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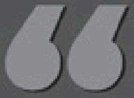
Human Trafficking: The History and Current Legislation to Combat this Growing Epidemic

First: Sandra Day O'Connor by Evan Thomas
A Book Review

The Official Publication of the Riverside County Bar Association



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Editor .... Jacqueline Carey-Wilson
Copy Editors .... Yoginee Braslaw & Juanita Mantz
Design and Production .... PIP Printing Riverside
Cover Design ....Pigprox/Shutterstock/Marian Semic

Officers of the Bar Association

President
Jeff Van Wagenen, Jr.
(951) 529-4092
JVanWagenen@rivco.org

President-Elect
Jack B. Clarke, Jr.
(951) 686-1450
jack.clarke@bbklaw.com

Vice President
Sophia H. Choi
(951) 955-6300
sochoi@rivco.org

Chief Financial Officer
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(951) 826-5567
nokazaki@riversideca.gov

Secretary
Lori Myers
(949) 300-3596
loriamyers@me.com

Past President
L. Alexandra Fong
(951) 955-6300
lafong@rivco.org

Directors-at-Large

Erica M. Alfaro
(951) 686-8313
erialfaro@gmail.com

Stefanie G. Field
(951) 684-2171
stefanie.field@greshamsavage.com

Mark A. Easter
(951) 686-1450
Mark.Easter@bbklaw.com

Jennifer Lynch
(951) 686-1450
jennifer.lynch@bbklaw.com

Executive Director
Charlene Nelson
(951) 682-1015
charlene@riversidecountybar.com

Officers of the Barristers Association

President
Megan G. Demshki
(714) 434-1424
megan@aitkenlaw.com

President-Elect
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Riverside County Bar Association
4129 Main Street, Suite 100
Riverside, California 92501

Telephone
951-682-1015

Facsimile
951-682-0106

Internet
www.riversidecountybar.com

E-mail
rcba@riversidecountybar.com

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

6 Understanding the Judicial Appointment Process
12:15 p.m.
RCBA Gabbert Gallery
Speaker: Justice Martin Jenkins, Judicial Appointment Secretary for Governor Gavin Newson

17 Family Law Section
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speakers: Ron Benavente and Barbara Hopper
Topic: "Bonvino: Undue Influence…Who Cares?"
MCLE – 1 hr General

19 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.

ON THE COVER:

Independence Hall in Philadelphia, home of the Second Continental Congress from 1775 to 1783 and site of the Constitutional Convention in 1787.

President's Message

by Jeff Van Wagenen

Do you listen to podcasts?

That is a question that I find myself asking people all the time. For the uninitiated, a podcast is "a digital audio file made available on the internet for downloading to a computer or mobile device, typically available as a series, new installments of which can be received by subscribers automatically." That is a very technical definition devoid of the true sense of the experience. I prefer to think of them as "ear candy for the brain." And, if the answers I get to my ubiquitous question are any indication, many of you think of them the same way.

There is a podcast for whatever interests you. News and Politics? Society and Culture? Sports and Recreation? Business? Science and Medicine? Religion and Spirituality? Technology? If you think those subjects cover just about everything, you're right – there is an endless supply of podcasts in each of those categories. And, the list above is less than half of the categories listed in the "Podcasts" app on an iPhone.

As an aside, there is one category that you will not see. There is not a standalone category for the subject of "legal issues." When I first started dipping my toe in the podcast pool (in 2014 with the first season of *Serial*), I was disappointed that I could not simply go to the "law" section and start listening. It didn't take long for me to figure out why it wasn't there. The law is everywhere and everything. Our profession is weaved into the fabric of the community in a way that nothing else is. Of course, you can't have a category devoted simply to the role of law in society – if you did there wouldn't be room for anything else.

The best podcasts all have one thing in common: to paraphrase Bill Murray from the movie *Stripes*, it is the stories that they tell. The writer Henry Miller wrote that "[t]he moment one gives close attention to anything, even a blade of grass, it becomes a mysterious, awesome, indescribably magnificent world in itself." This is the magic of podcasts. An example of this is *More Perfect*, which is also an especially appropriate podcast for this issue of the *Riverside Lawyer*. Found under the "Government and Organizations" category of all things, the podcast is described by the producers this way:

> Supreme Court decisions shape everything from marriage to money to public safety and sex. We know these are very important decisions we should all pay attention to – but often feel untouchable and even unknowable … *More Perfect* connects you to the decisions made inside the Court's hallowed halls, and explains what those rulings mean for "we the people" who exist far from the bench. *More Perfect* bypasses the wonkiness and tells the stories behind some of the court's biggest rulings.

Take the episode "The Political Thicket," which describes the 1962 redistricting case *Baker v. Carr.* At first blush, a redistricting case may not seem like the stuff of great entertainment, but this case was described by Chief Justice Earl Warren as the most important case of his tenure on the Supreme Court. This "simple" case pushed one justice to a nervous breakdown, sent another to the hospital, and brought a boiling ideological feud to a head. By diving deep into the story behind this decision, we learn how the Court and our nation were changed forever, and that what today seems preordained was anything but.

The recently published *Justice in Plain Sight*, also tells the story of two cases that today seem as if the outcome was inevitable, but the book reveals a precarious journey to those decisions. (Although this story is not a podcast, a recording of the panel discussion at our recent General Membership meeting anchored by its author, Dan Bernstein, would have resulted in countless downloads.) In the early 1980's, the *Press Enterprise* newspaper fought to open criminal court proceedings to the public. To any lawyer who started practicing in the thirty years since the Supreme Court decisions in *Press Enterprise I* and *Press Enterprise II*, public access to all stages of a criminal trial seems like a given.

We know that the best speakers, the best writers, and the best leaders are good storytellers. As a profession built on the practice of persuasion, we know we must make mastery of storytelling a priority. (I even have a book on my bookshelf by Annette Simmons entitled, *Whoever Tells the Best Story Wins*.) But what we do not always remember, and what podcasts like *More Perfect* and books like *Justice in Plain Sight* can remind us, is that we are part of the story. The characters of those narratives were unaware that their role would one day be seen as invaluable or heroic. They, like us, were doing their day jobs. They, like us, has had good days and bad. They, like us, had doubts and fears.

It has been said that a life becomes meaningful when you see yourself as an actor within the context of a story. Please tell your story every day.

Jeff Van Wagenen is the assistant county executive officer for public safety, working with, among others, the District Attorney's Office, the Law Offices of the Public Defender, and the courts.

Barristers President's Message

by Megan G. Demshki

It's been a privilege!

It's hard to believe how quickly a year goes by! It has truly been a privilege to lead the Barristers during my term as president. From pumpkin patch visits and movie nights to educational events and Happy Hours, we have enjoyed an event-packed year with multiple events each month to foster an active and engaged community of new and young attorneys. Thank you to the members of the Barristers and our greater legal community for showing up to events and participating so enthusiastically. It is the people and the relationships that have made this such a rewarding experience.

I am extremely grateful to former Barristers Presidents Erica Alfaro and Shumika Sookdeo for their ongoing commitment to the Barristers and guidance they offered along the way. Our organization owes so much to both of you.

Paul, I am eager to support you in your new role as president. You have been intentionally and genuinely welcoming at Barristers events, and I am excited to see your increased leadership role continue to better this organization.

I am so thankful.

To the outgoing board (Shumika, Paul, Goushia, Braden, Taylor, Patty, Mike, and Rabia), thank you for your unwavering support and tireless dedication to the betterment of this organization. I was continually inspired by your commitment to the Barristers. I truly believe we ignited lifelong friendships through Barristers and created a positive, welcoming avenue for new and young attorneys to grow within the Riverside legal community

2019-2020 Barristers Board – Alex Barraza, Megan Demshki, Patricia Mejia, Paul Lin, David Rivera, Goushia Farook, Lauren Vogt, Ankit Bhakta, Stuart Smith, and Michael Ortiz.

2019-2020 Barristers Board Elections

The Barristers held elections for the 2019-2020 Board of Directors on June 12, 2019. Congratulations to the newly elected board:

President: Paul Lin
President-Elect: Goushia Farook
Treasurer: David Rivera
Secretary: Mike Ortiz
Members at Large:
Alex Barraza
Ankit Bhakta
Patricia Mejia
Stuart Smith
Lauren Vogt
Immediate Past President: Megan Demshki

The 2019-2020 Board of Directions will be sworn in at the RCBA installation dinner at the Mission Inn on September 19, 2019. We hope you will join us!

Megan G. Demshki is an attorney with Aitken Aitken Cohn in Riverside where she specializes in traumatic personal injury, wrongful death, and insurance bad faith matters. Megan can be reached at megan@aitkenlaw.com or (951) 534-4006.

SAVE THE DATE

Annual Installation Dinner

Honoring President Jack Clarke, Jr., the Officers of the RCBA and Barristers for 2019-2020

Thursday, September 19, 2019
Social Hour 5:30 p.m.; Dinner 6:30 p.m.

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

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This Army Vet Died of an Overdose in His Jail Cell. He Deserved Better Than Laughter

by Honorable Mark Johnson

> *"I understand how difficult the transition can be, but we are still responsible for our own choices regardless of anything we may have witnessed or done overseas. He chose to put that poison in his body. He is responsible for his own death.*
>
> *"He absolutely deserved to die over his drug problem, because that is exactly what killed him. I'm not saying that that is fair, but that is life. Grow the f*** up."*

This judgment came from an anonymous poster in response to, "An Army Veteran Was Left To Die In A Cell While His Jailers Laughed And Took Video." The article, published in *Task & Purpose,* an online veterans magazine, documented Purple Heart recipient Bryan Perry's 2016 death.

In a viral video, Clackamas County deputies laugh as Bryan Perry gyrates on a bench with the classic symptoms of stimulant overdose: uncontrollable body movements, inability to stand, and incoherence. Yet, jail personnel did not take him to the hospital. They chose instead to lock him in a padded cell and film him. One deputy suggested Bryan be displayed at schools to show kids the dangers of drugs, "Look what I got for show and tell today."

Bryan died of cardiac arrest. He had ingested methamphetamine, bath salts, and heroin. He was 31.

I am accustomed to hearing comments such as those of the holier-than-thou poster. During the five years I presided as judge over the Riverside County Veterans Court, I supervised hundreds of veterans suffering from post-traumatic stress disorder and drug addiction. What surprises me, though, is that the harshest judgments generally come from veterans. They do not understand that post-traumatic stress disorder (PTSD) and addiction are diseases.

Bryan spent his eighteenth birthday—April 7, 2003—on an Army convoy from Kuwait to Iraq. In September 2003, he was wounded. He received an honorable discharge and left service with PTSD.

Bryan's situation was not unique. According to a 2008 study by the Rand Corporation, 20% of Iraq and Afghanistan veterans are suffering or have suffered from PTSD. Other studies report higher numbers. One by Yale University published in the March 2014 edition of *Substance Abuse and Rehabilitation* found, "Among male and female soldiers aged 18 years or older returning from Iraq and Afghanistan, rates range from 9% shortly after returning from deployment to 31% a year after deployment."

Yet, 50% of these veterans, including Bryan, do not seek treatment, often because they do not know they have PTSD. According to Dr. Michelle Spoont, a clinical and research psychologist at the Minneapolis Veterans Administration Health Care System, "We're finding out that patients know something is wrong, but they don't know what it is. They may see their peers struggling as well and not realize there is a problem."

One veteran I helped refused to travel the freeways of southern California because he would panic under overpasses. Another would have a flash back at the smell of exhaust. It was thick in the air when an improvised explosive device (IED) detonated, killing his best friend.

Normal to these veterans is seeing terrifying images that are not there. The veteran's relationships, employment and health fall apart. Parents who sent a healthy high school graduate to the military get back someone they fear and do not recognize.

To alleviate these symptoms, veterans like Bryan often turn to alcohol, methamphetamine, and other illegal drugs.

Why? Because these substances work. Snort methamphetamine and crushing depression and sadness are gone. A veteran climbing walls of anxiety relaxes after shooting up heroin. Down a pint of hard liquor and flashbacks go away. This is what we call "avoidance."

But this self-medication is akin to throwing gasoline on a fire. Alcohol and illegal substances make the classic symptoms of PTSD, which are irritability, aggression, hypervigilance, and so much worse. And veterans with unlucky genetic or psychological makeups become addicts, Bryan being one of them. He found himself caught in a world of PTSD terror and addiction.

To suggest that Bryan used because he was less than the rest of us is at best naïve. At worst, it is callous and cruel. Watch him on the video. Would anyone choose to live like that?

In our court, we did not label veterans as losers responsible for their predicament. We saw their crimes

as health problems. We did not judge. I told the veterans before me I was not looking at criminals. Instead, I saw the young soldiers who protected me when I served in Baghdad. I saw heroes who had stumbled, brothers and sisters in arms that needed help.

We supported them through an intensive eighteen month treatment plan developed by mental health and addiction experts. We did pretty well. Our recidivism rate after three years was 15%. By comparison, the California Department of Corrections had a recidivism rate of 65%.

With over 400,000 veterans returning with PTSD from Iraq and Afghanistan and a readily available supply of illegal street drugs, we stand on the edge of a huge future problem. There are thousands of Bryans out there. America's response should be treatment and compassion, not harsh armchair judgments.

Secretary of Veterans Affairs Eric K. Shinseki said it best, "This nation has a solemn obligation to the men and women who have honorably served this country and suffer from the often devastating emotional wounds of war."

I wished we could have helped Bryan Perry. RIP, Brother.

Honorable Mark Johnson is a judge on the California Superior Court in Riverside County. He presided over the Riverside County Veterans Court for five years, supervising the recovery of combat veterans suffering from post-traumatic stress disorder and other mental health issues. He is a retired colonel of the United States Army Reserve, an Iraq War veteran, and a graduate of the United States Army War College.

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 2020. The budget will be available after August 14. 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 21, 2019
at 5:15 p.m. in RCBA Board Room

RSVP by August 19 to: (951) 682-1015 or charlene@riversidecountybar.com

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Schenck and *Abrams* at 100

by Victor Lee and Gabriel White

In 1919, the United States Supreme Court handed down two cases that have become mainstays of First Amendment jurisprudence, *Schenck v. United States* (1919) 249 U.S. 47 and *Abrams v. United States* (1919) 250 U.S. 616. The importance of *Schenck* and *Abrams* extends beyond the "clear and present danger" test, a phrase first used in *Schenck*, but a doctrine few of us will regularly encounter in our personal or professional lives. The cases signal the start of a broad conception of the right to free speech, rejected in earlier First Amendment case law. It is often now assumed that the right to speak out is a core American value, subject only to carefully circumscribed exceptions. But it was not always so, even long after the First Amendment was adopted.

Schenck

Charles Schenck and Elizabeth Baer, high-ranking members of the Socialist party, were arrested for printing and distributing a flyer to men who had been drafted to help the country fight World War I. In "impassioned language," the flyer opposed the draft, contending that it violated the Thirteenth Amendment and urging its repeal.[1] It implored the reader to "Assert Your Rights" and not "submit to intimidation," and that "You must do your share to maintain, support and uphold the rights of the people of this country."[2]

In circulating the flyer, prosecutors alleged that the defendants violated the 1917 Espionage Act, which among other things made it a crime during wartime to "willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty, in the military or naval forces of the United States, or . . . willfully obstruct the recruiting or enlistment service of the United States . . . ."[3] The flyer did not directly urge its readers to obstruct the draft, but Schenck and Baer were charged with three counts of violating the Espionage Act and ultimately found guilty.

The Supreme Court unanimously affirmed the convictions. In an often-cited passage, Justice Oliver Wendell Holmes, Jr. wrote the following:

> It may well be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose, as intimated in *Patterson v. Colorado*, 205 U.S. 454, 462. We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. [Citation.] The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. [Citation.] The question in every case is whether the words used are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.[4]

There are many things worth noting about this passage, but let's focus on two. The first is that the Court suggests it may have gotten it wrong in *Patterson v. Colorado* (1907) 205 U.S. 454. In *Patterson*, the Court had stated that the "main purpose" of freedom of speech was only "'to prevent all . . . previous restraints upon publications'" and that the First Amendment *did not* "prevent the subsequent punishment of such as may be deemed contrary to the public welfare."[5] This view—that freedom of speech protected against prior restraints but offered no protection from allowing the government to punish the speaker after the fact—was the view stated in Blackstone's Commentaries.[6] But it left the First Amendment's protections of freedom of speech and freedom of the press more imaginary than real. *Schenck's* departure from *Patterson* deserves commemoration as much as anything else in this historic opinion.

Second, although *Schenck* seemed to announce a new test in asking whether "the words used are of such a nature as to create a clear and present danger," the Court did not actually apply this standard to the facts before it. It is hard to see, for instance, how the flyers could have truly

1 249 U.S. at pp. 50-51.
2 *Ibid.*
3 40 Stat. 217, 219.

4 249 U.S. at pp. 51-52.
5 205 U.S. at p. 462, italics omitted. The majority opinion in *Patterson* was written by Justice Holmes.
6 See *Alexander v. U.S.* (1993) 509 US 544, 5657-568 (dis. opn. of Kennedy, J.) [noting that, according to Blackstone's Commentaries, "[e]very freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity"].

amounted to a clear and present danger to American interests in the war. According to one scholar, the new language "was merely a paraphrase" of the then-prominent "bad tendency test," under which the government could punish speech so long as that speech "tended to cause unlawful consequences."[7] Giving the new "clear and present danger" language independent meaning was left for later cases.

Abrams

Abrams involved five Russian immigrants who had been convicted of violating various provisions the Espionage Act (specifically, as it was amended and expanded in 1918).[8] Like those in *Schenck*, the defendants in *Abrams* distributed flyers, but in *Abrams* the flyers (one version in English, the other Yiddish) protested the United States' involvement in the Russian Civil War (1918-1920).[9]

Writing for the majority, Justice John Clarke affirmed the convictions, applying *Schenck* and finding that substantial evidence supported two of the charges.[10]

In dissent, Holmes, joined by Justice Louis Brandeis, argued that the prosecution failed to show that the defendants intended to violate the Espionage Act, which (under the provisions the defendants were accused of violating) required an intent to impede a United States war effort; protesting American involvement in the Russian Civil War, Holmes stated, could not have impeded "the war that [the United States] was carrying on," World War I.[11] Holmes did not expressly doubt the validity of *Schenck* or his previous Espionage Act cases, though the tension with those cases is palpable.[12] Instead, focusing on the facts, he reasoned that "nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinions would hinder of the government arms or have any appreciable tendency to do so."[13]

7 Douglas Laycock, The Clear and Present Danger Test, 25 J. Sup. Ct. Hist. 161, 163, 165. For instance, just one week after Schenck, the Supreme Court decided *Debs v. United States* (1919) 249 U.S. 211, 216, another Espionage Act case, this time involving the five-time Socialist presidential candidate Eugene V. Debs, where the Court (in an unanimous opinion by Justice Holmes) expressly applied the bad tendency test.

8 250 U.S. at pp. 616-617; see 40 Stat. 553. The amendments are sometimes referred to as the 1918 Sedition Act.

9 250 U.S. at pp. 617-618. The flyers were "distributed" in part by throwing them out of a window. *Id.* at p. 618.

10 250 U.S. at pp. 616-624.

11 *Id.* at pp. 628-629 (dis. opn. of Holmes, J.).

12 *Id.* at p. 627; see *Frohwerk v. United States* (1919) 249 U.S. 204; *Debs, supra,* 249 U.S. 211.

13 *Id.* at p. 628. Compare this reasoning to *Frohwerk, supra,* 249 U.S. at p. 208, upholding conviction under Espionage Act despite newspaper's small circulation and lack of evidence of any particular effort to reach men subject to the draft, because it could have been found "that the circulation of the paper was in quarters where a little breath would be enough to kindle a flame and that the fact was known and relied upon by those who sent the paper out."

Holmes then penned perhaps one of the most famous paragraphs in Supreme Court jurisprudence. In it, Holmes among other things (1) rejects the conclusion that a "perfectly logical" notion is always the legally correct one, (2) argues that the "best test of truth" is acceptance in the marketplace of ideas, (3) reminds us that the Constitution "is an experiment, as all life is an experiment," (4) states matter-of-factly the "sweeping command" that is the First Amendment's protection of freedom of speech, (5) articulates a narrow exception "[o]nly" for "the emergency that makes it immediately dangerous to leave the correction of evil counsels to time," and of course (6) changes the course of First Amendment history in the process.[14]

It being a dissent, Holmes' opinion in *Abrams* had no binding effect. Holmes' insistence, however, that the exception to First Amendment protection requires "immediate" danger (the qualifier is used five times in the dissent—seven if you also count "imminent") would eventually become the law.[15]

Did Holmes change his mind between *Schenck* and *Abrams*, and if so, why? Apparently, "[t]he great weight of scholarly opinion is that Holmes and Brandeis changed their position."[16] A number of theories have emerged as to why.[17] Hopefully this truncated look back at these centenarian cases will encourage additional reading and reflection.

Victor Lee and Gabriel White are appellate court attorneys at the Court of Appeal. 4th District, Division 2. The views expressed in this article are solely their own.

14 See *Abrams, supra,* 250 U.S. at pp. 630-631. Space constraints, together with Eighth Amendment principles, counsel that we should not reproduce the text here. But we urge the reader to look it up; it is well worth the read.

15 See, e.g., *Thornhill v. Alabama* (1940) 310 U.S. 88, 105; *Brandenburg v. Ohio* (1969) 395 U.S. 444, 447.

16 Laycock, The Clear and Present Danger Test, 25 J. Sup. Ct. Hist. at p. 174.

17 For a recent and illuminating book-length treatment on this question, see Thomas Healy, *The Great Dissent: How Oliver Wendell Holmes Changed His Mind—and Changed the History of Free Speech in America* (2013).

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Confrontation Clause – The DareDevil is in the Details

by Andrew Gilliland

Recently, I had the opportunity to meet one of my favorite authors, Charles Soule,[1] who is also an attorney, and we were able to have a brief discussion about the Confrontation Clause and how it applied to one of my personal favorite superheroes, Matt Murdock, who is also known as Daredevil. Our discussion revolved around the storyline in the Daredevil graphic novel "Supreme," which Charles Soule authored. Like Superman (and numerous other superhero characters), Daredevil has an alter ego named Matt Murdock, who is an attorney practicing law in New York for the District Attorney's (D.A.) office. As a child, Matt lost his sight in a radioactive accident, which conversely gave him a 360-degree radar sense.[2] A constant theme of the Daredevil series revolves around Matt's Daredevil activities and his role as an attorney. Charles Soule, as an attorney, created a story line that captured this dual sided nature of Matt's being by creating an issue revolving around the Confrontation Clause, which Matt decided to pursue for the betterment of all superheroes, wishing to testify in criminal cases without revealing their secret identity.

By way of background, the Confrontation Clause found in the Sixth Amendment to the United States Constitution provides, "In all criminal prosecutions, the accused . . . shall be confronted with the witnesses against him . . ." To the colonists, who had been subjected to criminal prosecution without being able to confront their accusers, this right was fundamental to forging a legal system that cast aside one of the injustices embodied in the British legal system. Evidentiary rules, both civil and criminal, embody the protections of the Confrontation Clause for an accused seeking to use it either as a sword or as a shield in civil and criminal actions. For criminal prosecutions, the waters of the applicability of the Confrontation Clause are muddied when a confidential informant provides evidence revealing the criminal activity of the accused. However, as the Ninth Circuit Court of Appeals noted, "Without informants, law enforcement authorities would be unable to penetrate and destroy organized crime syndicates, drug trafficking cartels, bank frauds, telephone solicitation scams, public corruption, terrorist gangs, money launderers, espionage rings, and the likes."[3] Thus, the use of a confidential informant by law enforcement adds a valuable tool to their ability to gather intelligence leading to arrests and convictions.

At the federal level, the Department of Justice issued guidelines for dealing with the use of a confidential informant in federal crimes.[4] According to the DOJ Guidelines, a confidential informant is "any individual who provides useful and credible information to a Justice Law Enforcement Agency (JLEA) regarding felonious criminal activities and from whom the JLEA expects or intends to obtain additional useful and credible information regarding such activities in the future." Confidential informants are vetted by the federal agency seeking to use such person, which vetting requires proving the confidential informant's true identity, taking their picture, and registering the individual as a confidential informant. This process is designed to provide validity to the information provided by such confidential informant. The federal law enforcement entity using such informant protects the identity of the confidential informant as well as any information that could possibly lead to identifying the confidential informant.

At the state level, the California Rules of Evidence define who qualifies as a confidential informant and when such informant's identity must be disclosed to satisfy the due process rights contained in the Confrontation Clause. California Evidence Code section 1041 defines a confidential informant as a person who has furnished information of a purported violation of the laws of the State of California to "(1) a law enforcement officer, (2) a representative of an administrative agency charged with the administration or enforcement of the law alleged to be violated or (3) any person for the purpose of transmittal to a person listed in paragraph (1) or (2)." Section 1042 of the California Evidence Code subsection (d) sets forth the procedure to determine whether the identity of the confidential informant must be disclosed to protect

1 For more information about Charles Soule visit https://www.charlessoule.com.

2 The origin of Matt Murdock's superpowers can be found at the beginning of each Daredevil comic.

3 *U.S. v. Bernal-Obeso*, 989 F.2d 331 (9th Cir.)

4 Department of Justice Guidelines Regarding the Use of Confidential Informants.

the defendant's right to a fair trial, which process starts with the filing of a motion to disclose the identity of the information by the defendant. Factors a court might consider to determine whether the identity should be disclosed include: possible defenses the defendant might use; whether the defendant might call the confidential informant as a witness; whether the confidential informant might have information useful to the defendant's case; or whether there is evidence of guilt apart from the confidential informant's information. If the court determines that the identity of the confidential informant must be disclosed, the prosecutor must either disclose the identity or dismiss the charges. Charles Soule explored the risk of relying on a confidential information and the disclosure requirement with Matt Murdock aka the Daredevil in the Supreme storyline.

With his 360 sonar radar capability, Daredevil can hear through walls in order to gather information of criminal plots. Daredevil's arch nemesis is called Kingpin, a prototypical mob boss who also has enhanced strength, and Daredevil uses his special ability to thwart Kingpin time after time. One chilling aspect of Daredevil's sonar capabilities is the ability to act as a human lie detector by focusing in on the heartbeat of the person he is questioning. However, because Daredevil is a costumed and masked superhero, only a select few know his true identity as Matt Murdock. This limitation has prevented Daredevil from participating in the trial of the accused criminals he has rounded up, including Kingpin. Acting as Matt Murdock, he sought to challenge the system through having Daredevil testify in one of his trials against a defendant.

To put his plan in place, Matt Murdock sends another attorney from the D.A.'s office to court for the purpose of directly examining Daredevil during a criminal trial. Once Daredevil is sworn in and the judge explains his rights and potential consequences of his desire to have his true identity remain anonymous (Daredevil is not a registered confidential informant and his true identity has not been verified), the defense objects and moves for the court to require that Daredevil reveal his true identity. After an in camera meeting with the attorneys and a review of written briefs on the issue, the judge allows Daredevil to testify if he can prove that he is Daredevil and has super powers, which standard Daredevil satisfies. After the New York Supreme Court upheld the judge's ruling, Kingpin hires Tony Stark's former in-house counsel to appeal to New York's highest court, the Court of Appeals. Before the Court of Appeals, he argued that the Due Process provisions of the Fourteenth Amendment are intertwined with the Confrontation Clause in the Sixth Amendment, an argument the Court of Appeals finds convincing in a 4-3 decision reversing the New York Supreme Court and the trial court. Such a ruling was all part of Matt's plan as he wanted the issue decided by the United States Supreme Court, so that it would be applicable in all states and not just New York.

At oral argument before the United States Supreme Court, Matt cited *Roviaro v. United States*, 353 U.S. 53 (1957) as requiring a balancing test. The balancing test as articulated in the *Roviaro* opinion requires:

> "balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors."[5]

Murdock's opponent counters that the *Roviaro* test disallows confidentiality for informants involved in the criminal activity and because Daredevil is a vigilante he is involved in criminal activity. In his rebuttal, Matt drives home the point that the public interest in bringing anonymous superheroes into the legal system to testify tilts the balance in favor of keeping Daredevil's true identity secret. The United States Supreme Court agrees with Murdock in a 7-2 decision setting the standard that a masked superhero need not reveal their identity to testify against a defendant.

While fictional case law has no real world applicability, the merger of the fictional world of masked superheroes and the real world Confrontation Clause provides intellectual stimulation for those such as myself who enjoy the real world aspects found in superhero stories and characters. Quite frankly, until I read the Supreme story line, I had never really thought about how the criminals that superheroes rounded up were convicted. I never thought about what evidence would need to be produced at trial and who would testify in the case. Charles Soule with his legal background raised an interesting legal issue applied to the fictional world of superheroes. In our discussion it was apparent that he enjoyed applying real world legal principles to one of his favorite characters – Daredevil.

Andrew Gilliland is a solo practitioner and the owner of Andrew W. Gilliland Attorney-at-Law with offices in Riverside and Salt Lake. Andrew is a member of the RCBA's Publications Committee.

5 *Roviaro* at 353 U.S. 62.

DACA: An Uncertain Future

by Fernanda M. Pereira

On June 28, 2019, the Supreme Court announced its decision to grant certiorari, while consolidating three Deferred Action for Childhood Arrivals (DACA) termination cases that are before U.S. District Courts in California, the District of Columbia, and New York — *Department of Homeland Security v. Regents of the University of California*, No. 18-587, *Trump v. NAACP,* No. 18-588, and *McAleenan v. Vidal*, No. 18-589. The Supreme Court will decide (1) Whether the Department of Homeland Security's (DHS) decision to wind down the DACA policy is judicially reviewable; and (2) Whether DHS's decision to wind down the DACA policy is lawful. A decision is expected in the spring or summer of 2020, when the Presidential election contest is still on, promising that immigration will remain a hot topic in the upcoming election.

If the Supreme Court rules in favor of the administration, President Trump's claim that the program was an unconstitutional exercise of executive authority will be upheld, and he will have the right to terminate it. This decision would lift lower court injunctions that are now in place and make the current 699,350 DACA recipients deportable, forcing Congress to reach a compromise to prevent their removal. If the program is upheld, the government will have to continue to process DACA renewals, as well as accept new DACA applications and Advance Parole applications. More individuals would continue to qualify to apply for the program as they reach 15 years of age, and others will qualify for other forms of relief as they travel abroad and are admitted or paroled into the U.S.

DACA in a Nutshell

DACA was created by President Obama in 2012, and allows eligible individuals who do not present a risk to national security or public safety to request consideration for deferred action for a period of two years, renewable, provided that the applicants meet certain guidelines. While DACA does not grant lawful status or provide a path to lawful permanent residence, it allowed many young persons to pursue careers that otherwise would have been out of their reach because they lacked work authorization, and allowed them to avoid removal from the U.S. Many DACA recipients are unable to obtain legal status on their own because they were bought into the U.S. as children undocumented, or overstayed their visas, and do not have qualifying relatives to submit other type of applications for relief.

On September 5, 2017, then U.S. Attorney General Jeff Sessions announced that the government would gradually end DACA. That same day, then Acting Secretary of Homeland Security Elaine Duke issued a memorandum directing the DHS to reject all initial DACA applications and associated applications for work authorization received after Sep. 5, 2017; reject all renewal applications after Oct. 5, 2017, from current DACA recipients whose status expired between Sep. 5, 2017, and March 5, 2018; and to reject all other renewal applications from DACA recipients.

Soon after, multiple lawsuits challenging the Trump administration's actions to terminate the program were filed across the country arguing that the government's decision violated the Administrative Procedure Act as arbitrary and capricious, and violated equal protection by discriminating against individuals from Mexico and Central America. Two U.S. District Courts (Northern District of California and New York) granted injunctions and required the U.S. Citizenship and Immigration Services (USCIS) to continue accepting DACA renewal applications from anyone who has or has had DACA.

The administration argued that DACA was an unconstitutional exercise of executive authority, relying on *United States v. Texas,* 136 S. Ct. 2271, decided after the death of Justice Antonin Scalia in 2016, where the Supreme Court deadlocked, 4 to 4. The ruling set no precedent but left in place the Fifth Circuit U.S. Court of Appeals' preliminary injunction blocking the implementation of two related deferred-action policies, Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) and the expansion of the DACA policy.

The Supreme Court Decides to Decide

In November 2018, while the appeals were pending in the Circuit Courts, the government took the unusual step of appealing directly to the U.S. Supreme Court through a petition for certiorari before judgment in the three mentioned cases, asking the Supreme Court to immediately review the decision of a U.S. District Court, without an appeal having been decided by a U.S. Court of Appeals, for the purpose of expediting proceedings and obtaining a final decision. Although the Supreme Court had previously denied certiorari before judgment on February 26, 2018 in *Regents of the University of California, et al.*, on June 28, 2019, the Court granted review in the three cases, in addition to consolidating them.

On November 8, 2018, after the writ was filed but before certiorari was granted, the Ninth Circuit issued a decision affirming the lawfulness of the preliminary injunction, and

reasoned that the plaintiffs case were likely to prevail on their claim that the administration's termination of DACA was "arbitrary and capricious" and therefore unlawful. As this is the only case where a decision has been issued by the Appeals court, the Supreme Court will also consider the sufficiency of this decision.

While the Supreme Court granted review on these cases, *CASA de Maryland v. Trump,* Case No. 17-cv-02942-RWT is still pending before the Supreme Court. In this case, the U.S. District Court in Maryland granted summary judgment to the plaintiffs, prohibiting the government from using or sharing information provided through the DACA application process for enforcement or deportation purposes. To the extent that the government wants to use the information, the government must apply to the court on a case-by-case basis. The court granted summary judgment to the government, however, on the other claims challenging the termination of DACA. The United States Court of Appeals for the Fourth Circuit ruled that the Trump Administration's decision to rescind the Deferred Action for Childhood Arrivals (DACA) program was unlawfully "arbitrary and capricious," because the Administration failed to offer any plausible explanation for the determination. We will have to wait and see if the Supreme Court will grant review on this case as well.

While the cases are pending with the Supreme Court, the future of DACA recipients and their families are also on hold. They are fearful for having trusted the government, having to deal with family members that told them repeatedly to remain in the shadows, and be contented with what they had, without having the opportunity to benefit from all their efforts to contribute to society. For now, while we wait for a decision, DACA recipients can renew their DACA and work permit, but the future they have been working so hard to build may be gone with the stroke of a few keys. If the Court decides in favor of the administration, that DACA was an unconstitutional exercise of executive authority, the program will end and the nearly 700,000 people, many of which have never known any other country may be deported. If the Court declares that ending DACA would be unlawfully "arbitrary and capricious," DACA recipients would be able to remain in the country, and although they will be allowed to work and renew their deferred action, their future will still be uncertain, caught in limbo as Congress seems unwilling or unable to take action.

Fernanda M. Pereira is a principal with the Central Valley-based Meath & Pereira Law Firm and is the supervising attorney for the Immigration Program at El Concilio, the largest Latino community-based non-profit agency in the Central Valley. Ms. Pereira practices in all aspects of immigration law and speaks and writes frequently about immigration issues.

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Annual Past Presidents' Dinner

The past presidents of the RCBA spanning 48 years of bar leadership, together with guest Presiding Judge John Vineyard (also 1999 RCBA president) and Executive Director Charlene Nelson, met for their annual dinner on May 16. Participants spent the evening renewing acquaintances, catching up on news, and discussing the state of law practice and the courts. The evening was memorable.

Photos courtesy of Jacqueline Carey-Wilson.

Back row (l-r): Judge Stephen Cunnison (Ret.) – 1981, Harlan Kistler – 2010, Geoffrey Hopper – 1994, Judge Craig Riemer – 2000, Brian Pearcy – 2002.

Middle row (l-r): Dan Hantman – 2007, Charlene Nelson, Alexandra Fong – 2017, D. Richard Swan – 1977, Judge Dallas Holmes (Ret.) – 1982, Theresa Savage – 2005, Judge Chris Harmon – 2012, Sandra Leer – 1991, Riverside Public Defender Steven Harmon – 1995, James Heiting – 1996 (and State Bar of California President – 2005), Jean-Simon Serrano – 2016, Judge Irma Asberry – 1997, Judge Chad Firetag – 2014, Judge Kira Klatchko – 2015, Jacqueline Carey-Wilson – 2013.

Front row (l-r): Justice Barton Gaut (Ret.) – 1979, Jane Carney – 1989, Arthur Littleworth – 1971, Justice James Ward (Ret.) – 1973

Not pictured: Presiding Judge John Vineyard

Jacqueline Carey-Wilson and Justice James Ward (Ret.).

Judge Chad Firetag, Justice James Ward (Ret.), Theresa Savage, Carole Ward, Liz Cunnison, Judge Stephen Cunnison (Ret.), and Judge Kira Klatchko.

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Human Trafficking: The History and Current Legislation to Combat this Growing Epidemic

by DW Duke

Human trafficking is nearly as old as recorded history. In simple terms, human trafficking is a noun phrase that refers to the action or practice of illegally transporting people from one country or area to another, typically for the purpose of forced labor or commercial sexual exploitation. Today, we often use the term to represent any form of forced labor regardless of whether there is transportation. While it happens in many different contexts, sexual exploitation is one of the most pervasive areas in part, because of all forms of human labor, this is one of the most lucrative. In the same way that the transportation of illegal drugs produces an unusually high economic yield, so does sex slavery. For this reason, we often find cartels in the two industries intertwined.

Historically, human trafficking was one of the earliest forms of commerce. Contemporaneous writings on this topic appear in the first five books of the Bible commonly known as the Torah. The account of the Israelites in Egypt, in the book of Exodus, portrays a massive civilization built on slave labor. Even prior to that, conquered people were typically taken into slavery in various forms. Generally, if a given people had the ability and the opportunity to conquer another people they often did so, and the conquered people became slaves.

Accounts of slavery continued throughout history and it was generally accepted as a norm. The 15th century marked the start of the European slave trade in Africa, with the Portuguese transporting Africans to Portugal and using them as slaves. In 1562, the British joined the slave trade in Africa. The development of plantation colonies increased the volume of the slave trade. Later, throughout the 17th century, other countries became involved in the European slave trade. These included Spain, North America, Holland, France, Sweden, and Denmark.

Shortly after Europeans came to America in the 1490s, the native populations were subjected to slavery. Often in the context of conquering people, slavery is combined with genocide. Some historians estimate that as many as 100 million Native Americans were murdered between the 15th century and the 20th century, with several times that number being subjected to various forms of slavery.

Then of course, in Europe we had the human trafficking involved in the Holocaust, with Hitler's plan to concentrate and exterminate those considered undesirable, most notably the Jews and the mentally handicapped. In the Soviet Union for 60 years slave labor was used to serve the interests of the government. The same was true in China. In short, human trafficking is a problem that has plagued the world and until the 19th Century there were few laws that prohibited this practice.

It is difficult to estimate the number of human trafficking victims today because it is a hidden crime. The activities of traffickers are concealed because of its illegality. According to some estimates, there are currently as many as 20 to 25 million people trapped in human trafficking. According to the United Nations Office on Drugs and Crime, 79% of human trafficking is sexual exploitation. Worldwide, 20% of all trafficking victims are children though in some areas that number actually approaches 100%. ***Human trafficking generates $150 billion in revenue per year.***

Today, we typically think of human trafficking as using force, fraud, or coercion to make an individual perform labor or engage in commercial sex. The movement from one location to another is no longer a necessary element of the crime.

Slavery in Britain

In the late 1700s, a moral outcry against slavery began to surface in Europe. Britain, who had been the European leader in the slave trade, became the primary area of focus to end European slavery. Because the Britain slave trade transported more slaves to the Americas than any nation other than Portugal, we will focus on the British slave laws.

In 1772 the landmark case, *Somerset v. Stewart* (1772) 98 ER 499, was heard in the Court of King's Bench by Lord Mansfield (William Murray, First Earl of Mansfield) who found that slavery was unsupported in common law in England and Wales. And since there were no statutes authorizing slavery, Lord Mansfield concluded that there existed no legal support for slavery in England and Wales.

In *Somerset*, a slave owner named Charles Stewart had purchased an African slave named George Somerset in Boston, Massachusetts. Stewart returned to England in 1769 bringing Somerset with him. Somerset escaped in 1771, but was recaptured in November of that year and imprisoned on a ship called *Ann and Mary* bound for Jamaica. Three godparents of Somerset learned of his

capture and imprisonment on the ship and on December 3, 1771, filed a petition for a writ of habeas corpus in the Kings Court. During the pendency of the matter, the case generated substantial press and public attention. Oral argument was heard on May 14, 1772. On June 22, 1772, Lord Mansfield delivered his opinion that in the absence of legal support for slavery in either common law or in statutes, Somerset had to be released and could not be forcibly removed to another country. The Somerset case resounded throughout Europe as the first judicial decision to strike a serious blow to the slave trade. It became a symbolic torch for the Abolitionists who, for the first time, began to sense support for their position in the judiciary.

In 1781, a significant event caused outrage resulting in another case that struck a blow against slavery. A British slave ship called the *Zong*, while transporting slaves began experiencing slave deaths due to illness, in part caused by an insufficient supply of water on the ship. To keep the sickness from spreading to other slaves in passage, the captain ordered 133 men and women, who had become ill, to be thrown overboard resulting in their drowning. Under British law at the time, if the deaths resulted from efforts to save the lives of the crew, then insurance could be compelled to pay the loss, but if the deaths resulted naturally or by illness, then insurance could not be compelled to pay. In *Gregson v. Gilbert* (1783) 3 Doug KB 232, also heard by Lord Mansfield, the court determined that the deaths were not necessitated to save the crew and for that reason, there was no coverage under the policy of insurance issued to the ship.

In 1787, the Society for Effecting the Abolition of Slavery was formed in England as the culmination of years of work by a number of abolitionists, including such notables as Thomas Clarkson, George Fox, Mary Birkkett, Hannah Moore, and Mary Wollstonecraft, who for decades espoused the evils of slavery. Largely because of years of dedicated work by these abolitionists, abolitionism spread throughout the working and the middle-class families of Great Britain.

After a century of efforts by British citizens to end slavery, one of the first efforts to legally abolish slavery was the British Parliament Slave Trade Act of 1807. The Act proved ineffective because, while it prohibited individuals from participating in the slave trade, it did not outlaw slavery. Those who already owned slaves could keep them. Nonetheless, even though the Act was ineffective in ending slavery, it was important in swaying public opinion concerning its evils. Finally, in 1833 Britain passed the Slavery Abolition Act of 1833 which ended slavery in Britain. The Act provided for compensation to slave owners in exchange for the release of their slaves. Inasmuch as Britain had been a leader in the slave trade, the abolition of slavery impacted the slave trade throughout all of Europe.

While slavery was being abolished in Britain, the United States Supreme Court rendered the infamous decision in *Dred Scott v. Sanford* 60 US 393 (1857), which held that African Americans were not human beings within the meaning of the United States Constitution, and thus lacked standing to sue for redress of grievances. This also meant that an African American lacked standing to sue to prove that he or she is a free person of color. The Emancipation Proclamation was Abraham Lincoln's response and in 1865, the 13th Amendment to the Constitution prohibited slavery in the United States.

But slavery really did not end with the 13th Amendment. It continued well into the 20th century in the form of sharecropping and the Jim Crow laws. The former slaves were told that they were free and since they had no place to go, they could stay on the plantation and pay rent. However, the rent was so high, as were the cost of supplies, that the sharecroppers fell deeper into debt every year. If they tried to run, they were hunted down and charged with theft and were sentenced back to the plantation to work off the debt, which they could never pay because it continued to increase faster than they could pay off the debt. During this time as a demonstration of force, and as a warning to others, nearly 5,000 black sharecroppers were tortured and lynched.

After World War II, the international community began to accept that all nations had a responsibility to ensure that certain minimum human rights were in place. In 1948, the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. Article 3 provides that every person is entitled to life, liberty, and security of person. Article 4 prohibits slavery in any form. Article 2 provides that the Declaration of Human Rights applies to all persons regardless of race, color, creed, religion, political affiliation, national origin, property, birth, or other status. The Universal Declaration of Human Rights is technically not a treaty and thus, is not binding on nations. Nonetheless, it is often cited as authority in war crimes tribunals and other hearings involving human rights including human trafficking. It has been translated into 500 different languages.

In recent years, there have been numerous provisions at the international, national, and state level designed to specifically address modern human trafficking. In 2000, the United Nations General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. This Protocol requires state members to enact laws to protect victims of human trafficking and to punish persons who engage in human trafficking. So, while it does not itself provide for punish-

ment, it requires member nations to do so. A majority of countries have signed and ratified this Protocol.

United States Laws on Trafficking

The cornerstone of anti-trafficking laws in the United States is "The Trafficking Victims Protection Act" (TVPA), which consists of three components, Protection, Prosecution, and Prevention, commonly called the three P's. The TVPA provides protection to victims of trafficking and established the T visa, which allows temporary U.S. residency and a path to U.S. citizenship for victims of trafficking. It expands the crimes and penalties available to federal agents pursuing traffickers and enhances U.S. international efforts to prevent trafficking. The TVPA mandated the creation of the Office to Monitor and Combat Trafficking within the State Department and has sponsored public awareness campaigns and federal task forces to help implement its programs. The statute of limitations under the TVPA is 10 years.

The TVPA defines different types of trafficking as:

- **Commercial Sex Act:** Any sex act on account of which anything of value (money, drugs, shelter, food, clothes, etc.) is given to or received by any person.
- **Slavery:** A form of exploitation where people are legally considered personal property.
- **Involuntary Servitude:** A scheme, plan or pattern that causes a person to believe that if they do not enter into or continue a labor obligation or situation, they will suffer serious harm, abuse, or other negative consequences.
- **Peonage:** Peonage is involuntary servitude based upon a real or alleged indebtedness.
- **Debt Bondage:** Similar to peonage, debt bondage involves a debt that seemingly can never be paid off, forcing the victim into exploitative labor indefinitely (Sharecropping).

The Justice for Victims of Trafficking Act of 2015 states that individuals who purchase sexual acts from human trafficking victims may be arrested, prosecuted, and convicted as sex traffickers. It also established the Domestic Trafficking Victims' Fund, which allows money obtained from arrested traffickers to be given to states to assist victims of trafficking. This statute has a ten-year statute of limitations.

In 2014, the Preventing Sex Trafficking and Strengthening Families Act was enacted, which strengthened existing laws on child welfare, including additional stage actions related to foster care and adoption. This law recognizes how states' welfare agencies play a key role in the longer-term stability and assistance to minor victims of trafficking.

California Anti-Trafficking Laws

In addition to federal legislation on human trafficking, states have enacted their own laws. The California Transparency in Supply Chains Act requires manufacturers and retailers with $100 million or more in annual income to disclose information about their efforts to make sure human trafficking was not involved in producing their products.

Under Penal Code 236.1, the crime of "human trafficking" in California is defined as:

1. Depriving someone of their personal liberty with the intent to obtain forced labor or services from them;
2. Depriving someone of their personal liberty with the intent to violate California's pimping and pandering laws, California's child pornography laws, California laws against extortion and blackmail, or certain other California laws concerning commercial sexual activity and the sexual exploitation of children; or
3. Persuading or trying to persuade a minor to engage in a commercial sex act, with the intent to violate one of those same laws.

During the 2015-2016 legislative session, numerous bills were introduced in support of California's fight against human trafficking. Many of the bills that were enacted focus on protecting and assisting human trafficking survivors as they recover from their trafficking experience.

Senate Bill 84 (2015) – State government – enacted June 24, 2015: created the Human Trafficking Victims Assistance Fund and requires that the money in the fund be used for the distribution of grants to qualified nonprofit organizations providing services to human trafficking victims.

AB 418 (Chiu, 2015) – Tenancy: termination: victims of violent crime – enacted October 4, 2015: extended an existing law that authorizes a tenant who is, or lives with, a victim of human trafficking to terminate the tenancy and reduces the time limit for the tenant to give the landlord notice of intent to vacate from 30 days to 14 days.

Assembly Bill 15 (Holden, 2015) – Limitation of actions: human rights abuses – enacted October 4, 2015: requires a civil action for human trafficking to be commenced within seven years of the date that the trafficking victim was freed or if the victim was a minor, when the trafficking occurred, within ten years after the victim attains the age of majority.

Assembly Bill 1684 (Stone, 2016) – Civil actions: human trafficking – enacted July 22, 2016: authorized the Department of Fair Employment and Housing to receive,

investigate and prosecute complaints alleging human trafficking.

Assembly Bill 2221 (Garcia, 2016) – Criminal procedure; human trafficking witnesses – enacted September 26, 2016: requires, in a case involving a charge of human trafficking, that a minor who is a victim of the human trafficking be provided with assistance from the local county Victim Witness Assistance Center if the minor so desires that assistance.

Assembly Bill 1761 (Weber, 2016) – Human trafficking: victims: affirmative defense – enacted September 26, 2016: created an affirmative defense against a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had reasonable fear of harm.

Senate Bill 823 (Block, 2016) – Criminal procedure: human trafficking – enacted September 26, 2016: established a separate petition process for a person who has been arrested for, convicted of, or adjudicated a ward of the juvenile court for, committing a nonviolent offense, as defined, while he or she was a victim of human trafficking.

Assembly Bill 2498 (Bonta, 2016) – Human trafficking – enacted September 26, 2016: authorizes the withholding of names and images of a human trafficking victim, and the victim's family, from disclosure by a local or state police agency pursuant to the California Public Records Act until the trafficking investigation or any subsequent prosecution is complete.

Assembly Bill 1276 (Santiago, 2016) – Child witnesses-human trafficking – enacted September 26, 2016: authorizes, under specified conditions, a minor 15 years of age or younger to testify by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys if the testimony will involve the recitation of the facts of an alleged offense of human trafficking.

Senate Bill 1322 (Mitchell, 2016) – Commercial sex acts: minors - enacted September 26, 2016: eliminated the application of prostitution and loitering charges to minors and authorizes law enforcement officers to take temporary custody of juvenile human trafficking victims under specified circumstances pursuant to Welfare and Institutions Code section 305, subdivision (a).

Senate Bill 1064 (Hancock, 2016) – Sexually exploited minors – enacted September 26, 2016: indefinitely extended a pilot program in Alameda County to develop a comprehensive, replicative, multidisciplinary model to address the needs and effective treatment of commercially sexually exploited minors.

Senate Bill 448 (Hueso, 2016) – Sex offenders: internet identifiers – enacted September 28, 2016: requires a person convicted of a felony for which sex offender registration is required to register his or her internet identifiers and send written notice to the law enforcement agency with which he or she is registered within 30 days of changing any identifier.

Assembly Bill 2027 (Quirk, 2016) – Victims of crime: nonimmigrant status – enacted September 28, 2016: requires that, upon request, an official from a state or local entity certify "victim cooperation" on the Form I-914 Supplement B declaration, when the requester was a victim of human trafficking and has been cooperative, is being cooperative, or is likely to be cooperative regarding the investigation or prosecution of human trafficking. After three years a victim who receives such a certification can apply for citizenship.

Assembly Bill 1678 (Santiago, 2016) – Provision of incident reports to victims – enacted September 30, 2016: requires state and local law enforcement agencies to provide, without a fee, one copy of all human trafficking incident reports to the trafficking victim, or the victim's representative, upon request.

Two important 2018 bills:

- Senate Bill 970 amends the California Fair Employment and Housing Act to require by 2020, a hotel or motel employer is to provide 20 minutes of training to employees who are employed as of July 1, 2019, and likely to come into contact with victims of human trafficking, including, but not limited to, employees who work in a reception area, perform housekeeping duties, help customers in moving their possessions, or drive customers. Thereafter, the employer must provide training once every two years. For new employees hired after July 1, 2019, training must be completed within six months after hire
- Assembly Bill 2034 amends Section 52.6 of the California Civil Code to require operators of mass transit intercity passenger rail systems, light rail systems, and bus stations, on or before 2021, to provide employees who may interact with human trafficking victims with the same kind of training.

Human trafficking is a problem that is not easily resolved. We cannot completely eradicate this crisis in the near future, but reduction of human trafficking can be achieved if people are informed about what to look for and report it when they see it. In time, perhaps slavery will indeed become a condition of the past.

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.

First: Sandra Day O'Connor by Evan Thomas

a book review by Abram S. Feuerstein

If showing up is 80 percent of life,[1] showing up first may well be the whole shebang. And, for former Supreme Court Justice Sandra Day O'Connor, mostly it was.

Hence the title of Evan Thomas' new biography of Justice O'Connor, *First*.[2] By having wide access to family journals, personal correspondence, former O'Connor law clerks (94 of 108 of them), fellow justices (seven), and Justice O'Connor herself, Thomas has authored a thorough, highly readable, self-described "intimate" portrait of the first female to serve on the Court.

Justice O'Connor described her own appointment in 1981 to the Supreme Court almost as a matter of chance. She told a friend it was "like getting struck by lightning."[3] True, when Ronald Reagan fulfilled a campaign promise to appoint a female justice, he did not have a lengthy list of names. Five, to be precise.[4] Some of his advisors told him to wait. Reagan remained firm. A promise was a promise. And, Nancy seems to have insisted.

But, who was Sandra O'Connor? That's the question that a young Kenneth Starr — later of Whitewater fame — asked when he looked at the list and the Attorney General assigned him the job of visiting and interviewing O'Connor at her home in suburban Phoenix.[5] Starr, a former law clerk to Chief Justice Warren Burger and whose own name later would appear on Supreme Court "short lists," returned impressed, yes, by O'Connor's intelligence and pleasing personality, but also the salmon mousse she made and served her guest.[6]

Perhaps the mousse was the key. She presented herself as someone who fit into a "traditional" female role. As an Arizona state senator speaking to Rotary and Kiwanis Clubs, she would tell her audience that she had come to them "with my bra and wedding ring on."[7] No threat to the male of the species there. Not one of those angry feminists, but in the words of one of her former clerks, an "un-feminist feminist." Even the abortion question could not trip up her nomination. She found abortion personally abhorrent, but in interviews during the vetting process, O'Connor resisted saying if she would vote to overturn *Roe v. Wade*.[8] With the strong support of her Phoenix neighbor, Republican Senator Barry Goldwater, a little lobbying by a fellow Arizonan, Justice William Rehnquist (more about that later), and relying on her own deft, political skills, she charmed and thereby disarmed any opposition to her nomination, winning confirmation by a 99-0 vote.

Then, by positioning herself in the Supreme Court's ideological center, for almost two-and-a-half decades she became the Court's most important justice as a divided country — and its divided Court — grappled with society's most difficult issues.

Growing Up on the Lazy B

The suburbia, Junior League[9] persona encountered by DOJ interviewers was only a small part of the true O'Connor. She had grown up on a 250 square mile cattle desert ranch along the Arizona/New Mexico border.[10] Known as the "Lazy B," to a young girl, it seemed like its own country.[11] Big open spaces; no neighbors; dirt roads; broken wells; calf branding; cowboys; month-long roundups; repairing and driving trucks; and dust. Lots of dust. Her childhood pet was a bobcat, named Bob.[12]

Her father, known as "Mr. Day" to the ranch hands, was the king of the ranch, a tough man who after a few drinks in the evening could be verbally abusive to his wife.[13] He needled and badgered Ada Mae, O'Connor's mother. But, she refused to "take the bait," a lesson that

1 The observation typically is attributed to Woody Allen. See https://quoteinvestigator.com/2013/06/10/showing-up/.
2 Evan Thomas, *First: Sandra Day O'Connor* (496 pp., Random House 2019) (hereafter, "First").
3 Thomas, p. 291.
4 Thomas, p. 123.
5 Thomas, p. 123.
6 Thomas, p. 128.
7 Thomas, p. 79.
8 Thomas, p. 128.
9 O'Connor became the president of the Junior League's local chapter when living in Arizona. Thomas, p. 58.
10 Thomas, p. 4.
11 Thomas, p. 4 (quoting O'Connor).
12 Thomas, p. 5.
13 Thomas, p. 14.

Thomas states may be the most important the young O'Connor learned when in the future she would have to overcome workplace obstacles — mostly older dumb men.[14] Don't take the bait unless absolutely necessary. Pick your battles — the important ones. Let the others go. Notwithstanding a hard life in an isolated ranch house, Ada Mae tried her best to retain a sense of fashion and femininity, subscribing to *Vogue* and other magazines, and traveling 30 miles each week to the nearest hair salon. In Thomas' words, she "wore stockings and perfume, even as she carried around a flyswatter."[15]

Although it seems too easy to attribute the independent and practical-mindedness and self-confidence displayed by O'Connor later in life to her childhood experiences, ranch life left a deep mark. O'Connor did not write an autobiography about becoming the first female justice, but she co-authored with her brother *Lazy B*, a memoir about growing up on the family's desert ranch. Even after the family sold the ranch, the ranch remained firmly fixed in O'Connor's imagination as did her devotion to it. When asked at an "all-girls" dinner party in Phoenix if O'Connor were to have a tattoo, what would it say, and where would she put it, O'Connor replied: "That's easy. The Lazy B on my left hip."[16]

Off to Stanford

The family past-time at the Lazy B had been reading. Apparently, O'Connor loved Nancy Drew mysteries.[17] Miles and miles from the closest schools, her parents opted to send O'Connor to El Paso to live with her maternal grandmother where she could have "proper" schooling.[18] She aced elementary and then high school, and at age 16, with the strong encouragement of her father,[19] went to Stanford. The year was 1946, and at war's end, men outnumbered women 3 to 1.[20] She handled the social environment well, and loved the intellectual one. A survey course in Western Civilization — a right of passage for Stanford freshmen — became formative.[21] She was inspired by a creative writing class taught by heavyweight novelist and poet Wallace Stegner.[22] She finished her undergraduate studies in three years, did well on a law school admissions test, and decided to attend Stanford Law School — at least a first year to see if she did well and enjoyed the experience.[23]

14 Thomas, p. 14.
15 Thomas, pp. 13-14.
16 Thomas, p. 292.
17 Thomas, p. 6.
18 Thomas, p. 15.
19 Thomas, p. 24.
20 Thomas, p. 27.
21 Thomas, pp. 29-31.
22 Thomas, p. 31.
23 Thomas, p. 33.

O'Connor excelled — top of her class, moot court, law review, Order of the Coif. More than anything, she developed a "sense that law would be (her) life."[24] She dated a Stanford Law upper classman, future Supreme Court Justice William Rehnquist, who was at the top of his class. The relationship lasted a couple of years, a fact that neither of the justices discussed when they served together, and certainly one not widely known to Supreme Court observers. Indeed, even less well known until Thomas located a box of private correspondence that included love letters, after graduation Rehnquist wrote to O'Connor and asked her to marry him. She declined. O'Connor had by then met fellow Stanford law student John O'Connor, who became the love of her life. The couple married in 1952.

The Stanford Law School bulletin board contained job postings from all of the major West Coast law firms. O'Connor, at the top of her class, applied to all of them but eventually could obtain only one interview. At Gibson, Dunn & Crutcher. When she arrived for the interview, the hiring partner asked O'Conner whether she could type.[25] Apparently, the firm did not hire females to be attorneys ("Our clients won't stand for it") but could make room for O'Connor as a secretary. A shocked O'Connor told the partner, "That isn't the job I want to find."[26]

In fact, the only job Sandra could land was an unpaid position with the San Mateo County district attorney's office.[27] In the meantime, John O'Connor obtained a commission with the Judge Advocate General's Corps and for the next few years the couple lived in Germany. Upon his release from service, the O'Connors made the decision to relocate to Phoenix. John O'Connor had an easy time finding work at the city's leading law firm (Fennemore Craig); Sandra O'Connor, on the other hand, teamed up with a recent Michigan law school graduate and opened a firm in a storefront located next to a T.V. repair shop at a shopping mall.[28] The firm "took whatever came in the door to pay the rent."[29] After a brief period, O'Connor left the practice to raise a family.

In their well-to-do Phoenix suburb of Paradise Valley, the O'Connors mastered social-networking. As a team, they entertained at their home; Sandra O'Connor volunteered for various civic organizations; the couple did a lit-

24 Thomas, p. 36.
25 Thomas, p. 43.
26 Thomas, p. 43. Years later, in 1990, the Gibson Dunn firm asked O'Connor to speak at its 100th anniversary celebration. O'Connor noted that had the firm hired her as a lawyer, she might be number 10 of 650 on the letterhead, but she had settled instead for a smaller firm of nine, and now she was number seven. Thomas, p. 269.
27 Thomas, p. 52.
28 Thomas, pp. 58-59.
29 Thomas, p. 59.

tle work for Republican politicians. By the mid-60s, when Sandra made the decision to return to work, women still had difficulty finding employment in private practice. So the well-connected O'Connor applied for and obtained a position with the State Attorney General.[30] The big break appears to have taken place when a female state senator – one of four women in the state senate – resigned to take a position in the Nixon administration.[31] O'Connor was appointed to fill the position, and then won re-election. Three years later she was elected majority leader, making her the first female leader of any state legislative upper house.[32]

O'Connor proved an able, hardworking and pragmatic legislator, if not one with a low profile. Although she introduced a bill to approve the Equal Rights Amendment, as public sentiment towards the proposed constitutional amendment shifted O'Connor allowed the bill to die in committee.[33] Yet, she then set about changing one by one approximately 400 state laws that discriminated based on gender.[34] In 1974, she made the decision to run for election as a trial court judge, winning with 70 percent of the vote.[35] On the bench, she developed a reputation for toughness, making difficult decisions, and standing up to lawyers who performed shoddy work.[36]

By the late 1970s, O'Connor's name was mentioned as a potential Arizona gubernatorial candidate. Possibly worried about a potential popular challenger, Democrat governor Bruce Babbitt pulled some strings to get O'Connor appointed in 1979 to a vacancy on the Arizona Court of Appeals.[37]

She thus was positioned for the call from President Reagan in 1981.

The Swing Voter

O'Connor's arrival at the Supreme Court as its first female justice of course was a public sensation. In private, there was the usual nonsense that women "firsts" must always have to put up with. For instance, what should the Court do about the "Mr. Justice" plaques on chamber doorways?[38] [Answer: Take them down]. The Court did not have a ladies room close to the judicial conference room. [Answer: O'Connor used one located further away]. During their conferences, by tradition the newest justice typically arranged for coffee and took notes. Wouldn't the first female justice find that demeaning? [Answer: Continue the tradition]. Certainly, other justices didn't quite know how to react to O'Connor. Chief Justice Burger sent O'Connor an article from a purported academician about the "proper," of course passive way in which a lone female should behave towards the other male professionals in her group. [O'Connor's answer: File the article].[39]

Twelve years before Justice Ruth Bader Ginsburg joined the Court, Sandra Day O'Connor was first.

Other indignities proved worthy of a fight. At the local country club, women golfers were not allowed to tee off before 11:00 a.m. So, O'Connor and a female friend sat on a bench near the first hole and for an hour or two greeted the male members as they began their games. Some of the members were attorneys whose firms regularly appeared before the Court. The policy quickly changed.

In relatively short order, O'Connor became a cohesive force at the Court. When she arrived, she found that the justices did not really talk to each other. They had become somewhat suspicious of each other in the wake of the publication of *The Brethren*.[40] [41] Typically, they communicated by memo, and only a few of them would have lunch in the lunchroom.[42] O'Connor insisted that they go to lunch, refusing to leave their offices until they agreed to do so.[43] By creating social bonds, she partially succeeded in forging an atmosphere of mutual respect if not unlikely future Court majorities.

O'Connor's Jurisprudence

Until her retirement from the Court in 2006, O'Connor became known as the "swing" voter. She hated the label because she thought it made her appear indecisive or inconsistent.[44] But, the label fit — her vote was the

30 Thomas, p. 68.
31 Thomas, p. 69.
32 Thomas, p. 72.
33 Thomas, p. 90.
34 Thomas, p. 94.
35 Thomas, p. 104.
36 Thomas, pp. 105-108.
37 Thomas, p. 113.
38 Thomas, p. 154.
39 Thomas, pp. 157-158.
40 Bob Woodward and Scott Armstrong, *The Brethren* (Simon & Schuster 1979).
41 Thomas, p. 157.
42 Thomas, p. xiii.
43 Thomas, p. 301. Justice Thomas told author Thomas that "She would make you go to lunch. She was right! She was the glue! The reason this place was civil was Sandra Day O'Connor."
44 Thomas, p. 308.

controlling vote in Court decisions more than 330 times in her 24 years on the Court. Indeed, court observers began to call it the "O'Connor Court."[45]

Upon her appointment, O'Connor had been a reliable center-right jurist, but with time moved measurably leftward.[46] The Court's center suited O'Connor. Her upbringing and political and legislative instincts made her a "problem-solver," a person who could identify real world, practical solutions to difficult problems. Thomas also emphasizes that O'Connor concerned herself with the effect that Court decisions would have on people's lives. Thomas recounts a conversation between O'Connor and an individual named Peggy Lord, one of O'Connor's frequent golf partners, which ventured into the justice's views on *Roe v. Wade*. O'Connor told her friend that the Court's reasoning had been wrong, but that she did not believe states should be able to ban abortions completely. According to Thomas, O'Connor said: "Oh, Peggy, it's bad law, but I have to think about all the women in the United States."[47] Hence, O'Connor shifted the Court from its emphasis on the viability of a fetus at various stages of development to one which upheld state regulations so long as they did not impose an undue burden on a woman's right to an abortion.

Thomas convincingly demonstrates that in cases that raised difficult constitutional issues – such as abortion, affirmative action, and gerrymandering disputes – notwithstanding strong federalism instincts, she believed that the highest court should not, and did not, have the last word. Difficult societal issues to O'Connor should be left to society to work through. This dictated a non-ideological approach, one that refrained from grand pronouncements or doctrines and instead decided cases narrowly. In this fashion, as the Court decided additional cases on a subject, the law would evolve incrementally, roughly reflecting evolving, deliberative views held by the community.

O'Connor's minimalist judicial philosophy earned her the scorn of her more ideological colleagues who preferred establishing bright line rules that could be followed by other courts and the country. For instance, Justice Scalia viewed O'Connor harshly as a "results-oriented" judge.[48] The criticism is fair. And, it certainly is open to debate as to whether a modest, incremental approach ever brings true resolution to an issue. What is not open to debate, however, is that by planting herself at the Court's center, she could control a decision and force her more ideological colleagues to modify their views. In short, she made herself the most influential justice of her time.

Stepping Down

Justice O'Connor in large part was able to "have it all" in life because of the support of John O'Connor. With little hesitation he had given up his Phoenix law partnership and practice to enable the couple to move to Washington, D.C., and played his part as the *First's* husband. By the early 2000s, he became afflicted by Alzheimer's disease. It progressed quickly. In early 2006, O'Connor made the decision to retire from the Court so that she could take care of her husband. Sadly, within a period of several months, John O'Connor needed to be moved to a care facility and soon did not recognize his wife. On a visit to the facility, Sandra O'Connor noticed that John O'Connor was holding hands with another woman. A heartbroken O'Connor sat down and held her husband's other hand.[49] He died in 2009.

O'Connor regretted retiring from the Court. In the ensuing years, she wondered what a retired "cowgirl" could do to keep busy.[50] She embraced the need for students to learn civics and teamed up with an Arizona State University computer science professor to produce free video games (iCivics) to teach civics to middle school students.[51] She became a popular speaker at university conferences, frequently discussing her own public service. She traveled widely. Then, in 2013, O'Connor began to suffer from dementia herself. Life's real tragedies are beyond the control of 5-4 majorities. O'Connor publicly acknowledged the diagnosis in October 2018,[52] noting that it had forced her to retire from public life — a life that made it possible for women to reach the highest levels in the law.

Abram S. Feuerstein is employed by the United States Department of Justice as an Assistant United States Trustee in the Riverside Office of the United States Trustee Program (USTP). The USTP's mission is to protect the integrity of the nation's bankruptcy system and laws. The views expressed in the article belong solely to the author, and do not represent in any way the views of the United States Trustee, the USTP, or the United States Department of Justice.

45 Thomas, p. xv.
46 Thomas, pp. 313-15.
47 Thomas, p. 196.
48 Thomas, p. 300.

49 Thomas, p. 394.
50 Thomas, p. 387.
51 Thomas, pp. 392-93.
52 Richard Harris, "Sandra Day O'Connor and Alzhiemer's: A Personal Story," *nextavenue* March 19, 2019, retrieved at: *https://www.nextavenue.org/sandra-day-oconnor-alzheimers/*.

Graduation of 2018-2019 Class of the RCBA-Riverside Superior Court New Attorney Academy

by Robyn A. Lewis

The New Attorney Academy, which is a joint collaboration by the Riverside County Bar Association (RCBA) and the Riverside Superior Court, and with the assistance of the American Board of Trial Advocates (ABOTA), is pleased to announce the graduation of its fifth class.

The purpose of the New Attorney Academy (Academy) is to provide professional guidance and counsel to assist newly admitted attorneys in acquiring the practical skills, judgment, and professional values necessary to practice law in a highly competent manner, and to encourage sensitivity to ethical and professional values that represent the traditions and standards of the Inland Empire legal community.

This year, the Academy began its fifth term in October with the curriculum taught by judges and noted attorneys in the community. Topics of the classes included an introduction to the legal community, a practical and intensive primer on pleadings, depositions and discovery, an introduction to practicing in court (court appearances, legal writing, and research, pet peeves of the bench, etc.), transition into practice (dealing with clients, how to successfully participate in ADR, relations with other attorneys, case management, etc.), and an introduction to law practice management. Students were given tours of the Historic Courthouse, including a “behind the scenes look” at the clerk’s office, the Family Law Court and the Court of Appeal. The students enjoyed an introduction to trial that included an interactive class on voir dire, tips on openings, closings, and direct and cross examinations from some of the most notable trial attorneys in the Inland Empire.

At every session, the class attended the monthly RCBA general membership meeting, which allowed the members to interact with the legal community. At the May meeting, the academy members were recognized for their participation and received a graduation certificate.

Once again, the Academy was an enormous success, which is due in large part to the efforts of the Riverside Superior Court and members of ABOTA, most particularly, Presiding Judge John Vineyard, Judge Randall Stamen, Judge Irma Asberry, Greg Rizio, and Megan Demshki.

If you are interested in obtaining more information about the 2019-2020 New Attorney Academy, please contact Charlene Nelson at the RCBA or Robyn Lewis at robynlewis@jlewislaw.com.

Robyn Lewis is with the firm of J. Lewis and Associates, APLC, chair of the New Attorney Academy, and past president of the RCBA.

2018-2019 New Attorney Academy Graduates with several members of the court.
Back row (l-r) Sean Florence, Ankit Bhakta, Jay Im, Jacob Husen, Timothy Almond, Paula Hernandez, Lynette Clyde, David Rivera, Presiding Judge John Vineyard, Judge Irma Asberry.
Front row (l-r) Mirwais Mohammad Asef, Tatiana Bui, Maria Cazarez-Reyes, Lorelee Ishida, Cindy Lomeli, David Shoup, Aletha Smith, Jennifer Voltz, Devin Wheeler, and Judge Randy Stamen

The Academy Students at the Court of Appeal
Back row (l-r) Mirwais Mohammad Asef, Timothy Almond, David Shoup, Paula Hernandez, Jacob Husen, Sean Florence, David Rivera, Lynette Clyde, Jay Im, Devin Wheeler, Jennifer Voltz
Front row (l-r) Aletha Smith, Lorelee Ishida, Tatiana Bui, Maria Cazarez-Reyes, and Cindy Lomeli

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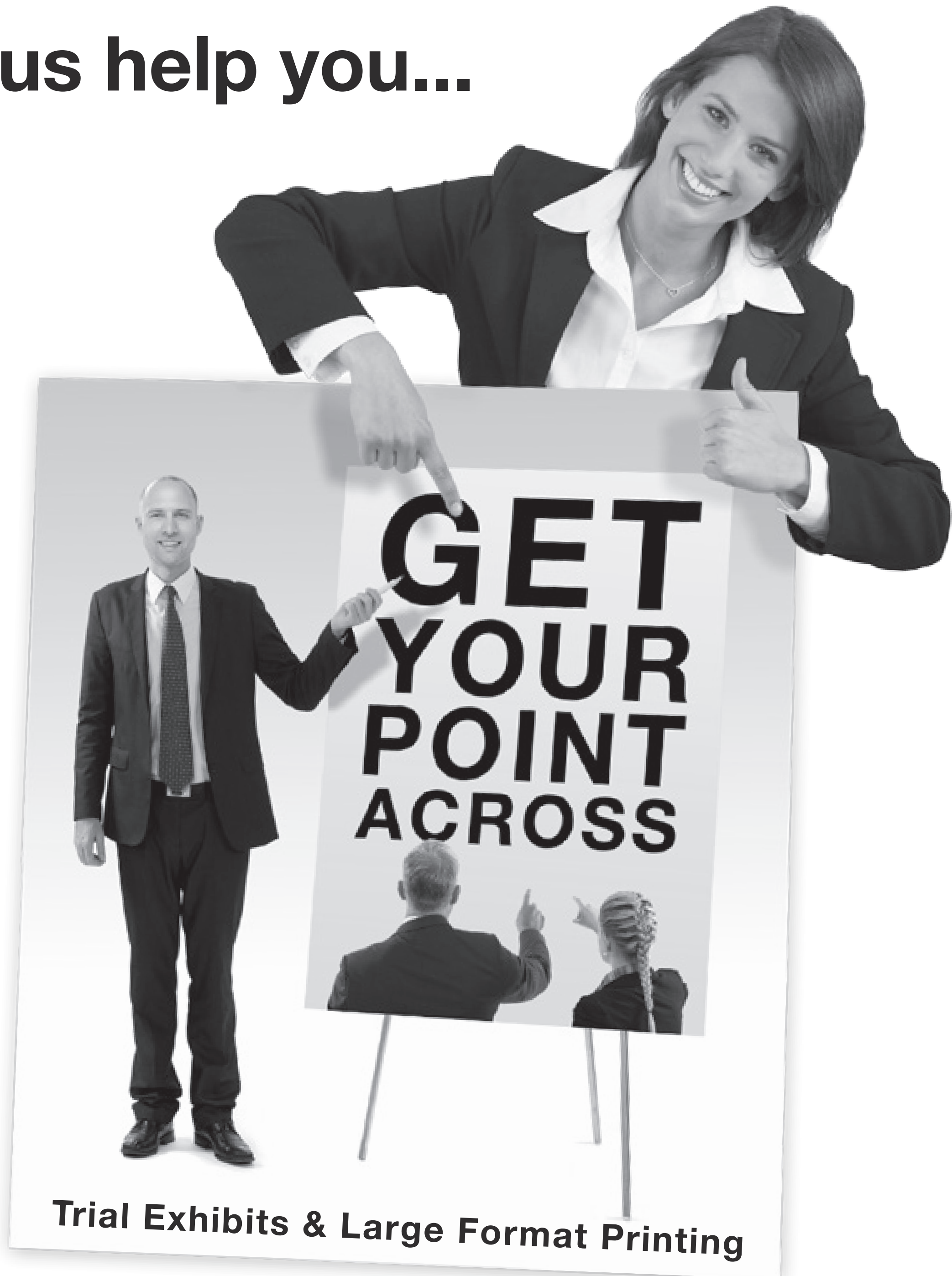

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Opposing Counsel: Ruben Escalante

by Betty Fracisco

If you have known Ruben Escalante as the president of the Inland Empire Chapter of the Federal Bar Association, as a founding member and president-elect of the Hispanic Bar Association of the Inland Empire, or as a Central District Lawyer Representative, you have only scratched the surface of this remarkable attorney who is a fine example of a hometown hero. Here is your opportunity to learn more about this inspiring member of our legal community.

Ruben Escalante

Ruben was born in Loma Linda and spent most of his childhood with his two siblings, Amanda Escalante Johnston and Robert Escalante, in the La Sierra area of Riverside (although they did spend a memorable year in Washington, D.C.). His father, Ruben Escalante, a minister, and his mother, Penelope Marca Escalante, a teacher, raised their children with a spirit of helping others and service.

Ruben attended La Sierra Academy, where he played volleyball and baseball. In 2003, he graduated from University of California, at Los Angeles (UCLA) with a degree in Business Economics. He graduated summa cum laude, Phi Beta Kappa, and with college and departmental honors. He then attended University of Southern California (USC) Law School where he was articles editor for the *Southern California Law Review,* and was the academic chair for the La Raza student organization. While in law school, Ruben had externships with Associate Justice Thomas Hollenhorst of the California Court of Appeal, and Stephen Larson, former judge of the United States District Court. Ruben graduated and passed the California State Bar Exam in 2006.

After passing the State Bar Exam, Ruben began working for Sheppard Mullin, where he had been a summer associate. Due to the variety of cases he handled and their varied venues, Ruben spent a lot of his time in the Orange County and Los Angeles offices of Sheppard Mullin. Ruben became a partner at Sheppard Mullin in 2016. Ruben specializes in representing clients in complex business litigation, employment matters, and class actions, which has resulted in significant courtroom and trial experience.

Driven by his faith, family, and deep desire to serve, Ruben is committed to pro bono work and community service. He has said many times, "Win or lose, it is an opportunity to offer justice and mercy to people." In 2013, he was given the Equal Access to Justice Award by the Public Service Law Corporation (Riverside Legal Aid). In 2014, Sheppard Mullin named him the Bob Gerber Pro Bono Attorney of the Year (the firm's highest pro bono honor). In 2015, he received the William J. Lasarow Award from the Bankruptcy Court of the Central District for work done in its pro se clinic. In addition to his legal pro bono work, Ruben of late has become involved in Make Serve (Make Me A Servant Foundation) and one of its projects, Servitas FC. Make Serve is an organization that is committed to service in the Inland Empire, and Servitas FC is a project that provides leadership, service, and academic opportunities, in addition to high level soccer training, to young women in Inland Empire. Most of the participants and volunteers are from the San Bernardino area, and they tirelessly work together to help usher in the next generation of leaders. Ruben says that it is "one of coolest" things he does.

One amazing fact about Ruben is that from the time he left Riverside to attend UCLA, through law school at USC, through his years at Sheppard Mullin, he has, for the most part, remained a resident of Riverside, and for the last few years, Loma Linda. He met his wife, Janelle, when he was eight. They started dating in high school, eventually getting married during his junior year of college. They have four lovely children.

Ruben Escalante is a fine example of an attorney who seems to do it all. He has excelled in the legal work he has done for his firm, been successful in a variety of law-related organizations, been recognized as a preeminent provider of pro bono services, and is an involved family man. We salute him!

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

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Judicial Profile: Justice Marsha Slough

by Jordan Ray and Chris Hayes

If you are lucky enough to know Justice Marsha Slough, you can probably imagine how difficult it is to write her profile. She's insightful, big-hearted, and self-deprecatingly funny, and her life outside the court is as big and interesting as her legal career. So do you focus on her love of the law and dedication to justice? Or do you describe her passion for sports, travel, books, and film? Who do you profile? The Justice Slough who sits on the Court of Appeal or the one who can be found on weekends golfing or presiding over the court of pickle ball? We'll try to do justice to both, though there is not a word count large enough to cover the places she's been.

Justice Marsha Slough

Justice Slough was born in Texas and spent her childhood in Garden City, a small town in southwest Kansas. She graduated from high school in the mid-1970s and attended Ottawa University, where she played point guard for the Lady Braves. The youngest of four siblings, including two older brothers with a penchant for pranks, she learned early to run fast (a skill that no doubt came in handy on the basketball court) and was generally viewed as the jock of the family.

She did not find her way to the legal profession right away and she did not "always want to be a lawyer," but when you ask her about her path to and through the law, it does seem fated. For starters, she scored as "attorney" when she took a career aptitude test in high school. But the bug bit her later. She began thinking about the law as a career only when her older brother Fred—the straight-A student and the "smart one" in the family—suggested his little sister consider following him into the profession. At the time, Fred was handling interesting civil rights cases back in Kansas City, and Justice Slough was living in Redlands and working as a research technician in Loma Linda's Department of Fetal Physiology. She decided to get a taste of the law by enrolling in the paralegal program at Cal State San Bernardino. Her first class was constitutional law and she was hooked.

Justice Slough attended Whittier Law School and clerked at MacLachlan Burford & Arias, a civil defense firm in San Bernardino. When she graduated, they hired her as an associate and she worked there for six years, practicing defense-side insurance litigation and cutting her teeth in the courtroom. Speaking of cutting teeth, they also asked her to provide babysitting services, which she politely declined. She moved to Markman, Arczynski, Hanson & King, where she became partner, and later, she became a partner with Jeffrey Raynes. During those years in private practice, she gained broad civil experience representing a variety of clients. Justice Slough built an employment litigation practice, representing governmental entities and their employees on a variety of issues, including in sexual harassment and civil rights disputes. At Raynes & Slough, she focused on plaintiff-side medical malpractice litigation. She spent a lot of time appearing before judges and trying cases and, in 1998, she was the first woman invited to become a member of the San Bernardino/Riverside chapter of the American Board of Trial Advocates.

In 2003, Governor Gray Davis appointed Justice Slough to the San Bernardino County Superior Court. Her new perspective brought a significant change in how she viewed the law. She had been drawn to the subject for its breadth and diversity, but it was not until she became a judge and worked in the criminal system that she discovered what would ultimately become an abiding concern—bringing law and justice together. As she describes the issue, the law grounds our legal system and provides a framework of standards and consequences for those who do not follow the rules. But the rules are not always calibrated right and our legal system does not always produce just outcomes. Justice is our goal, what our laws strive for, but they do not always achieve it, especially in the criminal context. In civil practice, attorneys often feel like they have obtained justice if they win a case for their client. But in the criminal system, justice is a heavier concept because the consequences for victims of crime can be life-altering and the punishment for violations is loss of liberty.

Justice Slough can pinpoint when those dots really connected for her. She recalls taking pleas on her last day on the adult criminal bench, before rotating to her next assignment in delinquency court. It just so happened, two of the defendants lined up to plead guilty that day were brothers who had not seen each other in years. They shared a brief moment of connection, but then one of the brothers received what would effectively be a life sentence. The following week, her first on the delinquency bench, one of the minors who appeared before her turned out to be the son

of the brother who had received the devastating sentence. The coincidence made her realize our society has deep, systematic problems that our laws were not designed to fix. She became interested in the concept of justice and in developing ways to help rehabilitate and reintegrate people who find themselves enmeshed in the criminal system. One effort to help was starting a program called "Running with the Judge," which aimed to support a particularly vulnerable population—girls in the delinquent system. She and other court staff, attorneys, deputies, and probation officers would train together with the girls to run in 10K races.

Justice Slough served on the trial court for over a decade, from 2003 to January 2016, when Governor Jerry Brown appointed her to the Court of Appeal, Fourth District, Division Two. For nearly four years, she served as San Bernardino County's Presiding Judge, a role requiring her to manage all aspects of the county court, from resource allocation to oversight of her fellow judges. Her tenure as Presiding Judge coincided with the economic recession and the resulting budget cuts to state superior courts. Those budget cuts, in turn, led to courthouse closures throughout the county and called for a significant reorganization of the San Bernardino Superior Court. It was during that time she became an advocate for proper funding for the judiciary, a cause for which she testified at numerous budget hearings at our state capitol.

Justice Slough has been at the Court of Appeal for three years now and enjoys the work immensely. She is no longer on a shot-clock in reaching her decisions. Her new job offers the luxury of time to reach decisions after careful consideration of the facts and the law, and, where those are not the end of the analysis, the interests of justice. She strives in every case to assure she is not interpreting the laws in a vacuum and without regard to achieving a just result.

Another big part of Justice Slough's path through the law is Judicial Council, the policymaking body for our state's judiciary. Since 2014, she has served as the Chair of Judicial Council's Technology Committee, which oversees the council's policies on technology. For example, one of the committee's long-term projects is integrating the trial courts different case management systems and to improve data sharing within the judicial branch. Justice Slough believes technology can play a vital role in policymaking, providing new and efficient ways to compile and interpret the data that should inform our policies.

Lately, Justice Slough has been focusing her policymaking efforts on the issue of bail reform. Earlier this year, Chief Justice Cantil-Sakauye tapped her to chair the Pretrial Reform and Operations Workgroup, a 12-member taskforce made up of justices, judges, and executive officers from courts throughout the state. The workgroup's charge

Justice Marsha Slough (r) with her spouse Jill Sibler

is to study California's existing pretrial detention and release practices and recommend ways to transform that system—which is currently based solely on bail or ability to pay—and put into place a new system based on risk assessment and appropriate probation supervision before trial. Justice Slough is passionate about this project, and she's looking forward to collaborating with her fellow workgroup members and others in the judiciary on such an important aspect of criminal justice.

When Justice Slough is not busy thinking about the law, she is most likely spending time with her spouse, Jill Sibler. She and Jill met over two decades ago and were able to get to know each other over recreational (but competitive!) tennis matches and golf games. Twenty-five years and two sets of custom-made clubs later, they are still together, pursuing their many shared interests. Recent highlights include trekking through exotic terrain to see the butterflies of Michoacán, Mexico and the silver-backed gorillas of the Ugandan mountains. And what description of Justice Slough could be complete without mentioning her love of books? A voracious reader, her tastes run the gamut, from Louise Penny to Haruki Murakami. Asked for standout novels, she cites as always, "the last one I read." But she does have two particular favorites. One is a more recent novel, *The Cadaver King & Country Dentist*, which is a nonfiction account of a wrongful conviction based largely on flawed expert opinion. The other is that beloved classic, *To Kill A Mockingbird*, which has special significance for Justice Slough. "It opened my mind, at a young age, to the reality of racial and economic bias in the criminal justice system." We think fellow country girl Scout Finch would admire the attorney and jurist young Justice Slough went on to become.

Jordan Ray and Chris Hayes are research attorneys at the California Court of Appeal, Fourth District, Division Two, and are assigned to the chambers of Justice Marsha Slough.

Spring Fling Fundraiser Raises $15,000 for Project Graduate

by L. Alexandra Fong

On May 10, 2019, Project Graduate held its Spring Fling Fundraiser at the private residence of Luis and Jamie Lopez in Riverside. Hors d'oeuvres, dessert, and assorted drinks were served at the fundraiser. This is the fifth fundraiser held by Project Graduate and the second hosted in the home of Luis and Jamie Lopez.

The fundraiser was planned by Project Graduate's Fundraising Steering Committee: Brian Unitt (Chair), L. Alexandra Fong, and Luis Lopez, with the goal of bringing awareness to members of the bar, as well as to raise funds for the continued success of Project Graduate.

Project Graduate was established in 2011 as a philanthropic program of the Riverside County Bar Association and works in collaboration with the Riverside Superior Court and Riverside County's Department of Public Social Services to assist foster youth to graduate high school, continue their education beyond high school, and plan for a successful future.

In 2015, upon the establishment of Riverside County Bar Foundation, Inc. (the "Foundation") by RCBA, Project Graduate became one of the first four core programs of the Foundation. The Foundation was established as a 501(c)(3) corporation so that its generous donors would be able to receive the appropriate tax deduction, as allowed by law.

Project Graduate would like to thank its sponsors as follows:

Valedictorian: Holstrom Block & Parke, APLC, Holstein Taylor & Unitt, The Law Offices of Luis E. Lopez, Altura Credit Union, RCBA Dispute Resolution Service, Inc., International Union of Operating Engineers (Local 12), United Association of Plumbers & Steamfitters (Local 398), Riverside County Deputy District Attorney Association.

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Project Graduate would also like to thank its donors of silent auction items: Aitken Aitken Cohn, Megan Demshki, Esq., Discovery Science Foundation, Disneyland, Mark Easter, Esq., L. Alexandra Fong, Esq., Jean Hall, Holstein Taylor & Unitt, APC, Holstrom Block & Parke, APLC, In-N-Out Burger, Luis & Jamie Lopez, Neil Okazaki, Esq., Panera Bread, Rubio's Coastal Grill, Thompson & Colegate, LLP, Brian Unitt, Esq., and Melissa Utterback. The silent auction items sold for fantastic prices and Kristen Holstrom of Holstrom Block & Parke, APLC generously offered multiple bidders the opportunity for each to win individual estate plans at the final bid price due to the fierce bidding in the final seconds of the auction.

Project Graduate also appreciates the assistance provided by the Barristers Goushia Farook and Mike Ortiz, who assisted with the check-in of guests and acceptance of payments from the auction winners.

Project Graduate raised approximately $15,000 to support its mission to help Riverside County foster youth graduate from high school. Our county has over 4000 youth in foster care and a little more than 50% graduate from high school while in foster care. Each Project Graduate youth is provided a monetary incentive to commit to the program, raise their grades and graduate high school. All high school graduates participating in the program receive a laptop computer and a check to help them in their future endeavors at the June 19, 2019 celebration luncheon. Juvenile Defense Panel graciously agreed to donate the laptops to each of the graduates at the luncheon.

Project Graduate accepts donations year-round. Please make checks payable to "Riverside County Bar Foundation" and write "Project Graduate" in the memo line. Donations may be sent to Riverside County Bar Foundation, 4129 Main Street, Suite 100, Riverside, California 92501.

Project Graduate plans to make the Spring Fling fundraiser an annual event. Please stay tuned for further details! If you have any questions concerning Project Graduate and/or would like to volunteer as an educational representative, please contact the Steering Committee Chair Brian Unitt at (951) 682-7030.

L. Alexandra Fong is a deputy county counsel for the County of Riverside, specializing in juvenile dependency law, president of the Leo A. Deegan Inn of Court and immediate past president of the RCBA.

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4129 Main Street, Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Office suites available. Contact Charlene Nelson at the RCBA, (951) 682-1015 or rcba@riversidecountybar.com.

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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.

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, 2019.

Jeffrey S. Corcoran – Solo Practitioner, Hemet

Christopher M. Ortega – Keith L. Shoji & Associates, Riverside

Brynna D. Popka – McCune Wright Arevalo LLP, Ontario

Daniel S. Shahidzadeh – Law Offices of Kathleen G. Alvarado, Riverside

Meeghan H. Tirtasaputra – Reid & Hellyer APC, Riverside

Elaine Torres – Immigrant Defenders Law Center, Los Angeles

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