citizenship.

Project Graduate: Project Graduate is one of the five programs of the Foundation. On June 20, 2018, Project Graduate held its yearly luncheon to celebrate the foster youth participants who successfully graduated from high school. A certificate and laptop were bestowed upon each graduate.

Foundation Fundraiser: All Foundation programs are expected to continue with their annual fundraising efforts but the Foundation also holds a general fundraiser to help its programs, as well as the community. In spring 2017, when I was president-elect, I organized the "Spring into Action" fundraiser with my committee members. This year, the Foundation fundraiser will be organized by current President-Elect Jeffrey A. Van Wagenen, Jr. It is anticipated to occur in late summer 2018.

I close this column as I have closed past columns, with an invitation to attend a board meeting. The final meeting of the 2017-2018 RCBA board will be on August 15, 2018. At this meeting, we will review and approve a budget which will then be sent to our members for final approval. I know that this organization will continue to thrive under the leadership of incoming president, Jeffrey A. Van Wagenen, Jr.

L. Alexandra Fong is a deputy county counsel for the County of Riverside, practicing in the field of juvenile dependency law, and is the president-elect of the Leo A. Deegan Inn of Court.

NOTICE

Notice is hereby given that the RCBA Board of Directors has scheduled a "business meeting" to allow members an opportunity to address the proposed budget for 2019. The budget will be available after August 8. If you would like a copy of the budget, please go to the members section of the RCBA website, which is located at riversidecountybar.com or a copy will be available at the RCBA office.

Wednesday, August 15, 2018
at 5:15 p.m. in RCBA Board Room

RSVP by August 13 to:

(951) 682-1015 or
charlene@riversidecountybar.com

Barristers President's Message

by Shumika T. R. Sookdeo

The past few months have proven to be altogether, challenging, extremely rewarding, but most importantly, fun! I reflect back to the moment just before I was elected as president of the Barristers; when I was concerned about how well I would lead the organization. I can now laugh at the moment and feel extremely thankful for the words of encouragement from our immediate past president, Erica Alfaro. The 2017-2018 Barristers board was awesome!

I am incredibly thankful for the hard work shown by each board member and their devotion to the organization's growth this year. Thank you for your unwavering support and commitment: Breanne Wesche, Nesa Targhibi, Priscilla George, Kristopher Daams, Megan Demshki, Braden Holly, Paul L. Lin, and Erica Alfaro. Together, we presented several MCLE events, numerous social and networking events, charitable works, and our annual judicial reception. I would like to also express gratitude to our sponsors, judicial officers, attendees, and persons who worked behind the scenes to make all our events this year a success. These events have allowed us to get to know one another better, fostered a stronger relationship between new attorneys and the bench, and attract additional new attorneys who ultimately have decided to become members of Barristers.

It has truly been an honor to serve as Barristers president. I am excited to pass the baton over to incoming president, Megan Demshki, who will do an amazing job.

Announcement

Barristers proudly announces its newly elected 2018-2019 board of directors. Congratulations to the following:

President: Megan Demshki
President-Elect: Paul L. Lin
Treasurer: Braden Holly
Secretary: Rabia Chaudhry
Members-at-Large:
Taylor DeRosa
Goushia Farook
Patricia Mejia
Michael Ortiz

I will continue on the board as immediate past president

Upcoming Events

In August, we plan to volunteer our time and energies towards feeding the homeless veterans at the March Air Reserve Base. Details for this event will be available via our media outlets soon.

Finally, please stay informed about Barristers' events by joining our mailing list at www.riversidebarristers.org or follow the Riverside County Barristers Association on Facebook.

Shumika T.R. Sookdeo, managing attorney of Robinson Sookdeo Law, is a past president of the Richard T. Fields Bar Association, a commissioner on the California Commission on Access to Justice and a board member of John M. Langston Bar Association and the California Association of Black Lawyers.

SAVE THE DATE

The Riverside County Bar Association requests the pleasure of your company at the

Annual Installation Dinner

Honoring President Jeffrey Van Wagenen, Jr., the Officers of the RCBA and Barristers for 2018-2019

Special presentation to
Robyn A. Lewis
Recipient of the E. Aurora Hughes Meritorious Award for Service

Thursday, September 27, 2018
Social Hour 5:30 p.m.; Dinner 6:30 p.m.

Mission Inn, Grand Parisian Ballroom
3649 Mission Inn Avenue, Riverside

The Understaffing of the Federal District Court in Riverside Puts a Burden on All Litigants in the Inland Empire – Washington, We Need Your Help!

by Daniel S. Roberts

In 1992, Congress created the Eastern Division of the Central District of California to serve Riverside and San Bernardino counties. Congress recognized the dramatic growth in population in the area, as well as the challenges of serving the area from Los Angeles. The Eastern Division formally opened in August 1995, with one district judge, Robert Timlin, who sat in borrowed space in the Riverside Superior Court. As the area continued to grow, the area received a second district judge in 1999, Virginia Phillips, who is currently the presiding judge of the Central District, and finally its own federal courthouse in Riverside in 2001.

The population of the Eastern Division has continued to grow rapidly, from about 2.8 million in 1992 to roughly 4.5 million today. The Eastern Division covers 27,408 square miles. By way of comparison, it is comparable in population to the State of Kentucky, and in land area to the State of West Virginia. Kentucky and West Virginia each have two federal district courts to serve its citizens, with nine and eight authorized district judgeships, respectively. Our Eastern Division has only ever had, at most, two district judges at any given time, and frequently only one.

The result has been, for the entire history of the Eastern Division, that more cases are filed here than can be fairly handled by District Judge Jesus Bernal, the only district judge assigned here. Accordingly, the court has devised a process of reassigning a portion of the Eastern Division caseload to judges assigned to the court's other divisions (predominantly the Western Division in Los Angeles, but also the Southern Division in Santa Ana) to equalize assignments among district judges throughout the Central District. This occurred even in the best of times (for example, when the Eastern Division has had two district judges).

While the assistance from the district judges in Los Angeles and Santa Ana is certainly helpful in getting cases resolved and greatly appreciated, these transfers nevertheless impose substantial hardship on litigants in the Inland Empire. The additional travel time to hearings and trials in Los Angeles or Santa Ana, instead of having the matters heard in Riverside, imposes not only substantial financial cost to the litigants for their attorneys' time spent in traffic, but also substantial inconvenience to the parties and witnesses themselves in travel to trials and hearings. It is, in the words of one prominent local attorney (and former judge), a tax on the litigants of the Inland Empire.

The problem is particularly acute now, as now we are not in the "best of times" as far as having both Eastern Division district judge positions filled. For more than two years, since Judge Phillips became Chief Judge and relocated from Riverside to Los Angeles, the Eastern Division has had only one district judge to serve the 4.5 million people of the Inland Empire.[1] The result has been that the "normal" reassignment of Eastern Division cases to another Division has become the rule rather than the exception. Since 2016, roughly two-thirds of the civil cases which should have been heard in the Eastern Division (meaning that a majority of the plaintiffs or defendants reside in Riverside or San Bernardino County, or that the case was removed from either the courts in Riverside or San Bernardino counties) have been reassigned. In 2017, nearly 1,000 civil cases that should have been heard in Riverside were instead heard in Los Angeles. Criminal cases are also reassigned for the same reason. In 2017, of the 264 criminal defendants whose cases should have been heard in Riverside, more than half (136) had their cases transferred to a judge in Los Angeles.

The problem goes beyond just the added travel, however. The other Divisions are laboring under their own shortage of district judges. The Western Division in Los Angeles currently has five of its existing district judge positions vacant.[2] Thus, there is no "extra" capacity to devote to the overflow of Inland Empire cases. All of the district judges in the Central District (along with help from the senior judges, and the magistrate judges where permissible) are working overtime to handle the crush of cases.

The court is doing all it can to serve the community. More district judges are needed, both in the Central

1 This is not the first period that our Division has faced a prolonged vacancy. Similar episodes occurred from February 2005 through March 2006 and again from September 2009 through December 2012.

2 These vacancies are of the currently authorized judgeships. The Judicial Conference of the United States has determined, based on caseload and complexity, that the Central District as a whole needs seven additional new District Judgeships. That takes an act of Congress, however (literally!). Not only has congress failed to take any noticeable action on this latest Judicial Conference recommendation, it has not passed an omnibus judgeship bill since 1990.

District overall and especially in the Eastern Division. The solution to this problem lies with the political branches, Congress and the president. Of course, the existing vacancies (including ours in Riverside) can only be filled by President Trump, with the advice and consent of the Senate. Unfortunately, as of this writing the president has not even nominated anyone for the Senate to consider for any of the six Central District vacancies. That both California senators are of a different party than the president is no reason for these vacancies to persist. The same situation existed during George W. Bush's presidency, yet 14 district judges were appointed to the Central District during that time, including Stephen Larson in Riverside. Understandably, all of the attention is now on the process of filling the Supreme Court vacancy left by Justice Anthony Kennedy's retirement, but we cannot allow our servants in Washington to continue to forget the severe needs of our community, both in the Inland Empire and the Central District as a whole. Our senators and the administration need to know the importance to our community of filling these district court positions. The task need not be partisan, as shown by the experience during the Bush years. Well-qualified candidates exist. Compromise between our Republican president and Democratic senators is possible. Nearly 20 million people in the Central District, including 4.5 million people in the Inland Empire, need federal district judges to hear their cases. The political branches in Washington must be pressured to fill those vacancies.

Dan Roberts is the managing partner of Cota Cole & Huber LLP's Southern California office in Ontario and is a member of the board of directors and past president of the Inland Empire Chapter of the Federal Bar Association.

Turning Sharply to the Right

by Dean Erwin Chemerinsky

The just completed Supreme Court term was, by far, the most conservative in recent memory. Almost without exception, the conservative position prevailed in every major decision. It was a term for conservatives to rejoice about and for liberals to see as a harbinger of what to expect for years to come. The retirement of Justice Anthony M. Kennedy ensures that the Court will be even more conservative for a long time to come.

One explanation for the Court's stunning consistent conservatism this year, in fact, was Justice Kennedy. He widely has been described as the "swing justice" on the Court, but he didn't swing at all this term. There were 18 5-4 rulings out of 59 decisions. Justice Kennedy voted with Chief Justice John G. Roberts, Jr., and Justices Clarence Thomas, Samuel Alito, and Neil M. Gorsuch in 13 of them. He voted with the liberal justices – Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor, and Elena Kagan – zero times. A year ago, in the ideologically divided cases, Justice Kennedy was with the liberals 57% of the time.

The conservatism of the term also can be explained in another way: elections, or more precisely the Electoral College, matter. If Hillary Clinton had been elected and had replaced Antonin Scalia, with Merrick Garland or someone more liberal, it is likely that the results in virtually all of these 5-4 cases would have come out the other way. Republican voters understood the importance of the November 2016 election for the Supreme Court much more than Democratic ones. Of those who voted for Trump, 56% said that the Supreme Court was the most important factor in their choice for president, but only 41% of those who voted for Hillary Clinton said this.

What explains the decisions of October Term 2017 is not any principle like judicial restraint or originalism, but simply the conservative values of the majority of the justices. The justices were adhering to the vision of the Republican platform.

Sometimes the justices engaged in remarkable judicial activism, such as in *Janus v. American Federation*, where the Court overturned a 41-year-old precedent and held that no longer can public employees be required to pay the "fair share" of union dues that go to support collective bargaining.

For four decades the Court had adhered to the view that non-union members benefit from collective bargaining in their wages, hours, and working conditions. They should not be able to be free riders. But on Wednesday, June 27, the Court said that requiring this payment is impermissible compelled speech and invalidated provisions in tens of thousands of contracts between governments and workers. The decision was 5-4, with Justice Alito writing for the Court. This case is going to have an enormous effect in California, as hundreds, if not thousands, of public employees contracts have been based on *Abood v. Detroit Bd. of Ed.* (1977) 431 U. S. 209, 235–236.

In *National Institute of Family and Life Advocates v. Becerra*, the Court declared unconstitutional a California statute that required that reproductive health care facilities in the state post notices that the state provides free and low-cost contraceptives and abortions for women who economically qualify. Also, unlicensed facilities were required to post notices saying that they were not licensed to provide health care. The California legislature adopted the law because of the existence of over 200 pregnancy crisis centers in the state that are affiliated with religion and fail to inform women of their rights and often provide false information. The Court, 5-4, in an opinion by Justice Thomas found this to be impermissible compelled speech.

The Court said that the California law was a "content based" regulation of speech. Of course, all laws requiring disclosure of information prescribe the content of speech. This decision will open the door to challenges to many of these requirements.

In other cases, the Court exhibited great judicial passivity. In upholding President Trump's travel ban, in *Trump v. Hawaii*, Chief Justice Roberts' majority opinion expressed enormous deference to the president in the area of immigration, even when the decision was motivated by a frequently expressed desire for a "total and complete shutdown of Muslims entering the United States."

The Court said that in the area of immigration, the president has broad discretion and only rational basis review is to be used. Under rational basis review, any conceivable government purpose is sufficient; the government's actual purpose is irrelevant. The Court set a dangerous precedent that allows a president to presume that people are more dangerous just because of their religion or their country of residence. Again, the ruling was 5-4, split along ideological lines.

Even apart from the 5-4 decisions, the conservative position prevailed, though sometimes more narrowly. The Court had two cases challenging the practice of partisan gerrymandering, where the political party that controls the legislature draws election districts to maximize safe seats for that party.

This undermines the democratic process; no longer are the voters choosing their elected officials, but rather it is elected officials choosing their voters. The Court dismissed both cases on procedural grounds.

In *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, the Court ruled in favor of a baker who refused to design and bake a cake for a gay couple's wedding celebration. The ruling was narrow, but overturned a lower court decision in favor of the gay couple. The Court said that two members of the Colorado Civil Rights Commission made statements that expressed hostility to religion. The larger questions – does it violate freedom of speech or freedom of religion to force a business to provide services – were left unresolved.

The only major win for liberals was in *Carpenter v. United States*, where the Court held that police must obtain a warrant before accessing cellular location information that can be used to determine a person's whereabouts or movements. Every time a person uses a cell phone it communicates with a cellular site. In fact, cell phones do this even when they are not being used. This provides information as to the location of a cell phone. And a person's movements can be tracked by seeing how his or her phone shifts from one cellular site to another. So a person's location and movements can be tracked with a fairly high degree of precision from cellular location information. The Court held that an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through cellular site location information. Chief Justice Roberts wrote for the Court in a 5-4 decision holding that police in general must obtain a warrant to access such information. His opinion was joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan.

A conservative Court is about to get much more conservative. And it is going to stay that way for a long time. Justice Thomas is 70 years old; Justice Alito is 68; Chief Justice Roberts is 63; and Justice Gorsuch is 50. Absent unforeseen circumstances, they and the new nominee will be the majority for the next ten to twenty years. For conservatives, this is a time to celebrate. For liberals, it is devastating.

Erwin Chemerinsky became the 13th Dean of Berkeley Law on July 1, 2017, when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law. Prior to assuming this position, from 2008-2017, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at University of California, Irvine School of Law, with a joint appointment in Political Science. Before that he was the Alston and Bird Professor of Law and Political Science at Duke University from 2004-2008, and from 1983-2004 was a professor at the University of Southern California Law School, including as the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science.

March for Our Lives – Riverside

by Jacqueline Carey-Wilson

On March 24, 2018, thousands gathered on the steps of the Historic Courthouse in Riverside for the "March for our Lives." A local group of high school students led the march. Similar marches occurred through the state and nationally in response to the deadly mass shooting at Stoneman Douglas High School in Parkland, Florida that killed fourteen students and three faculty members on February 14, 2018. The shooting in Parkland was one of the deadliest school mass shooting in the nation.

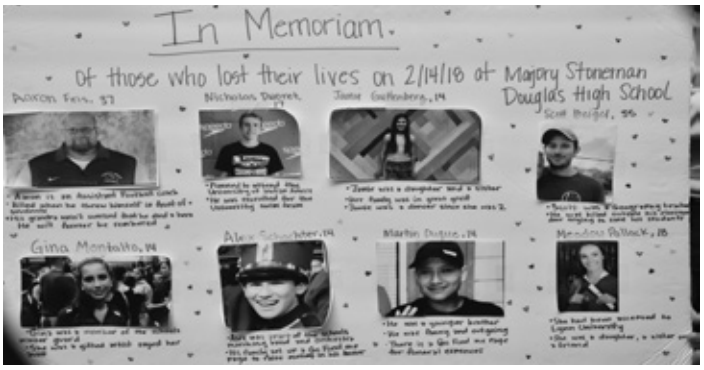
Before the march, a rally was held where the speakers were introduced by their names and the ages they were when past mass shooting occurred – for example, speakers were six years old when the Virginia Tech shooting took place; eleven years old for Sandy Hook; and seventeen years old for Stoneman Douglas, and so on. The students called on Congress to enact stricter gun control laws and mandate more comprehensive background checks. The students also called for individuals to promote change in Washington by voting out politicians who do not support stronger gun control legislation.

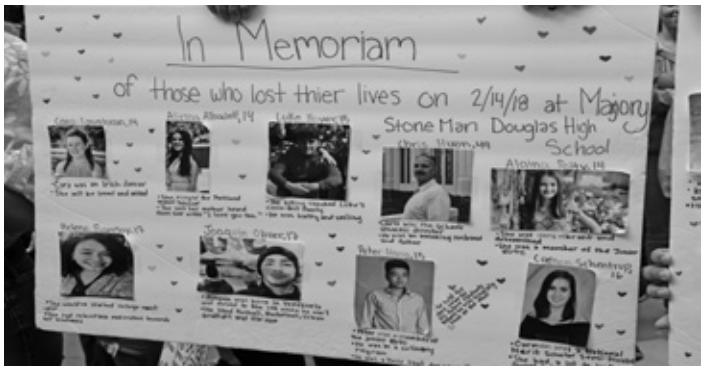
The march began between the Family Law and Hall of Justice courthouses and the students led the demonstrators around Lemon Street up to University Avenue and ended in front of the Historic Courthouse. At the conclusion of the event, students read the names and ages of the victims from Stoneman Douglas High School followed by a moment of silence.

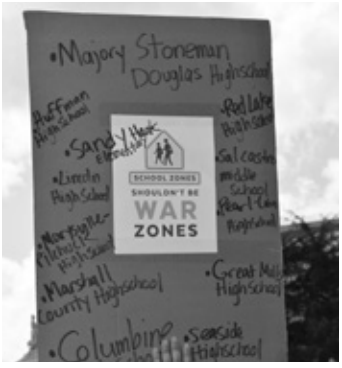
Alyssa Alhadeff, 14	Chris Hixon, 49	Meadow Pollack, 18
Scott Beigel, 35	Luke Hoyer, 15	Helena Ramsay, 17
Martin Duque, 14	Cara Loughran, 14	Alex Schachter, 14
Nicholas Dworet, 17	Gina Montalto, 14	Carmen Schentrup, 16
Aaron Feis, 37	Joaquin Oliver, 17	Peter Wang, 15
Jaime Guttenberg, 14	Alaina Petty, 14	

Jacqueline Carey-Wilson is a deputy county counsel with San Bernardino County, editor of the Riverside Lawyer*, and past president of the Riverside County Bar Association and the Inland Empire Chapter of the Federal Bar Association.*

photos courtesy of Jacqueline Carey-Wilson.







McCoy v. Louisiana and Implications of Incompetency

by Juanita E. Mantz and Andrew Lopez

When asked to write about the recent 2018 decision in the United States Supreme Court case, *McCoy v. Louisiana*,[1] for this constitutional issue of the *Riverside Lawyer*, we thought that an important issue rarely talked about in constitutional circles is competency. And, in the *McCoy v. Louisiana* case, competency is clearly an issue, although the Supreme Court glosses over it by maintaining their focus on the Sixth Amendment issue.

McCoy v. Louisiana involved whether it was a violation of the Sixth Amendment in a three-count first-degree murder trial for defense counsel to concede a client's guilt, in the guilt phase, over his client's objection.[2] In the case, the defendant, Robert McCoy (McCoy), had insisted on the stand that he was factually innocent and presented a bizarre conspiracy and alibi defense that the "corrupt" police had done the murders when he was out of town.[3] During the guilt and penalty phase of the trial, defense counsel had conceded guilt over client's strenuous objection with the Court's approval, but had argued that McCoy's mental state prevented him from forming the specific intent for guilt and that his mental health issues should be considered in sentencing.[4] The jury found him guilty and in the sentencing phase, returned three death verdicts.[5]

The Supreme Court (disagreeing with the Louisiana Supreme Court), ultimately held that the Court had committed "structural error" by allowing such conduct and that McCoy should obtain a new trial as the Sixth Amendment guarantees a defendant the right to choose the objective of his defense and to insist that his counsel refrain from admitting guilt, even when that attorney's decision is based on experience and a belief that confessing guilt offers the defendant the best chance to avoid the death penalty.[6]

Ultimately, the Supreme Court's majority in *McCoy* focused on a specific narrow issue: whether it is unconstitutional to allow defense counsel to concede guilt over the defendant's intransigent and unambiguous objection.[7] In the ruling, the Court cited ABA Rule of Professional Conduct 1.2 (a)(2016), which states that a "lawyer shall abide by a client's decisions concerning the objectives of representation."[8] While the choice to follow a client's objective in a defense seems intuitive, the adherence to the ABA guidelines becomes complicated once a client's mental competency is questioned. Furthermore, while the Court did not address the issue of whether McCoy was, in reality, mentally competent and fit for trial, the persistent references in both the majority and dissenting opinions describing McCoy's behavior, conduct, and reasoning exposes a potential pitfall: one may be able to be declared competent to stand trial, yet incapable to exert the autonomy required to present their defense and act in their own best interest.

During trial proceedings, McCoy was referred for competency hearings to determine whether he had "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding."[9] McCoy was deemed competent to stand trial. Yet, both the majority and dissenting opinions describe McCoy's irrational decision making and bizarre behavior and beliefs.[10] Despite "staggering" and "overwhelming" evidence implicating McCoy in three counts of first-degree-murder, McCoy declared his innocence on the stand with an "alibi difficult to fathom," which involved a "conspiracy" of local, federal, state police, his attorney, and the presiding judge were all out to frame him. His defense lawyer, Larry English, implored the jury to see that McCoy had "serious mental and emotional issues."[11]

Choosing to accept the staggering finding that McCoy was competent was in conflict with evidence in the records that McCoy did not appear able to assist in his own defense by acting in his own best interest. It is also important to note that defense counsel had tried to withdraw, but was not allowed as trial was imminent.[12]

Thus, it appears that the competency finding may have been a fiction, one the Supreme Court was required to accept in their ruling. This, however, puts defense counsel in an untenable position. The rock and hard place is this: a client is found competent and yet wants to assert a wildly unbelievable defense against his own interest due to his mental health issues. What should defense counsel do? In *McCoy*, the defense counsel clearly did what he

1 *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018).
2 *Id.* at p. 1505.
3 *Id.,* at pp.1506-1507.
4 *Id.*
5 *Id.* at p. 1507.
6 *Id.* at pp. 1511-1512.
7 *Id.* at 1507.
8 *Id.* at p. 1509.
9 *Id.* at p. 1509.
10 *Id.* at pp. 1506-1507, 1512-1514.
11 *Id.* at p. 1507.
12 *Id.* at. pp. 1513-1514.

thought was best, he tried to withdraw and when not allowed to, acted in what he believed was his client's best interest, by conceding guilt and highlighting the client's mental health issues.[13]

The Supreme Court's ruling makes this impermissible, by essentially holding that a defense counsel put in this position is required to go along with his mentally ill client's wishes, even when in his/her educated and experienced opinion, the cost of those wishes is death.

Thus, once declared competent, a defendant's ability to function is elevated and characterized to be a "master of his own defense" and a captain able to "steer" a ship on a long voyage.[14] The Supreme Court majority insisted in the opinion that McCoy's "autonomy" signified that he could make his own choices about the proper way to protect his own liberty."[15] Yet, throughout the majority and dissenting opinion, we are repeatedly told about Mr. McCoy's unreasonableness and an inability to act consistent with one trying to actually defend oneself from death. The Supreme Court's dissenting opinion ironically emphasizes why these authors believe McCoy's competency should be still questioned by stating that McCoy was the type of "rare plant" that comes very seldom because such an occasion would occur only in cases involving "irrational capital defendants."[16]

In considering the majority and dissenting opinions, it is important to note that both opinions identify concerning behavior suggesting an inability by a defendant to follow reason and to act in his own best interest, implying that McCoy's behavior, although odd, was autonomous. But, we would argue that McCoy's autonomy does not resemble a moral and just adherence to reason, but rather a diminished functioning resulting in an independent mind creating irrational decisions.

Perhaps, *McCoy* underlines what we in mental health law have known all along, the competency issues are very serious and complicated and it is vital that one must litigate them fully because otherwise, an incompetent client could go to trial and even potentially be executed.

Juanita E. Mantz ("JEM") is a Riverside County deputy public defender and represents clients in incompetency proceedings in mental health court. She also writes creative nonfiction in her spare time and will be attending Sandra Cisneros' Macondo Conference in July.

Andrew Lopez is a 2L at University of La Verne College of Law and a law clerk with the Riverside County Public Defender's Office in the mental health unit.

13 *Id.* at p. 1507.
14 *Id.* at p. 1509.
15 *Id.* at p. 1507.
16 *Id.* at p. 1515.

18th Annual Constitutional Law Forum

by Krystal Lyons, Kay Otani, and Mark Schnitzer

Riverside Legal Aid Attorney Robert Simmons Honored

Dean Erwin Chemerinksy Discusses Supreme Court Term

Dean Erwin Chemerinsky

The origin of the Inland Empire Chapter of the Federal Bar Association (FBA/IE) was a joint committee of the Riverside and San Bernardino County Bar Associations formed at the end of 1995. Ted Stream represented the Riverside County Bar and Mark Schnitzer represented the San Bernardino County Bar. Various people were on the committee, including the District Judge Robert J. Timlin, who passed away in 2017, and Bankruptcy Judge David Naugle, who retired from the bench in 2008.

The committee decided to form a FBA chapter and the process began. They began soliciting membership, communicating with other local chapters (Orange County and Los Angeles), and asking the national FBA for guidance. They were invited to attend the FBA annual meeting in September 1996. They obtained provisional status as a chapter in October 1996. Shortly thereafter they formed a board from the committee members and elected officers. Mr. Schnitzer was elected as charter president and Mr. Stream was president-elect. The FBA/IE presented educational programs much as today.

In April 1997, the FBA/IE had 39 members whose names appeared on the charter. By the time of the annual convention in September 1997, the chapter had grown to 75 and was the fastest growing chapter in the country.

In November 1997, the chapter held the first annual judges' night and installation of officers at the then San Bernardino convention center. Mr. Stream was installed as the second president. District Judge Timlin, then-Magistrate Judge Virginia A. Phillips (now Chief District Judge), and bankruptcy judges all attended. Adrienne Berry, the then national president-elect also attended.

In 2001, the FBA/IE invited Dean Erwin Chemerinsky, then a professor from the University of Southern California, to give a lecture called "The Future of Constitutional Law." Since that time, Dean Chemerinsky has been a steadfast friend of the FBA/IE. In 2004, the chapter began honoring both Dean Chemerinsky and members of the Inland Empire legal community by presenting the Erwin Chemerinsky Defender of the Constitution Award. Each year its recipient exemplifies service to the Constitution and to the community.

On May 16, 2018, the FBA/IE held its 18th Annual Constitutional Law Forum at the Double Tree Convention Center in San Bernardino. Several judicial officers, law students from La Verne College of Law, and a considerable number of Inland Empire federal and civil practitioners attended the lunchtime program where Riverside Legal Aid attorney Bob Simmons received the Defender of the Constitution Award.

Our chapter president, Kay Otani, opened the forum by welcoming the attendees, and then turned the program over to Dean Chemerinsky, a highly-regarded legal scholar and commentator who serves as Dean and Distinguished Professor of Law at the University of California Law School in Berkeley. Dean Chemerinsky presented an overview of important Supreme Court decisions, despite having to fly back to be present for a groundbreaking ceremony in Berkeley just a few hours after his talk in the Inland Empire. The time crunch proved inconsequential as Dean Chemerinksy, in his customary insightful, yet whimsical style, explained the outcome and potential implications of a substantial number of cases recently decided by or pending before the Supreme Court.

Dean Chemerinsky first noted that the Supreme Court has in recent years accepted far fewer cases which has resulted in the court taking longer to decide unsettled or contentious issues. Next, he shared his perspectives on the current makeup of the Supreme Court as well as his enlightened predictions about the future composition of the Supreme Court, and how changes in the court's membership would likely impact which cases the court accepts

Diane Roth presenting the 2018 Erwin Chermerinsky Defender of the Constitution Award to Robert Simmons.

District Judge Jesus Bernal, Robert Simmons, Diane Roth, Magistrate Judge Kenly Kiya Kato, and Magistrate Judge Sheri Pym

and how it decides those cases. Dean Chemerinsky then discussed several cases that the Supreme Court decided this term. *(See Dean Chemerinsky's article on the Supreme Court on page 8.)*

After Dean Chemerinsky's engaging and informative presentation, Diane Roth, former Executive Director of Riverside Legal Aid, offered a sincere, heartwarming introduction for Robert Simmons. Ms. Roth explained how she met Mr. Simmons, and she described how she persuaded him from retirement from his role as counsel for the City of San Bernardino to become the Managing Director of Riverside Legal Aid's Pro Se Clinic. Mr. Simmons and a modest group of volunteer attorneys help pro se litigants with bankruptcy and civil matters. Ms. Roth described Mr. Simmons as a "hero" who "helps people get access to courts." She noted that Mr. Simmons has helped over 1,500 pro se litigants over his 6-year tenure at the Pro Se Clinic.

When accepting the Defender of the Constitution Award, Mr. Simmons reminded us that he was a charter member of our FBA chapter. He thanked his family, the Pro Se Clinic staff, and those who supported him during his 40-year legal career. He offered a rousing call to action where he encouraged attendees to volunteer at the Pro Se Clinic.

Mr. Otani concluded the event by thanking Dean Chemerinsky for his insightful summary of seminal Supreme Court cases, and by congratulating Mr. Simmons on his well-deserved recognition as this year's recipient of the Erwin Chemerinsky Defender of the Constitution Award.

Krystal Lyons is a board member of the FBA/IE and senior director of operations and budget, University of La Verne, College of Law.

Kay Otani is president of the FBA/IE and a deputy federal public defender.

Mark Schnitzer is a past president of the FBA/IE and a partner with Reid & Hellyer.

photos courtesy of Jacqueline Carey-Wilson

Jacqueline Carey-Wilson, Daniel Haueter, Jean-Rene Basle, Ruth Stringer, Judge Michael Sachs, and Teresa McGowan

Magtistrate Judge Kenly Kiya Kato, James "Jeb" Brown, Jeffrey Aaron, Magistrate Judge Sheri Pym, David Bristow, and Magistrate Judge Shashi Kewalramani

District Judge Jesus Bernal, Dale Galipo, and Robert Simmons

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Taking Note of Taking Notes: Madison and the Constitutional Convention

by Abram S. Feuerstein

The story is well known, and a little tired, to most students of American history. Madison, later dubbed by John Quincy Adams as the Father of the Constitution,[1] took copious notes of the "Miracle" proceedings in Philadelphia. The Notes, classified by the Library of Congress as a "top treasure,"[2] enable a reader to follow the Framers as the events of the summer of 1787 unfolded and the Constitution took its final shape. We know who said what as the great debates raged – the Large State or Virginia Plan vs. the New Jersey Plan, the 3/5ths Compromise, etc. – because we have Madison's Notes. And, ultimately, we know the Framers' intent and how to interpret the Constitution today, well, because we have Madison's notes, sitting on the shelf alongside the *Federalist Papers*, which by the way were co-written by Madison.

With the 2015 publication of Mary Sarah Bilder's Bancroft prize-winning work, *Madison's Hand: Revising the Constitutional Convention*,[3] however, the reliability of Madison's Notes as a primary, definitive source for knowledge about the Convention and the Framers' intent is open to question. Bilder, a Boston College Law Professor, combined her lawyerly skills with her prodigious talent as a historian, and focused on the Notes as a historical artifact – from the paper on which they were written and the watermarks embedded in the paper, to the substantive revisions made by Madison during a long political life in the decades following the Convention. Aside from its merits as an extraordinary interdisciplinary work, Bilder's "biography" of the Notes inevitably compels a thoughtful re-examination of the role of originalism in Constitutional interpretation.

Madison: Front and Center

In taking his Notes, the physically short Madison[4] years later recalled that he "chose a seat in front of the presiding member, with the other members on (his) right & left hands," and in that "favorable position for hearing all that passed" recorded his observations in a type of shorthand from which, "losing not a moment unnecessarily" between sessions, he wrote them out more fully.[5] He claimed that luckily he "was not absent a single day, nor more than a casual fraction of an hour in any day, so that (he) could not have lost a single speech, unless a very short one."[6]

Why did Madison decide to take notes? After all, as Madison historian Ralph Ketcham observed, no one asked Madison to record the debates.[7] The generally accepted view is that Madison took notes because he understood both the historical importance of the Convention and the Constitution it created.[8] This notion rests in large part on Madison's own recollections written four decades after the Convention. To prepare himself for Philadelphia, Madison ensconced himself at the family plantation, Montpelier, in Orange, Virginia along with a "literary cargo" of books on history and politics that his close friend and mentor, Thomas Jefferson, shipped to him from Paris in 1786.[9] He tried to locate and study as many examples as he could of the "most distinguished Confederacies, particularly those of antiquity."[10] From his research, he reached important conclusions about the fundamental nature of republican forms of government.[11] But, he regretted not having even better sources of information. Therefore, Madison said that with his Notes he wished to create for posterity an "exact account of what might pass in the Convention" concerning

1 Lynne Cheney, *James Madison: A Life Reconsidered* (Viking 2014), p. 153.

2 Mary Sarah Bilder, *Madison's Hand: Revising the Constitutional Convention* (Harvard University Press 2015), p.1 (hereafter, "Bilder").

3 *Id.*

4 Although biographers seem to agree that Madison was short, they do not seem to agree on his actual height. On the shorter end, Richard Brookhiser asserts that Madison was "just over five feet tall, just over a hundred pounds." Richard Brookhiser, *James Madison* (Basic Books 2011), p. 4, while Lynne Cheney puts Madison "at no more than five feet six inches tall." Cheney, *James Madison*, p. 2.

5 Madison, "A Sketch Never Finished Nor Applied," believed to be written in 1830, collected in *Madison's Writings*, p. 840 (Library of America 1999) (hereafter, "*Madison's Writings*"). Madison does not state who was sitting to his left or right.

6 *Id.*, p. 841.

7 Ralph Ketcham, *James Madison* (University of Virginia Press, First Paperback Edition 1990), p. 195.

8 An extensive new biography of Madison by Harvard Law School Professor Noah Feldman, entitled *The Three Lives of James Madison: Genius, Partisan, President* (Random House 2017), pp. 107-08, embraces this traditional view.

9 Ketcham, *James Madison*, pp. 183-84.

10 *Madison's Writings*, p. 840.

11 Madison's key, if not radical, insight was to break with past thinking, which concluded that republican governments could succeed only on a small scale. By contrast, Madison believed that an extended or enlarged republic would prosper because of the multiplicity of interests that would be available to check each other. A larger republic also would be able to draw on a larger talent pool to serve in government. Ketcham, *James Madison*, p. 189; Feldman, *The Three Lives of James Madison*, pp. 97-99.

the "peculiar structure & organization" of the "new System of Govt."[12] The Notes would be his "contribution" to the history of the U.S. Constitution "and possibly the cause of liberty throughout the world."[13]

For historians, the Notes are particularly important because immediately after convening and choosing George Washington (unanimously) as its chair, the Convention adopted a secrecy rule. It required that "nothing spoken in the House be printed, or otherwise published, or communicated without leave."[14] The confidentiality rules were designed to prevent the "licentious publication of (the) proceedings."[15] Modern day "sunshine" or transparency rules may make the Convention's secrecy rule seem unusual but closed legislative proceedings in England and pre-Convention America were normal and typical.[16] Jefferson, who had been in Paris since 1783 and missed the Convention,[17] believed the secrecy rule was "abominable," while Madison believed that "no constitution would ever have been adopted . . . if the debates had been public.[18]

Ten or so other delegates took notes, too.[19] But Madison's Notes were the most complete, covering each day of the four-month Convention. William Jackson, the Convention's secretary, compiled an official record of the proceedings,[20] which was delivered to George Washington at the Convention's conclusion.[21] In keeping with legislative practices of the day, however, the official record largely was a compilation of the "yeas" or "nays," as well as the specific measures adopted or voted down. It was not a record of the comments and debates of the Convention delegates, unlike our modern day Congressional record, and definitely lacked the drama if not storytelling quality of Madison's Notes.

In appearance, Madison's Notes consisted of 136½ sheets of paper.[22] Madison likely purchased his notepaper in September 1786 when he participated in the Annapolis Convention, a poorly attended precursor to Philadelphia.[23] According to Bilder, Madison "folded a large sheet (a paper size called post, approximately 9 inches high and 15 inches wide). The fold created four writable pages. After using a sharp point to rule margin lines, Madison placed the fold on the left. He began writing on that first page. He then opened the sheet, wrote down the left and then right side. He closed the sheet and finished writing on the back."[24] The written manuscript thus ran approximately 550 pages in length. And, Madison had a neat, legible handwriting.[25]

Madison's Sleight of Hand

So, should we believe Madison? Was Madison writing for posterity, anticipating that we would read the Notes 230 years later as the "founding narrative of our Constitution"?[26] Not according to Bilder. Her analysis starts with what appears to be an obvious, but seemingly overlooked point: notwithstanding a sense of the importance of their task, Madison and the Framers simply did not know they were drafting ***the*** Constitution.[27] Indeed, there already was a constitution – the Articles of Confederation. Sure, it had proven inadequate, and resulted in a weak general government. It needed to be replaced. They were going to adopt a new constitution. It might work, it might not. The Articles had been good for about a decade. They hoped the new arrangement would last longer. But, did they think they were drafting our enduring Constitution. The Constitution. Likely not.

Bilder argues that instead of writing for posterity, Madison initially took the Notes as a type of "legislative diary" for both himself and for the absent Thomas Jefferson.[28] The genre of legislative diaries flourished in an age of closed political proceedings; they were a source of valuable political "intelligence."[29] Previously, as a member of the Continental Congress, Madison had engaged in the practice of taking extensive notes, he shared that intelligence with others including his fellow Virginians, and Jefferson enjoyed and made good use of those earlier notes in his own political maneuverings.[30] Madison's notetaking in Philadelphia in 1787, with Jefferson as a likely if not *the* intended reader, simply continued Madison's previous practices.

Bilder bolsters her contention that the Notes were not an archival or verbatim record of what was said of the Convention by tracking Madison's revisions to the Notes. By necessity, the revisions started almost immediately.

12 Madison's Writings, p. 840.
13 *Id.*
14 Ketcham, *James Madison*, p. 196.
15 Richard Brookhiser, *James Madison* (Basic Books 2011), p. 51
16 Bilder, p. 19.
17 In the Broadway musical *Hamilton*, Jefferson on his return to the United States sings, "What'd I Miss?"
18 Cheney, *James Madison*, p. 128.
19 Bilder, p.1.
20 *Id.*
21 Washington retained the journals from September 1787 to April 1796. When a controversy arose relating to the Jay Treaty and the warring sides referenced the Convention proceedings to support their positions, Washington then deposited them with the Secretary of State. They were not published until 1819. Bilder, p. 250.
22 Bilder, p. 1.
23 Bilder, p. 39. Bilder supports her conclusion by observing that the paper from the Notes matched the paper on which Madison had written two letters about the Annapolis Convention on September 8 and 11, 1786.
24 Bilder, p. vii.
25 Various samples of Madison's handwriting from the Notes and other sources appear in the un-numbered pages in the center of Bilder's volume. Images of Madison's papers, including all of the pages of the Notes, are available at the website of the Library of Congress, loc.gov.
26 Bilder, p. 3.
27 *Id.*
28 Bilder, p. 19.
29 Bilder, p. 21.
30 Bilder, pp. 22, 27.

With daily sessions lasting as long as six hours, the Notes present a mere fraction of what transpired.[31] Also, Madison was a frequent speaker at the Convention – usually speaking without notes – so it was not possible for him to take notes of his own speeches. As one historian observed, "Madison could not speak and record at the same time."[32]

Beyond these paradoxes inherent in the act of taking notes – the listener takes down what he or she views as important and thereby interprets the information – Madison's revisions were far more extensive. According to Bilder, Madison did not complete the Notes in 1787, but left off somewhere in late August as other convention work over the next month overwhelmed his time.[33] He only returned to the project two years later in 1789, just shortly before Jefferson returned from Paris. By then, in order to fill in gaps, he needed to borrow – somewhat illicitly – the official record of the Convention from George Washington, and contacted other delegates for their written observations.[34] Significant substantive revisions continued into the 1790s. Madison added slips of paper to the Notes, and even replaced some of the pages that described his own speeches.[35]

Bilder demonstrates that the revisions in the decade following the Convention were undertaken to make Madison look a little better, which is understandable and quite human, but also as part of an effort to align himself closely with Jefferson's emerging views of republican philosophy and politics.[36] Madison had entered the Convention with views much nearer to Hamilton's nationalist views than the "states' rights" approach subsequently elevated by Jefferson. To Madison, the problems with the Articles of Confederation had been the lack of a national sovereign with supremacy over state governments. At the Convention, Madison voted in favor of a Hamilton proposal to have the president elected to serve "during good behavior," *i.e.*, for life,[37] and even championed a national, legislative "negative" or veto over all state laws.[38] After the Convention, Madison joined forces with Hamilton and penned the *Federalist Papers*. However, by the 1790s, as Jefferson was accusing his political enemy, Hamilton, of having favored a monarchy during the Convention, with his revisions, stricken sentences and replaced pages, Madison sought to downplay his own nationalist views.

As he re-wrote the Notes, Madison also added material to make it appear that he had spoken out against slavery at the Convention when, in fact, there is little evidence that he did. He attributed the same anti-slavery remarks made one day by another delegate, Luther Martin of Maryland, to himself on another day.[39] Madison's family owned approximately 100 slaves, and while he clearly understood the immorality of slavery, Madison just as clearly did little or nothing to abolish it during his life or after.[40]

Madison continued to revise the Notes in his retirement, largely to create a record of what he viewed as the important events at the Convention, and to conform them to the developing history about the Convention's proceedings.[41] He resisted requests to publish the Notes during his life. Many of these requests came from political associates who believed the Notes could support their positions on various issues. Bilder suggests that in refusing to publish the Notes, Madison was concerned that his version of the Convention would be contradicted by other surviving Convention delegates – particularly those who also had taken notes.[42] But, Madison had been the youngest of the delegates and by 1829 he outlived all of them. In fact it seems that Madison kept tabs on their deaths.[43] By then,

31 Bilder, p. 4. Interestingly, Madison likely reserved two days each week – his letter-writing days -- for transcribing his rough "real time" notes into more detailed entries. Typically these days fell on a Tuesday or Wednesday, and a Sunday, which was the Convention's "off" day. As a result of having more time to devote to the Notes, the Saturday Convention deliberations, which were fresher to Madison's mind by the time he wrote about them, are considerably longer and more fleshed out than the entries from other days. Bilder, p. 62.

32 *Id.*, citing James H. Hutson, "The Creation of the Constitution: The Integrity of the Documentary Record," *Texas Law Review* 65 (1986): 1-39; James H. Hutson, "Riddles of the Federal Constitutional Convention," *William and Mary Quarterly* 44 (1987): 411-423.

33 Bilder, pp. 179-201.

34 *Id.*

35 *Id.*, at p. 198.

36 *See generally*, Bilder, p. 202-222.

37 Bilder, pp. 114-15.

38 Brookhiser, *James Madison*, p. 51; Bilder, pp. 43-44.

39 Bilder, p. 188.

40 Bilder, pp. 30-31; Ketcham, James *Madison*, p. 629 ("Madison failed utterly to do anything about what he always regarded as a moral evil and an economic catastrophe.")
As support for the moral misgivings Madison had with slavery, among other things Madison scholars reference a young Madison's letter to his father discussing Billey, a slave Madison brought with him to Philadelphia when Madison served in Congress in 1783. Billey had been up to that point Madison's most valuable property interest, having inherited Billey from his maternal grandmother. Feldman, *The Three Lives of James Madison*, p. 50. On the eve of his return to Virginia, Madison advised his father in the letter that it would be wrong for Madison to bring Billey back to Virginia after Billey had been living in Pennsylvania, a state that had partially abolished slavery. To resolve his morality/money dilemma, Madison ultimately opted to "sell" Billey into a seven year term of indentured servitude. *Id.* By the end of his life, Madison had become president of the American Colonization Society, whose goal –ridiculous in hindsight -- was to "repatriate" freed blacks to Liberia. *Id.*, p. 620. Yet Madison, heavily in debt in his older years, failed to emancipate his own slaves when he died in 1836, leaving title to them in his will to his wife, Dolley. *Id.*, p. 621. The failure to free his slaves shocked Madison's close friends. An incredulous Edward Coles, an abolitionist who had been Madison's private secretary when Madison was president and who later became the second Governor of Illinois, thought Madison's will could be a forgery because it failed to free Madison's slaves. *Id.*, p. 716, n.27.

41 Bilder, p. 223.

42 Bilder, p. 233.

43 Bilder, pp. 231-333.

however, he had made the decision to publish the Notes posthumously.

Madison and Dolley expected "considerable" profits from the publication of the Notes.[44] After Madison died, a financially distressed Dolley attempted unsuccessfully to sell the Notes to Congress for the sum of $100,000.[45] Eventually Congress authorized the purchase of the Notes and other important Madison papers for $30,000.[46] The Notes were published in 1840. Dolley outlived Madison by 13 years, and died in 1849.[47]

Originalism, Revisionism, and Madison

Bilder's central theme – that each revision of the Notes by Madison in the days, then years, and then decades after the Convention increased the "distance"[48] from the actual debates and deliberations of 1787 – is indisputably true. And, from a historical perspective, it certainly is healthy to understand that Madison's Notes are not a definitive record of the Convention. Clearly, tracking Madison's revisions sheds some light on Madison's development as a politician and political thinker through the decades that followed the Convention, decades that saw Madison as a co-founder of a political party, America's first war-time president, and then, in retirement, a sage.

But the "distance" created by Madison's revisions to the Notes from the actual Convention proceedings poses problems, too, for those "originalists" who rely on Madison as a source of the "Framers' intent" to interpret the Constitution. Good historian that she is, Bilder does not provide an answer to that problem, but leaves it to the reader to determine whether Madison's revisions alter our fundamental understanding of the Constitution.[49] In the end, while Madison's Notes and their revisions do not require embracing notions of a "living constitution," they raise substantial doubt as to whether original understandings of the Convention and the Constitution are retrievable.

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44 Brookhiser, *James Madison*, p. 247.
45 *Id.*
46 *Id.*; Feldman, *The Three Lives of James Madison*, p. 623.
47 Dolley survived into the era of the daguerreotype, and there is a Matthew Brady 1848 image of a seated Dolley with her sister, Anna Payne. Feldman, *The Three Lives of James Madison*, unnumbered page opposite to p. 589.
48 Bilder, pp.4-5.
49 Bilder, p. 5.

Bankruptcy Restrictions on What Attorneys Can and Cannot Say in a Post-*Milavetz* World

by Cathy Ta and Alexander Brand

While the economy is doing better of late, consumers are always at risk of being scammed and consumers who seek debt relief are no exception. In 2005, Congress passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). The purpose of the BAPCPA was to enact a series of protections for consumers seeking debt relief through the bankruptcy courts and through debt relief providers, including: (1) restricting attorneys from advising clients to take on new debt prior to filing for bankruptcy; and (2) prohibiting attorneys from advising clients to incur new debt to pay for attorney fees prior to filing for bankruptcy.[1] The net effect of these protections was for the government to restrict what attorneys can and cannot say to their clients.

These restrictions on an attorney's free speech rights were challenged in 2010 and 2018 respectively, whereby the Supreme Court and the 11th Circuit Court of Appeals upheld them respectively. It is important that attorneys and consumers alike are aware of these restrictions so that attorneys do not inadvertently run afoul of them and consumers are protected from attorneys who may violate them.

There is No Question that Bankruptcy Attorneys are Debt Relief Agencies

The BAPCPA applies to debt relief agencies; in turn, bankruptcy attorneys are considered debt relief agencies under the BAPCPA. A debt relief agency is any person who provides bankruptcy assistance to another individual for compensation, including providing legal advice for an actual or potential bankruptcy case.[2] Under a plain language interpretation of these definitions, the Supreme Court in *Milavetz, Gallop & Milavetz, P. A. v. United States,* 559 U.S. 229 concluded that attorneys are clearly debt relief agencies subject to the BAPCPA.[3]

As Debt Relief Agencies, Attorneys Cannot Advise Clients to Incur Additional Debt Prior to Filing Bankruptcy and to Abuse Bankruptcy Laws

Under BAPCA, debt relief agencies cannot advise a client or potential client "to incur more debt *in contemplation of*" filing a bankruptcy case.[4] In *Milavetz*, this restriction on speech was challenged under the First Amendment as unconstitutionally vague and prohibiting "not only affirmative advice, but also any discussion of the advantages, disadvantages, or legality of incurring more debt."[5]

The Supreme Court rejected the argument, ruling that the restriction is to be construed narrowly[6] such that it prohibits a bankruptcy attorney "only from advising a debtor to incur more debt because the debtor is filing for bankruptcy, rather than for a valid purpose."[7] If there is a legitimate reason for incurring more debt prior to filing bankruptcy, the attorney can still discuss the pros and cons of incurring that debt with the client and advise the client accordingly. The only restriction on an attorney's advice to a client is that the attorney cannot advise the client to take on more debt in an attempt to take advantage of bankruptcy laws. Under this narrow reading, the Supreme Court concluded that the statute was not unconstitutionally vague and therefore did not violate the First Amendment.[8]

It is clear that an attorney cannot advise a client to incur more debt prior to filing bankruptcy without a legitimate reason; moreover, an attorney cannot provide such advice on the basis of exercising their First Amendment free speech rights. An attorney who violates this restriction faces the risk of liability for potential damages.[9] Further, if a debtor is exposed to an attorney who advises them in violation of this restriction, the debtor may have options to recover damages from the attorney.[10]

As Debt Relief Agencies, Attorneys Cannot Advise Clients to Incur Debt to Pay for Pre-Filing Attorney Fees

BAPCPA also restricts debt relief agencies from advising a client or potential client to incur debt to pay for pre-filing attorney fees, such as by paying by credit card. In *Cadwell v. Kaufman, Englett & Lynd, PLLC*, the 11th Circuit determined "whether [this] second prohibition—on advice to incur debt to pay for bankruptcy related representation—likewise entails an invalid-purpose requirement."[11]

1 These restrictions are set forth at 11 U.S.C. § 526(a)(4).
2 11 U.S.C. §§101(4A) and 101(12A); *Milavetz v. U.S.*, 559 U.S. 229, 235-36 (2010).
3 *Milavetz*, 559 U.S. at 236, 239.
4 11 U.S.C. §526(a)(4) (emphasis added).
5 *Milavetz*, 559 U.S. at 240.
6 *Id.* at 242-43.
7 *Id.*
8 *Id.* at 247-48.
9 11 U.S.C. §526; *Milavetz*, 559 U.S. at 241-42.
10 *Id.*
11 *Cadwell v. Kaufman, Englett & Lynd, PLLC*, 886 F.3d 1153, 1155 (11th Cir. 2018).

Unlike the first restriction, this second restriction prohibits an attorney from ever advising a client to incur debt before filing bankruptcy, regardless of whether or not there is a legitimate purpose, if it is to pay attorney fees.[12] The 11th Circuit upheld this restriction on the grounds that when an attorney advises a client to incur debt to pay the attorney in full, this conduct is inherently abusive and potentially detrimental to the client.[13] The reason is simple: such advice puts the attorney's interest at odds with that of the debtor (and other creditors). Moreover, the new debt used to fund attorney fees could be deemed improper and challenged as excepted from the bankruptcy discharge, which would deny the debtor a fresh start – the entire purpose of bankruptcy law.[14] Accordingly, *Milavetz*'s invalid purpose test was not applicable to incurring debt to pay for attorney fees or an attorney retainer. Similar to the first restriction, an attorney who violates this restriction faces liability for potential damages.

Both *Milavetz* and *Cadwell* provide important guidance to attorneys and debtors with respect to what type of advice an attorney can provide to the debtor prior to the filing of bankruptcy, with respect to incurring new debt prior to the filing. The BAPCPA's restrictions on such advice have been construed narrowly and upheld as constitutional. Attorneys can inadvertently violate these statutory restrictions if they are unaware of their scope. Conversely, these statutory restrictions provide protections to debtors seeking assistance with debt relief, including a right to claim damages against attorneys for violations of these restrictions.

12 *Id.* at 1159.
13 *Id.*
14 *Id.*

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Separation at the Border, a Humanitarian Crisis

by DW Duke

As the co-president of an international adoption agency with a foster care license and contracts with the federal and state governments, I have been dismayed at the chaos concerning refugee immigration. June 2018 brought a new national awareness of the immigrant refugee crisis at the Southern border of the United States. At issue is the zero-tolerance policy of the Trump administration that results in the separation of children from their parents even when they request asylum. In the frenzy to identify a culprit in this practice, media sources have focused on foster care agencies accusing them of acts ranging from human rights abuses to human trafficking.

As is often the case, news outlets have little knowledge of the facts and even less of a desire to learn them as they seek to increase ratings, so they simply broadcast "fake news." The information you have likely received via media concerning this issue is far from the truth. The reality is that the foster care agencies in contract with the Office of Refugee Resettlement, an agency of the United States government that deals with refugees, do not participate in separating immigrant children from their parents. That happens while the families are at detention centers under the control of U.S. Customs and Border Protection or the U.S. Marshals. The parents are then delivered to the authority of Immigration and Customs Enforcement (ICE) and the children are placed in the control of U.S. Health and Human Services, specifically in the custody of the Office of Refugee Resettlement (ORR).

It is after the children are separated that foster care agencies, with whom the ORR has contracts, are instructed to find foster homes for the children. These foster care agencies are placed in the difficult position of accepting or rejecting children that have already been separated. If they do not accept them and find foster homes, the children will be stuck in detention centers. If the agencies accept the children, at least they will be placed in foster homes where they remain until their parents' cases are processed. Hence, the foster care agencies are not the ones separating the children; but rather, they seek to mitigate the injury caused by the zero-tolerance policy.

A large number of the children in custody of foster care agencies, arrive in the United States unaccompanied by any family at all. Some are sent across the border by family members knowing that they will be treated humanely by the United States under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). Others arrive unaccompanied by adults because their parents have been murdered by drug cartels and other groups or have simply abandoned them. Some are victims of human trafficking. Many of these children have suffered greatly in their journey to the United States. Some enter at the border and some come through refugee camps from all over the world. These children are fleeing horrendous atrocities of trafficking, servitude, abuse, mutilation, war, civil unrest, famine, gang violence, and abandonment.

The Presidential Executive Order signed June 20, 2018, which ordered that families remain together after entering the country seeking asylum, was only the first step in reversing the harm caused by the "zero tolerance" policy targeting vulnerable families seeking sanctuary and asylum. Zero tolerance and other directives caused the separation at the border and because families were separated, children had no place to go. Children were not allowed in the detention systems. This very action forced many non-profit foster care agencies to take action. Children were left languishing. The Executive Order does not resolve this problem completely.

The second step in resolving the crisis, is in recognizing that holding families and children in detention or tent cities is extremely traumatic and constitutes a human rights violation. There are better solutions than separation of families and family detention. The administration should focus on community-based services that protect children and families.

The United Nations Convention on the Rights of a Child, which has been ratified by every member nation except the United States, provides, in part, at Article 9, Section 1:

> ". . . Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. . . "

Recently, U.S. District Judge Dana Makoto Sabraw, in a 24-page order, ruled that children could be separated at the border only if adults with them were found to pose a danger to the children. Judge Sabraw ordered that separated children must be reunited with their parents within 14 days if they are under the age of 5, and 30 days if they

are over the age of 5. The court also ordered that adults could not be deported from the country without their children. We know that efforts are now being made to reunite children with their parents and that this will be accomplished in the next month. Many agencies have been caught in the firestorm of all the executive actions and have been forced to take children who have been separated by our government. Their goal is always to reunite the children, but the system to reunite is often difficult if not impossible because the whereabouts of the family members is often unknown.

We must remember while dealing with this humanitarian crisis, that above all else, the best interest of the children is at stake. For a time, this has been forgotten. Hopefully, the recent Executive Order will begin the process of placing the best interest of the children ahead of strict enforcement of immigration laws, so that they will be treated humanely and fairly by all concerned. These children unfortunately are the ones who are being traumatized, not only from the horrendous journey to come to the United States, including the events that preceded the journey, but once again at the border of the Unites States and beyond. While we, as a nation, try to determine the best solutions to this crisis, we must not make children and those trying to help them, the victims of frustration and anguish arising from the injustice of this crisis.

DW Duke is the managing partner of the Inland Empire office of Spile, Leff & Goor, LLP and the principal of the Law Offices of DW Duke.

Law Alliance Members Wanted!

Calling for new members to join the Riverside County Law Alliance (RCLA)! We are spouses of lawyers and judges who have formed a group whose main purpose is to give back to the community. It is RCLA's goal to welcome new legal community members and promote social relationships by hosting gatherings throughout the year, such as our "kick-off" event this October. Our community involvement includes support to organizations such as Operation SafeHouse, which provides services such as shelter, schooling, and counseling to youth in crisis, as well as in Juvenile Court.

Along with these purposes, we also have the longest running program, our court tour program. For the past 47 years, RCLA has provided a court tour program for 6th grade students, both in public and private schools, in the Riverside area to hundreds of students with an introduction to our legal system. Through the support and help from RCBA, we are able to host hundreds of students each year to participate in a mock trial at the bar building and then escort them to the Hall of Justice to witness a trial in progress.

The legal world is a mystery to many adults in today's society, but thanks to the Law Alliance volunteers, there is a large number of young people who have a basic grasp of our jury system.

Although the court tour program is well supported by the school district, as well as the Superior Court judges and staff, and in fact could not survive without them, the number of tours available each year is determined by the number of volunteers available to serve as guides. There are many guide positions that make up our group including narrator, projectionist, court runner, etc. and most of these guides volunteer just one morning a month for a couple of hours. The majority of volunteers must make time in their busy schedules. However, it is these volunteers who keep this wonderful program going.

To serve more students, the Law Alliance needs additional volunteers. Anyone interested in the court tour program or would like more information about our group, contact the Law Alliance president, Debbie Lee, at 951-206-3741 or email at DebbieLeeRE@gmail.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 July 30, 2018.

Bruce D. Abel – Abel Law Offices, Palm Desert
Jay C. Im – Law Offices of Jay Im, Los Angeles
Traci D. Luis – Office of the Public Defender, Banning
Marlene C. Nowlin – Rosenstein & Associates, Temecula
Matthew E. Sheasby – Sheasby & Associates, Rancho Cucamonga

Opposing Counsel: Cathy Ta

by Melissa Cushman

Like many areas of the legal field, bankruptcy is a commercial practice area that is still predominately male. Always pleasant and approachable, Cathy Ta has bucked this trend and any dour stereotype of a bankruptcy attorney and is Of Counsel in the bankruptcy practice group at Best Best & Krieger LLP (BB&K). Cathy particularly enjoys what can be a very technical and complex practice area, finding the work intellectually stimulating and a little like a chess game, with many competing interests and opportunities for strategy to set things up favorably for clients. She also appreciates the fact that at the end of the day, bankruptcy law is driven by economic realities and practicalities, allowing for common ground and creativity not found in every area of the law.

Cathy Ta

Cathy was not only born and raised in Monterey Park, California, she still lives there with her family nearby. Cathy attended high school in Monterey Park at Mark Keppel High School. She remembers it fondly as having distinctly involved and resourceful teachers and particularly high achieving and talented students, while also catering towards English learners. While Monterey Park remained her home base, Cathy moved away for college, attending Swarthmore College outside Philadelphia and double majoring in political science and economics. Cathy chose the Quaker-founded small liberal arts college because it valued social consciousness and interdisciplinary studies, and because it had very small classes and a highly diverse student body, with students from all 50 states and many foreign countries represented. During her college years, she ventured even farther from home, studying Mandarin Chinese in Taipei, Taiwan for a summer and focusing on developmental economics in Copenhagen, Denmark for a semester.

After college, Cathy returned home and contemplated various options suited for her degree and interests. She tentatively explored law school and applied, but had significant concerns about the debt load. However, after being accepted at multiple schools, she received an e-mail from Loyola Law School, Los Angeles, informing her that their number of acceptances had exceeded their planned enrollment and offering her a full tuition scholarship if she deferred for a year. Relief from some of the debt load concerns helped Cathy decide that law school was the right path for her. She spent the next year in New York, coming back to the greater Los Angeles area before law school began. While she was back in Southern California, she met her future husband who at the time had graduated recently from Laguna College of Art and Design.

Once in law school, Cathy did particularly well in business law, real property and litigation-related classes. Since she enjoyed both transactional and litigation-oriented legal work, she was torn regarding which track to pursue. Her mentor Katherine Pratt, a tax law professor, recommended that Cathy try bankruptcy, because unlike many areas of law, it combines transactional and litigation-oriented work, and because it was a natural fit given Cathy's political science and economics background and interests in commercial and public policy.

After graduating law school, Cathy clerked for a highly respected bankruptcy judge, the Honorable Marvin Isgur, in Houston, Texas. During her two years in Texas, she worked on a variety of consumer and commercial bankruptcy cases before the Southern District of Texas and found a new love for Tex-Mex food.

Following her clerkship, Cathy returned to California and began practicing at BB&K, working under former partner (and now retired) Franklin C. Adams. Still at BB&K today, Cathy enjoys the day-to-day practice of bankruptcy law, which continues to bring daily challenges and fulfillment.

Cathy is not only a busy and hard-working attorney, maintaining a practice at BB&K's Riverside and Los Angeles offices, she also has two sons, ages 9 and 4 respectively. Her husband became a CPA and is now an attorney specializing in complex tax law, so they share parenting responsibilities while balancing their careers.

In addition to her two full-time jobs as attorney and mother, Cathy sees being an attorney as an opportunity to be a public servant and a leader of the community. Currently she is co-chair of the International Women's Insolvency and Restructuring Confederation, Southern California Network, and program chair and president-elect of the Inland Empire Bankruptcy Forum. She is also a much-appreciated frequent contributor to the *Riverside Lawyer* and the nicest lawyer you'll ever meet.

More information about Cathy and her legal career, including contact information, can be found at the BB&K website, https://www.BB&Klaw.com/our-team/cathy-ta.

Melissa Cushman is Cathy's friend and former colleague and is a deputy county counsel with the County of Riverside specializing in land use and CEQA.

Update on the Eastern Division of the Central District of California

by District Judge Jesus G. Bernal

Located in downtown Riverside, the George E. Brown, Jr., Federal Building houses the only federal and bankruptcy courts in the Inland Empire. This "Eastern Division" of the Central District of California serves the over four million residents of Riverside and San Bernardino counties. Although our division has undergone several recent changes, and is in the midst of others, it continues to attempt to meet the growing needs of the population it was formed to serve.

The most notable transition is the impending retirement of Bankruptcy Judge Meredith A. Jury, who has served as a bankruptcy judge in Riverside since 1997. Judge Jury has had a long and distinguished career as a lawyer and judge in the Eastern Division. Judge Jury joined Best Best & Krieger's Riverside office as that firm's first female associate in 1976 after graduating from UCLA law school. During her time at Best Best & Krieger, Judge Jury represented businesses, municipalities, and water districts in litigation and bankruptcy proceedings. In 1982, Judge Jury became the firm's first female partner and thereafter practiced law alongside Virginia A. Phillips, who eventually became the Eastern Division's second district judge.

In 1997, U.S. Court of Appeals for the Ninth Circuit appointed Judge Jury to be a bankruptcy judge in Riverside; she was reappointed in 2011. Judge Jury was appointed to her first seven-year term to the Ninth Circuit Bankruptcy Appellate Panel in 2007, and to her second term in 2014. Over her many years on the bankruptcy bench, Judge Jury has handled many important matters. She presided over the Chapter 9 bankruptcy petition filed by the City of San Bernardino in August 2012. Judge Jury's vast experience as a lawyer conversant with bankruptcy and municipal finance law – as well as her many years as bankruptcy judge – equipped her well to handle the complexities of this important case.

Judge Jury's departure from the bench is not really a retirement. Consistent with her active nature, Judge Jury will apply her legal acumen and knowledge to continue her service to the Riverside community. She plans to partner with local firms and to coordinate with the Riverside District Attorney's Office and the Inland Empire Legal Services to combat elder abuse in the Inland Empire. We thank Judge Jury for her long and distinguished service as a bankruptcy judge and are convinced that she will continue to use her considerable knowledge, skill, and experience to tackle the legal issues faced by our community.

Another change in the courthouse also involves the bankruptcy court. Due to reduced bankruptcy filings in recent years, office space previously used by the clerk of the bankruptcy court has been vacated. Construction is underway to convert that space into new offices to be occupied by the U.S. Probation Office currently located in downtown San Bernardino. Phase I of that construction project, the first of three, began in January of this year and involves a reconfiguration of part of the clerk's office space in the main floor of the courthouse. Phase I is almost complete and it is anticipated that the U.S. Probation Office will move into the courthouse by the end of the year.

Over the last year, the Eastern Division has seen one magistrate judge depart and another take his place. Magistrate Judge David T. Bristow served in Riverside from his appointment in 2009 until his departure in June 2017 to work for the Mission Inn as General Counsel and Executive Vice President in the Entrepreneurial Corporate Group. In August 2017, after an exacting application and interview process, the district judges of the Central District appointed H. Shashi Kewalramani to the position vacated by Judge Bristow. Judge Kewalramani earned his B.S. in Aerospace Engineering from the University of Texas at Austin in 1993 and his J.D. from the Baylor University School of Law in 1996.

After graduating from law school, Judge Kewalramani served as a law clerk for District Judge Richard A. Schell of the Eastern District of Texas. He then joined a private firm and focused on patent litigation for several years, before joining the U.S. Attorney's Office for the Northern District of California in 2003. In 2008, Judge Kewalramani transferred to the U.S. Attorney's Office for the Central District of California in Santa Ana. He left in 2015 to form his own firm and served on the CJA indigent defense panel until his appointment.[1] Judge

1 "CJA" refers to the Criminal Justice Act Panel, which is a group of qualified and court-approved attorneys who are eligible for appointment by the Court to represent individuals in criminal cases who are unable for financial reasons to retain counsel.

Kewalramani's breadth of knowledge across varied legal disciplines and the depth of his experience in them prepared him well to ably serve as a magistrate judge.

With Judge Kewalramani's appointment, the Eastern Division currently counts on four judicial officers – one district judge and three magistrate judges – to manage federal legal disputes for the residents of San Bernardino and Riverside counties. District Judge Virginia A. Phillips, who presided in Riverside for many years, transferred to Los Angeles to become the Central District's Chief Judge. Our division continues to be significantly understaffed, which results in the transfer to Los Angeles and Santa Ana of many civil and criminal matters which originate in the Inland Empire.

Hon. Jesus Gilberto Bernal has been a United States District Judge of the United States District Court for the Central District of California since December 2012 and is assigned to the Eastern Division.

SAVE THE DATE

28th Annual Red Mass
Tuesday, October 2, 2018 at 6:15 p.m.
Saint Francis de Sales Catholic Church in Riverside
Saint Thomas More and
Saint Mother Teresa of Calcutta Awards
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Retirement Celebration for Judge Meredith A. Jury

by Monique D. Jewett-Brewster

Charles (Chuck) Hart, Judge Meredith Jury, Hal Hart, and Ruth Hart

Peter C. Anderson, Judge Meredith Jury, Abram Feuerstein, and Paul R. Glassman

Mohammad Tehrani, Louis Kempinsky, David Meadows, and Judge Meredith Jury

I first met Judge Meredith A. Jury when I interviewed for her clerk position in 2001. After Judge Jury told me that my clerkship would be the best job I had ever have, I came to realize that she was right! I learned something new every day; and while I sometimes worked long hours, they were flexible. But my clerkship was truly the best job because I had the amazing opportunity to get to know Judge Jury as an educator, a mentor and sponsor, one of the greatest influencers of my legal career – and a friend.

Despite pursuing her master's degrees in English and education, Judge Jury decided not to become a teacher because, to my understanding, she believed she might not be good at it; but many would disagree. In fact, to this day, Judge Jury still shares her wisdom through presenting seminars to the bar (as recently as last month, she came up to speak to the Bay Area Bankruptcy Forum about Chapter 11 limited liability cases). Judge Jury is a true educator, however, because she openly shares her values and leads by example.

In learning from Judge Jury, I learned about how she was raised and treated as an equal to her brothers, which led her to never let others' prejudices define her abilities or her values. There were very few women lawyers in the profession when Judge Jury started practicing. Still, because she was raised as an equal to her brothers, she never once considered that she couldn't do anything that men could do, and I learned from her example.

Judge Jury also shared with me just how much her love for her mother shaped her as a person, as an advocate, and as a judge. Her mother was her strongest role model, and she proclaims that everything good about her came from her mom.

Standing (l-r): Chad Haes, Andrew Hurley, Michael Gomez
Seated (l-r): Annie Hsieh (Stoop), Hyunji Lee, Judge Meredith Jury, Kitty Kruis, Monique Jewett-Brewster

Mark Schnitzer, Magistrate Judge Sheri Pym, District Judge Jesus Bernal, and Bankruptcy Judge Mark D. Houle

Her mother was an optimistic, glass is "three-quarters full" person, and anyone who has practiced before Judge Jury, or is one of her colleagues, can attest to how much her mother influenced her judicial and personal temperament.

Her mother also taught her that actions speak louder than words, and everyone deserves respect, and should be made to feel like they matter because they do. Judge Jury made every litigant feel like they matter, from pro se individuals, to mom and pop corporations, to institutions. She treated everyone in her court with the same respect and dignity.

Judge Jury's concept of family is not limited to her blood relatives, however. She is known for treating her court staff and law clerks like family. Amazingly, Judge Jury has followed the careers of all twelve of her law clerks. She has even officiated at five of their weddings!

Back Row: Bankruptcy Judge Mark S. Wallace, Magistrate Judge Autumn D. Spaeth, Bankruptcy Judge Catherine E. Bauer, Bankruptcy Judge Robert N. Kwan, Bankruptcy Judge Mark D. Houle, Bankruptcy Judge Debra J. Saltzman, Bankruptcy Judge Martin R. Barash, Bankruptcy Judge Wayne Johnson, Bankruptcy Judge Scott H. Yun, Administrative Law Judge John C. Tobin
Front Row: Bankruptcy Judge Victoria S. Kaufman, Bankruptcy Judge Julia W. Brand, Bankruptcy Judge Meredith A. Jury, Chief Bankruptcy Judge for the Southern District of California Laura S. Taylor, Bankruptcy Judge (Retired) David N. Naugle

James Heiting and Abram Feuerstein

Judge Meredith Jury and Darrell Moore

In line with her values, Judge Jury will continue to educate and contribute to her community after retiring from the bench. We can all continue to learn from Judge Jury by embracing her core values and following her example to treat each other with dignity and respect.

Monique D. Jewett-Brewster is an attorney with the Law Firm of Hopkins & Carley in San Jose, CA. A member of the Financial Institutions and Creditors' Rights group, Monique assists creditor clients in commercial loan workouts and restructurings, and bankruptcy and business litigation cases.

photos courtesy of Jacqueline Carey-Wilson.

Working with Judge Meredith A. Jury

by Chris Hudson

I first began working for Judge Jury as her Relief Judicial Assistant when she was appointed to the bench, but officially in May 1999. While working in her chambers as her Relief Clerk my impression of her was that she pulled no punches in letting you know what she thought or felt of you. As a Relief Clerk I was assigned in Judge Jury's (or any other Judge's) chambers for no more than a week at best and therefore would not learn of her style or preferences very well. So when I was offered a permanent position in her chambers I was caught off guard, as I had the impression that my performance was nowhere close to meeting her standards. After discussing my concerns with Judge Jury, we agreed to give our partnership (I call it partnership because that is always how she treated me) a try and she promised to teach me what I needed to learn. From that moment on until the last day working in her chambers she did exactly that.

Working for Judge Jury turned out to be training and lessons that could never be completely expressed in a short story. Upon my very first few months or year in her chambers, I had gone through some very shocking life and family situations that would have easily alarmed and created a frightening impression or created serious doubt of the person she had just hired. I learned to keep her informed and to not determine what should or should not be told, simply be truthful so that she was never blind-sided or placed in a position of discomfort and in turn she proved to be very supportive and nonjudgmental. I realized that she was the type of person that dealt with you based on her trust and observation of you as a person.

Working with Judge Jury for over 18 years has given me so much more than bankruptcy and court training, I have obtained a bond like that of family, learned how to interact with others without judgment, learned to be the example that I would like to see in others. I have found that if you ever want her honest advice on any issue she will share her thoughts as well as opinion very generously; just make sure you are ready for the truth.

Classified Ads

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Conference Rooms Available
Conference rooms, small offices and the Gabbert Gallery 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 Charlene or Lisa at the RCBA office, (951) 682-1015 or rcba@riversidecountybar.com.

Superior Court of California, County of Riverside – Civil Changes
The following be effective July 11, 2018: All hearings in all Civil Departments are subject to being vacated, continued, or reassigned to a different department. When those changes are made, a minute order will be mailed to notify parties and counsel. The Court will no longer provide telephonic and email notice.

It is the responsibility of parties and counsel to review the Court's online docket to confirm whether hearings remain on calendar. In most cases, minute orders will be posted and the online docket will be updated by 3:00 p.m. one court day prior to the scheduled hearing.

Unless a minute order is posted to the online docket indicating otherwise, all hearings will remain on calendar as scheduled and the Court will expect appropriate appearances.

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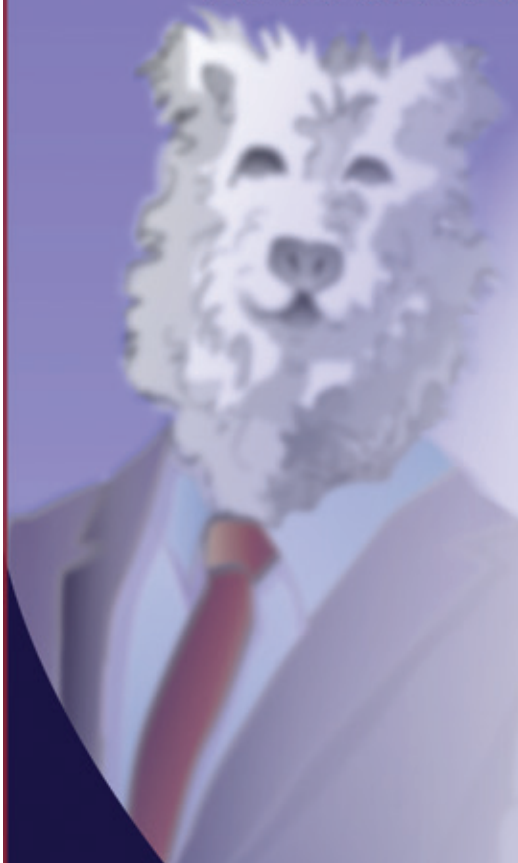

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