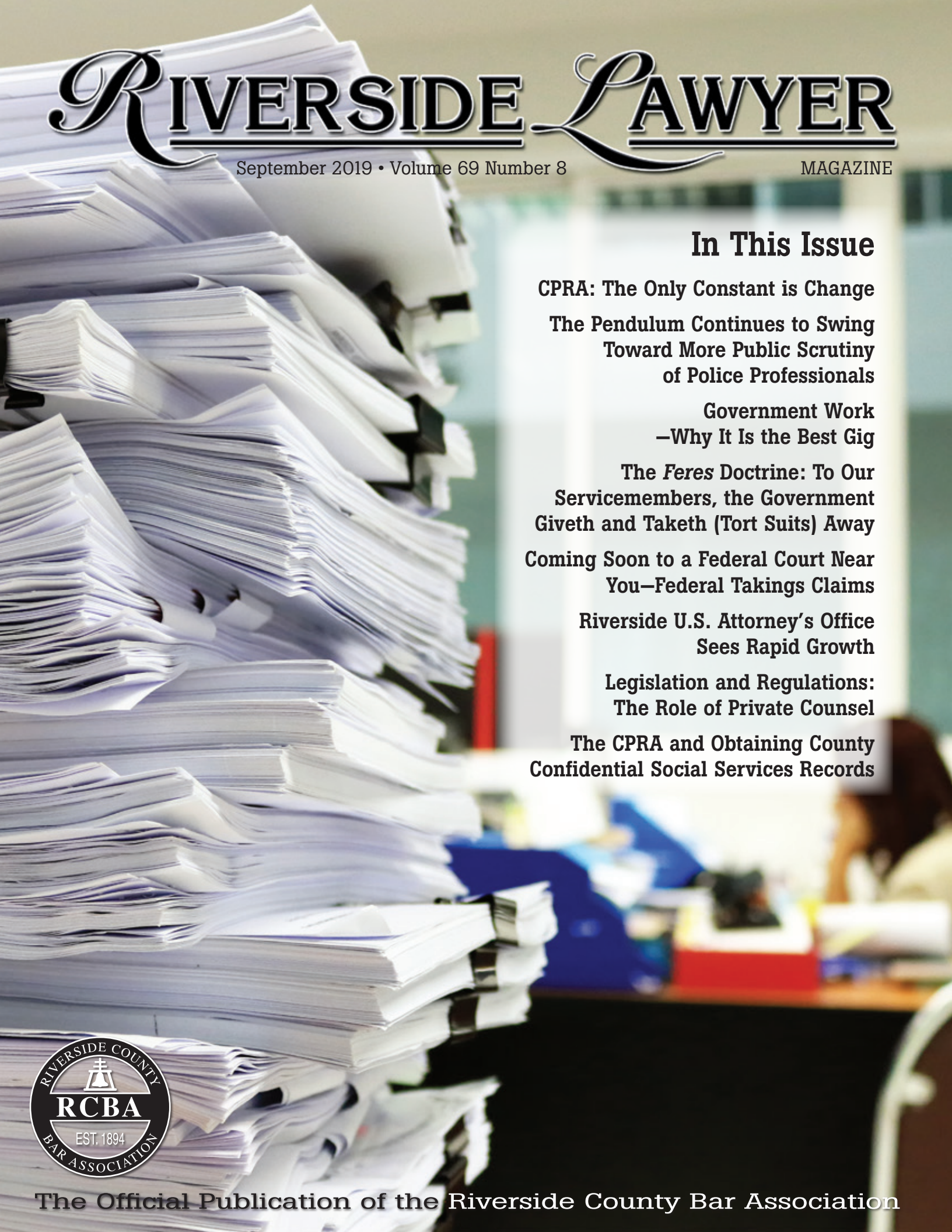

RIVERSIDE LAWYER

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RIVERSIDE LAWYER MAGAZINE

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Mission Statement

Established in 1894

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

RCBA Mission Statement

The mission of the Riverside County Bar Association is:

To serve our members, our communities, and our legal system.

Membership Benefits

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

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

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

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities, Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

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

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

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

Calendar

September

9 **Civil Litigation Roundtable Discussion**
Judge Craig Riemer, Riverside Superior Court
RCBA Boardroom (First Floor)
12:10 – 1:10 p.m.
MCLE – .75 hour General

10 **Civil Litigation Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Stefanie Field
Topic: "Summary Judgment Motions"
MCLE – 1 hour General

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 hour General

19 **Solo & Small Firm Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker – Dayn Holstrom
Topic: "Growing a Successful Firm – Small or Large"
MCLE – 1 hour General

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

October

1 **29th Annual Red Mass**
6:00 p.m.
Sacred Heart Catholic Church
Rancho Cucamonga
(Please see information on page 20)

9 **Understanding the Judicial Appointment Process**
5:00 p.m.
Grier Pavillon, Riverside City Hall
Speaker: Justice Martin Jenkins, Judicial Appointments, Secretary for Governor Gavin Newson
Sponsored by the Richard T. Fields Bar Association

18 **General Membership Meeting**
Noon – 1:30 p.m.
RCBA Gabbert Gallery
Speakers: Peter Houlahan (Author of *Norco 80: The True Story of the Most Spectacular Bank Robbery in American History*),
Judge J. Thompson Hanks (ret.) and RSO Deputy Sheriff John Burden (ret.)
More information to follow

24 **RCBA Dispute Resolution Presents:**
"The Use and Misuse of Apology and Forgiveness in Mediation"
Guest Speaker: Peter Robinson, Esq.,Professor of Law, Straus Institute for Dispute Resolution, Pepperdine University School of Law
9:00 a.m. – 4:00 p.m. (check-in 8:30 a.m.)
DRS Mediators & Riverside Superior Court Mediation
Program Mediators – Free
RCBA Members – $50, Non RCBA Members – $95
RSVP by October 21 to DRS office, 951.682.2132 or DRS@riversidecountybar.com
MCLE Credit – 5.5 hours General

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

President's Message

by Jack Clarke, Jr.

An Introduction, Some Words Of Thanks and A Reflection On This Thing We Call "Government"

It is with some trepidation that I write this piece. I must admit that I find beginning a term as the president of the RCBA both invigorating and also a bit daunting. So first, let me introduce myself. I started with Best Best & Krieger LLP in 1985. I left the firm briefly to work for a firm in downtown Los Angeles for a couple of years. But I liked Riverside more than Los Angeles, so I returned to BB&K and became a partner of the firm in 1992. My current practice includes several areas, but my primary focus is on litigation pertaining to educational issues. I have been married to my wife, Sheila, for just over thirty years and we have two children. My daughter Chynna, is a fresh graduate of U.C.R. and my son, Jack, III, is attending U.C. Santa Cruz. Also, I should note that I have had the honor to work with and learn from some tremendous attorneys since I passed the State Bar examination.

I will no doubt get into trouble by not including someone's name, because many lawyers have helped and inspired me. So, I will just mention three who come to the top of my mind now. First, Art Littleworth, currently the senior partner at BB&K and a nationally known expert on water law. Mr. Littleworth is also legendary in the City of Riverside for his work as president of the Riverside Unified School Board in the 1960s. I will talk more about Art in a future column. Second, retired Justice Barton C. Gaut. Justice Gaut was a partner in the litigation department of BB&K when I clerked with the firm in 1984. I found him to be one of the smartest, most ethical attorneys with whom I have ever worked. (I easily could have named Judge Dallas Holmes (ret.), Judge Charles Fields (ret.), Chief Judge of the Central District Virginia Phillips, who was a senior associate at BB&K when I first met her, Bill DeWolfe, Anne Thomas, Gene Tanaka, Chris Carpenter, Dick Anderson, John Brown, or several others who had a distinct impact on me. But, Bart made a deep impression on me, even before I became a lawyer.) Third, Mark Rochefort. Mark was a partner in the Los Angeles law firm that I worked with in the late eighties. Mark is a tremendous trial attorney and a tremendous human being from whom, hopefully, I learned a lot. I think that is enough about my background.

So next, I would like to say thank you to a few of our members. First and foremost, I want to thank Jeff Van Wagenen, our outgoing RCBA president. Jeff provided wisdom and a steady hand, to the leadership of our association. Jeff has helped improve the RCBA in ways too numerous to delineate here. But, from dealing with the inevitable unforeseen crises, to mapping out strategies for fiscal stability, to keeping current on issues that could affect our profession, Jeff did an incredible job. I hope to be able to maintain Jeff's momentum this year, as there will be matters which require attention. As an example of a rapidly approaching issue, our State Bar Task Force on Access through Innovation of Legal Services (ATILS) currently is considering a proposal which could allow non-attorneys to deliver some type of legal services. The proposal under consideration is summarized as follows:

> "ATILS has developed 16 concept options for possible regulatory changes, and the Task Force is now seeking public input to help evaluate these ideas.
>
> The 16 options include some that overlap and some that represent alternative approaches to a particular regulatory change. For example, ATILS is considering two different rule changes addressing whether a lawyer should be allowed to share a fee with a nonlawyer and would like public input on both of them. The key issues addressed by the options on which ATILS is seeking public comment include:
>
> - Narrowing restrictions on the unauthorized practice of law (UPL) to allow persons or businesses other than a lawyer or law firm to render legal services, provided they meet appropriate eligibility standards and comply with regulatory requirements;
> - Permitting a nonlawyer to own or have a financial interest in a law practice; and
> - Permitting lawyers to share fees with nonlawyers under certain circumstances and amending other attorney rules regarding advertising, solicitation, and the duty to competently provide legal services.
>
> The link to the full press release and method for submitting your comments is here: http://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Public-Comment/Public-Comment-Archives/2019-Public-Comment/Options-for-Regulatory-Reforms-to-Promote-Access-to-Justice."

The RCBA board of directors will be discussing this issue and will consider how properly to engage the matter. I hope each of you will give input on this proposal either directly or through the RCBA. Please note that the public comment period ends on September 23. In addition to Jeff

and to the other members of the board of directors, I want to thank Charlene Nelson and the staff of the RCBA. Under Charlene's leadership, the staff keeps our affairs in order and makes sure all of the board members, committee chairs, committee members, and attorney volunteers meet our marks. Charlene and her colleagues are just excellent.

Lastly, I will close with just a small reflection on the subject of this month's *Riverside Lawyer*, which focuses on government. The late former chief justice of the United States Supreme Court, Earl Warren, in his book, *A Republic, If You Can Keep It*, made the following observations:

Governments are organisms and, like all others, function for good or ill, depending on the soil and atmosphere in which they come into being. They grow and prosper or decay and die as do others according to their substance rather than their form. They have different nomenclatures, but it is the manner in which they function that characterizes them. There are many kinds of government in the world today—empires, monarchies, dictatorships, democracies, republics, both unitary and federal—but they all fall into two classifications: those which function under some variation of the democratic process; and those which are totalitarian in the sense that the nation is ruled by the will of either one individual or of a small oligarchy, without direction from the citizenry at large. Our government is dedicated to the democratic process, and is in form a federal republic which contemplates universal participation in its affairs: all citizens have certain rights and privileges on the one hand and corresponding duties and responsibilities on the other.

I am struck by how germane those observations are today. But, I think a more direct way to consider the seemingly complex problem of maintaining the proper size and function of government is to consider some advice that my father, Jack Clarke, gave me in my twenties. My father worked for over thirty years as an administrator in the now defunct, California Youth Authority (CYA). After he retired from the CYA, he was elected to the Riverside County Board of Education and after that, he was elected to the Riverside City Council, the first person of African-American descent to hold that office in the history of the city. On one occasion, he was musing about the realities of working within government systems and he told me words to this effect:

> "Jack, you know, I hear about people complaining about the problems with "the system [referring to the government]." But you know, there really is no true "system." There are just people. Whatever decision comes out of a "system," there is always a person or a group of people who made that decision."

In my opinion, my father's point was well taken. The solution to any problem in government is us.

I look forward to working with you this year. Be well all.

Jack Clarke, Jr. is a partner with the law firm of Best, Best & Krieger LLP.

Barristers President's Message

by Paul Leonidas Lin

Are you a new or young attorney in Riverside? Then we want you to join the RCBA Barristers!

People often wonder, "What is the RCBA Barristers?" The Barristers—sometimes mistaken for the Baristas---is the young or new lawyers division of the Riverside County Bar Association (RCBA). Officially, we are a group dedicated to the professional growth and advancement of the young or new attorneys in Riverside County through networking events and MCLE trainings. Unofficially, we're a ragtag bunch of misfits that get together for happy hours, bowling, trivia night, and occasionally host a MCLE training.

We are Not a Cult, I Promise.

Why join the RCBA Barristers? Notwithstanding the obvious fact that we are a fun, welcoming, and undisputedly awesome group of people to hang out with, there are two main reasons that drew me to joining the Barristers.

The first would be comradery. Attorneys, for good reason, are the butt of many jokes. "What does a lawyer use for birth-control? His personality." And it's true. As lawyers we meet with most people on the worst day of their lives. As a result, we develop thick skin and an unnaturally dark sense of humor. The humor that your non-attorney friends and family cannot comprehend, but your fellow Barristers truly appreciate. Trust me, there is nothing you can say that will shock or offend us—I've tried.

The second reason is networking. Ever heard of the game Six Degrees of Kevin Bacon? Well the RCBA Barristers is the far less fun, but extremely useful Riverside legal community version of that game. Need a sample of a motion to strike? Have a question about which courthouse to file a complaint? Looking for someone who practices in wine law? Your new friends at the Barristers will likely know the answer or knows someone who does. Even if you have a mentor who has been practicing longer than you have been alive, sometimes it's nice to talk to someone who just learned what you are trying to figure out a year ago.

How do I join your ~~Cult~~ Group?

Did I pique your interest in becoming a Barrister? Joining is simple. Just answer the following two questions:

1a) Are you an attorney who is 37-years-old or young?

or

1b) Are you within your first 7 years of practice?

and

2) Are you a member of the Riverside County Bar Association?

If you answered yes to both then Congratulations! You are already a barrister. Just make sure your dues are paid with the RCBA.

Don't qualify? No need to fret, the Barristers welcome everyone to attend our events. Attorneys of all ages, law students, and members of the community are encouraged to attend. The more, the merrier.

Big Thanks to our Outgoing and Fearless, Megan Demshki!

Many of you have had the pleasure and privilege of knowing Megan through the RCBA Barristers or the number of other organizations that she is involved. Megan works tirelessly to make sure everything she is part of thrives. Sometimes to her own detriment.

What you probably do not know about Megan is that she selflessly took on the mantle of president of the RCBA Barristers this past year at a moment's notice. Our previous president-elect, who was about to assume the title of president, had made the momentous decision to leave California for the most noblest of reasons: To Blave.[1] (Shout out to Breanne Wesche in Texas.) Even more, the core and experienced board members were all leaving for new ventures. The incoming president was going to have to handle a brand new board who had never worked together before, without the benefit of having a year to shadow the outgoing president.

When asked, Megan did not hesitate. She loved the Barristers organization and did not want to see it fail. And it didn't. Through her fierce leadership, RCBA's 2018-2019 year had an outstanding amount of new barristers coming to our events. I can only hope to carry on in her momentum. When I was asked to accept the nomination of president-elect, I was hesitant for two reasons: 1) being

1 To the uninitiated, a *Princess Bride* reference.

president is a lot of work and I joined the organization simply for the happy hours; and 2) I did not want to be the poor sap who had to follow the Demshki presidency.

On behalf of all of 2018-2019 Barristers board, thank you Megan for your hard work and dedication this past year.

Upcoming Events:

- Thursday, September 26 – Happy Hour at Lake Alice starting at 5:00 p.m.
- October – The Barristers will be teaming up with JAMS for a MCLE and a beer tasting. Date to be announced shortly.

We will be having numerous fun events this coming year. In the past we have done bowling nights, trivia nights, hikes, movies, golfing, and much more. If there is something you would like to do or learn as a MCLE course, please contact us and I'll see what we can do. We can be reached at RCBABarristers@gmail.com or you can reach out to me personally at PLL@TheLinLawOffice.com.

Follow Us!

Stay up to date with our upcoming events!
Website: RiversideBarristers.org
Facebook: Facebook.com/RCBABarristers/
Instagram: @RCBABarristers

Paul Leonidas Lin is an attorney at the Lin Law Office Inc., where he practices exclusively in the area of criminal defense, and is the immediate past president of the Asian Pacific American Lawyers of the Inland Empire (APALIE.). Paul can be reached at PLL@TheLinLawOffice.com or (951) 888-1398.

ANNUAL INSTALLATION DINNER

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

Special Presentation to The Honorable Becky Dugan

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

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

RSVP to RCBA office:
$80/person on or before September 13
$90/person after September 13

To RSVP online, go to the Calendar of Events on RCBA website: www.riversidecountybar.com

CPRA: The Only Constant is Change

by Christine Wood

A public agency's release of public records is a hot button issue for policy wonks, community advocates, and conspiracy theorists alike. In recent years throughout California, the process of gathering and releasing public records has become much more complex, thanks to legislative and judicial changes. For those practicing law for or against public agencies, the only constant now is change.

California Public Records Act

Adopted in 1968, the California Public Records Act is one of California's sunshine laws. It was enacted to hold agencies accountable by allowing the public to inspect and copy records in the agency's care.

The CPRA states that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The CPRA's purpose is to create maximum disclosure of the government's conduct. The California Legislature felt that records disclosure was necessary to help keep the government accountable to the people. The right was later enshrined in the state constitution. The people's right to disclosure under the CPRA is broad. When the government resists disclosure and is challenged for it, the courts err on the side of records release to the public.

Writings held by a public agency are public records, and writings is broadly defined to include any recording of a communication "regardless of the manner in which the record has been stored." Inherent in the CPRA is the tension between the public's right to records and basic privacy rights. The volume of personal information in public agencies' possessions, including libraries, water districts, cities, sanitation districts, police departments, and fire districts, for example — is unfathomable. The California Legislature recognized this tension by inserting a number of exemptions in the Act, including a "catch-all exemption" that can be invoked if no other exemption applies, but the agency must demonstrate that the public interest served by not making the record public clearly outweighs the public interest served by the record's disclosure. This is an incredibly high showing for the agency — but courts may sustain this exemption if there is a clear effort to protect confidentiality.

Since the CPRA was first adopted more than 40 years ago, there has been a significant effort to modernize the Act to reflect the technological trends that make it easier for public agencies to govern: email, enterprise systems and body and dash cameras, to name a few. The following are some of the ways the CPRA has changed (or is changing) to accommodate these trends.

- Email

In March 2017, the California Supreme Court held that public records on public employees' and elected officials' personal devices and email accounts are subject to disclosure. This means that public employees and elected officials must now disclose emails in their personal accounts (and text messages on their cell phones) if the communication substantively relates to the conduct of the public's business.

The Legislature is considering whether to require public agencies to retain all email for a minimum of 2 years. Most public agencies already have an obligation to retain any record for a minimum of 2 years. Assembly Bill 1184 will require public agencies to keep any and every email, even those extraneous to the conduct of the public's business. Watch this bill closely, as it could be a significant change in the law and create an increased retention burden for public agencies.

- Enterprise Systems

In 2015, the California Legislature enacted Senate Bill 272, which requires each public agency, with the exception of school districts, to post to its website a catalog of enterprise systems. The catalog is meant to help the public more easily access public data that might be maintained electronically in large-scale software packages and no longer in paper form. While this may have been a small burden to public agencies, these types of disclosures — if not done correctly and within the protections afforded in the law — could leave public agencies vulnerable to cyberattacks.

- Law Enforcement Records

In January, the California Legislature enacted SB 1421, which gives the public access to police personnel records under four circumstances:

--Discharge of a firearm by an officer;

--Use of force that results in death or great bodily injury;

--Sustained findings of an officer's job-related dishonesty; and

--Sustained findings of an officer's sexual assault against a member of the public.

In companion legislation, AB 748, the Legislature required law enforcement agencies to disclose police audio and video records within 45 days of a critical incident. Together, these two pieces of legislation reversed well-established laws and practices in exchange for more law enforcement transparency. While the latter is important, it comes with a significant cost to law enforcement agencies.

For example, the California Supreme Court is determining whether agencies can recover the cost of redacting body and dash camera footage. In *National Lawyers Guild v. City of Hayward*, an appellate court decided the City was entitled to recover the cost of compiling, reviewing, and redacting exempt portions of body and dash camera footage. This is a decision that could have proven beneficial to police departments in lessening the financial burden placed on them by the enactment of SB 1421 and AB 748. *National Lawyers Guild* is a much anticipated decision because it will have far-reaching implications for law enforcement agencies.

Inevitably, public agencies have to become more savvy in handling the retention, collection, storage, and production of electronic public records. It may not be easy, but it is definitely necessary now that both the Legislature and the courts are updating the CPRA's provisions to align with today's technology.

Christine Wood, Esq., is the Director of PRA Services and e-Discovery Counsel at Best Best & Krieger LLP. In this capacity, Christine manages the firm's Advanced Records Center. ARC is a rapid response team that handles public records requests, document retention policies, and e-discovery practices for municipalities and special districts throughout the state.

VOLUNTEERS NEEDED

Experienced Family Law and Criminal Law Attorneys are needed to volunteer their services as arbitrators on the RCBA Fee Arbitration Program.

If you are a member of the RCBA and can help, or for more info, please contact Lisa Yang at (951) 682-1015 or lisa@riversidecountybar.com.

The Pendulum Continues to Swing Toward More Public Scrutiny of Police Professionals

by Robert L. Rancourt, Jr.

A lawyer might pilfer funds in his or her client trust account, and his or her online State Bar profile could display to the world the impropriety. Yet a police officer might cause the death of an individual with whom he or she has no special relationship of trust, and the public might never know about it. Such was the state of California law.

The headlines captured the nation's attention: Michael Brown, Jr., Ferguson, Missouri; Eric Garner, Staten Island, New York; Sandra Bland, Prairie View, Texas; Freddie Gray, Baltimore, Maryland; Philando Castile, Falcon Heights, Minnesota; and Stephon Clark, Sacramento, California. The deaths of these African-Americans in incidents involving use of police force—and others—are forcing a closer look at police everywhere.

Until last year, California was in a minority of states that cloaked its peace officers with broad protections against public knowledge of the mistakes of its police. Penal Code section 832.7 had provided that police officer personnel records, such as ones of sustained complaints and discipline, are confidential, and this provision was interpreted to exempt from disclosure production of such records in response to a public records request.[1]

However, SB 1421 went into effect on January 1 and reversed course. The revision changed Penal Code section 832.7 to read that notwithstanding any other law, peace officer personnel files concerning discharge of a firearm, use of force, sexual misconduct, and dishonesty "shall be made available for public inspection pursuant to the California Public Records Act."

Yet the new law was silent on whether it applies only going forward or also retroactively. Police unions pounced; more than 100 lawsuits were filed. One of the first was the San Bernardino County Sheriff's Employees' Benefit Association, which won an injunction against compliance until the issue was decided in the courts.

And decide the courts did. As the Attorney General and law enforcement organizations up and down the state argued that the new law should not be retroactively applied to cover anything before its inception, courts disagreed, and ultimately the lawsuits—except in a lone outlier—were dropped.

Forced to accept the change in the law, police organizations are finding other ways to resist. The California Reporting Project, a collaborative project of 40 news entities, finds that some agencies are stalling by charging unreasonably high fees, rejecting requests as technically incomplete, demanding repeated extensions of time, arguing insufficient resources to comply, destroying documents citing pre-SB-1421 records retention policies, or ignoring court orders to produce records. As of the latest reporting, the largest law enforcement agency of all—the California Highway Patrol—still hadn't produced anything in response to media requests.

Some agencies have started to comply, and the revelations demonstrate that police, like other California professionals, should be subject to public scrutiny: Sexual assaults in jail, cover-ups of domestic violence and excessive force, theft, and dishonesty. As the trial judge tries to teach the prospective juror, police officers make mistakes too.

Although law enforcement resistance to the new law and the revelations trickling out so far may not surprise some, the legislation's author is dismayed. State Senator Nancy Skinner (D-Berkeley) is reported to say that she intends to get more proactive against the feet-dragging, and she will call for oversight hearings to enforce compliance and look at possible amendments.

And the pendulum continues swinging on police interactions with the public. Stephon Clark's shooting and death, for example, eventually saw the officers cleared of any use of force violations, but then prompted concerns whether the use of force law should be changed.

On July 8, the Senate passed AB 392, which its sponsor, Assemblywoman Shirley Weber (D-San Diego), believes will strengthen the law on police use of force and reduce the number of deadly police shootings. Pilots of this type of use of force policy have done so in San Francisco and Seattle.

The legislation will establish a "necessary" versus "reasonable" use of force standard. Presently, police can use deadly force if it is reasonable, regardless whether deadly force is necessary to prevent imminent death or serious bodily injury, whether there are available alternatives, or whether the officer's own actions created the circumstances that led to the use of deadly force.

AB 392 changes the standard to require that officers use deadly force only when "necessary to defend against

1 Gov. Code, § 6254(k); *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1297; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1431.

an imminent threat of death or serious bodily injury to the officer or to another person." Significantly, this new standard would consider the officer's conduct in the use of deadly force to determine whether the officer's actions were justified.

The bill is on the Governor's desk. Despite law enforcement opposition, he is expected to sign it.

Robert L. Rancourt, Jr. is a deputy public defender with the Law Offices of the Public Defender, County of Riverside, where he has worked for 17 years and is presently assigned to the Banning Office. The views, thoughts, and opinions expressed belong solely to the author and not necessarily to the author's organization or any other group or individual.

Government Work—Why It Is the Best Gig

by Juanita E. Mantz

As a young girl, I always wanted to be an artist. It was the 1980s and I was obsessed with Judy Blume's books. Now, I think of them as treatises for how to survive the young adult years. Just like Blume's protagonist Sally J. Freedman, I was always imagining myself as a star on stage reading, singing, or performing. I loved the spotlight and still do. In my side gig writing creative non-fiction, I do readings and enjoy the rush of adrenalin right before I go on stage.

Unfortunately, my writing does not pay the bills, at least not yet. And even more germane to this article, my government day job as a deputy public defender is one I am good at and love. I specialize in representing the incompetent to stand trial. All of my clients (for the most part) have severe mental health or cognition issues and sometimes both. I have empathy for all criminal defendants, but there is something so vulnerable and helpless about this mentally disordered and cognitively disabled population that it drives me to work as hard as I can to protect them. Their plights keep me up at night and it gives me a stomach ache to think of a cognitively disabled person in custody. It is difficult for me to let work go, but writing helps me to decompress while also fulfilling that artistic side of me that I always had even as a little girl.

In my other life, more than a decade ago as a big firm lawyer, I didn't have the energy or power to write. Corporate culture had sucked all of my creativity out of me. Add in the eighty hour work week and there was little time for anything else. In a government job, you get to do good work, while still having energy for other passions. There is no wining and dining clients. There are no billable hours to document. There are little politics. Don't get me wrong, you do work hard, in fact, I work very hard. But, there is more of a balance.

Recently, I attended the Macondo Writing Workshop ("Macondo") in San Antonio, Texas. This is a workshop started by acclaimed Latinx writer Sandra Cisneros and designed for writers working to advance creativity, foster generosity, and serve community. At Macondo, I studied under writer Joy Castro and worked on my memoir. At night, I watched Presidential Inaugural Poet Richard Blanco perform his poems, sat in the audience at Sandra Cisneros' new play, performed a story in front of my other Macondo writers and danced outside at a Pechanga (party) under the stars. I kept thinking, I am so grateful for this opportunity. I know that if I was still in corporate practice, I would not have had the energy to apply to Macondo, much less the ability to leave for a week to foster my artistic side. Ultimately, I learned that my writing and artistic side makes me a stronger lawyer and that the beauty is in finding the synergy.

Sandra Cisneros once said that "writing can change the world." When I came back to my day job as a deputy public defender, I was refreshed and ready to fight to change the world again, one mentally disordered client at a time. I now know that I am meant to change the world in two ways, in my role as a writer and as a deputy public defender. This is a rather long winded nutshell to show you how my government job is the best gig ever. It is because I made it that way and so can you.

Juanita E. Mantz is a writer and has been a Riverside County deputy public defender for over a decade. You can read more of her work on her Life of JEM blog at https://wwwlifeofjemcom-jemmantz.blogspot.com/.

The *Feres* Doctrine: To Our Servicemembers, the Government Giveth and Taketh (Tort Suits) Away

by David P. Rivera

I. The *Feres* Doctrine Defined

The *Feres* doctrine holds that the United States is not liable to suit by its servicemembers under the Federal Tort Claims Act ("FTCA") for injuries that arise [from activity] incident to those members' military service.[1] The doctrine is a seventy-year-old, judicially-created bar articulated by the Supreme Court in *Feres v. United States*.[2]

This article examines the *Feres* doctrine in light of Supreme Court justifications, Ninth Circuit interpretation, and examples of its repercussions. We begin with a contextual review of the doctrine of sovereign immunity and the FTCA.

II. Waiver of Sovereign Immunity Under FTCA

Sovereign immunity is one of the axioms of American law. It is a privilege enjoyed by the United States government, whereby it cannot be sued unless it has clearly declared its willingness to assume liability.[3] In 1946, the government did just that. It enacted the FTCA.[4]

The FTCA grants cognizable causes of action to private parties for the tortious behavior of government employees.[5] The statute defines "employee" to include a member of the military service: "employee[s]" include "members of the military or naval forces of the United States . . . and National Guard. . . ."[6] As a result, the government can be a defendant in an FTCA suit for the tortious conduct of its servicemembers.

But can servicemembers be *plaintiffs* in an FTCA lawsuit? The statute does not expressly state so, but this scenario is certainly implied by its language. First, the FTCA allows for "any claim" in tort.[7] The phrase "*any* claim" is literally limitless, rather than limiting; it does not exclude claims by servicemembers.[8] Second, the FTCA sets forth thirteen very specific exceptions to the government's consent to suit.[9] None of these wholly exclude lawsuits by servicemembers.[10] The two most relevant exceptions merely disallow claims arising in a foreign country and those arising from combat activities during times of war.[11] By implication, the FTCA not only contemplates claims by servicemembers, it permits them when injury is sustained domestically from non-combat activities in times of peace.

Let's do the math. The FTCA, by its plain language, allows suits by servicemembers for harm caused by other members of the service, provided that the harm does not arise in a foreign country or in times of war during combat. Notwithstanding that language, the *Feres* doctrine states otherwise.

III. *Feres* Doctrine—Policy Rationales

Simply stated, the *Feres* doctrine bars FTCA recovery by servicemembers who sustain injury "incident to service." The doctrine has been supported by four policy rationales: (1) The government is liable only to the extent of a private individual in like circumstances; (2) The service relationship is distinctively federal in character, yet governing law is dictated by the injury situs; (3) FTCA recovery is at odds with servicemembers' other benefits and (4) Permitting liability will damage, the military disciplinary structure. The fourth rationale has emerged as the doctrine's saving grace.[12]

A. Liability Permitted Only to Extent of Private Individual in Like Circumstances

Under the FTCA, the "United States shall be liable . . . in the same manner and to the same extent as a private individual under like circumstances."[13]

1 *Feres v. United States*, 340 U.S. 135, 146 (1950) (consolidating review of three cases to address a central issue: whether or not the FTCA extends is remedies to servicemembers who sustain injuries "incident to [their military] service.").
2 *Id.*
3 *Price v. United States*, 174 U.S. 373, 375–376 (1899).
4 *Federal Tort Claims Act of 1946*, 28 U.S.C. §§ 1346, 2671–2680.
5 *Id.* at §§ 1346(a), 2671.
6 *Id.* at § 2671.
7 *Id.* at §§ 1346(a), 2680.
8 *Brooks v. United States*, 337 U.S. 49, 51 (1949) (stating "[w]e are not persuaded that '*any* claim' means 'any claim but that of servicemen'… and that '[i]t would be absurd to believe that Congress did not have the servicemen in mind in 1946, when this statute was passed.'") (emphasis added).
9 28 U.S.C. § 2680(c).
10 *Id.* at § 2680.
11 *Id.* at § 2680(j)–(k).
12 Cases subsequent to *Feres* commonly state that the *Feres* Court identified three justifications, not four. In doing so, these cases disregard the "private individual in like circumstances" rationale that the *Feres* Court presented at the forefront of its policy discussion. (See, e.g., *United States v. Johnson*, 481 U.S. 681 (1987)).
13 28 U.S.C. § 2674.

The *Feres* Court found that this provision eliminates recovery by servicemembers.[14] First, the Court emphasized that there can be "no liability 'under like circumstances'… [because] no private individual has power to conscript or mobilize a private army . . . [in the same way] as the Government."[15] Second, even if a private individual could administer a military enterprise like the government, the Court reasoned that liability still cannot attach because there is "no [other] American law which ever has permitted a soldier to recover [in tort against either his superior officers or the Government he is serving."[16]

Basically, this rationale states that, with respect to servicemembers' claims, the FTCA is self-defeating.

In later cases, the Supreme Court discounted this rationale as inherently unsound. The Court recognized that the entire purpose of the FTCA is to surrender sovereign immunity.[17] Additionally, the Court admonished that the FTCA's "like circumstances" provision cannot and should not be equated with "same circumstances."[18]

This particular *Feres* rationale has been so degraded that modern cases no longer seriously mention it.[19]

B. Service Relationship Is Distinctively Federal, yet Governing Law Is Dictated by Injury Situs

The FTCA requires that claims be governed by the "law of the place where the act or omission occurred."[20] Thus, state law would determine the government's liability. The *Feres* Court weighed this provision from the perspective of both the government and its servicemembers. In the end, it extrapolated a rationale that denies FTCA recovery to servicemembers.[21]

The Court noted that the relationship between servicemembers and the government is "distinctly federal in character," so it should be governed by *federal* authority.[22] Yet the FTCA is inconsistent with this premise, requiring that state law govern all claims. Moreover, the Court could find "no [other] federal law [that] recognizes recovery such as claimants seek."[23] As a consequence, the FTCA becomes inoperable as a remedy available to servicemembers.[24]

The Court continued its analysis, stating that the FTCA's "governing law" provision makes sense for non-servicemembers, but not for servicemembers. Non-servicemembers enjoy free choice as to where they live and travel. In exercising that choice, they can limit the jurisdiction (and, presumably, any disadvantageous law) that might govern harm suffered from federal agents.[25]

The same is not true for servicemembers. Servicemembers have no choice in what law will apply, because they report to locales under order and have no free choice in where they are stationed. Rather than unfairly subjecting servicemembers "to laws which fluctuate in existence and value" based on "geographic considerations over which they have no control," the Court reasoned that it would be best to deny them recovery altogether.[26]

The "governing law" rationale has been weakened to a degree. In a case subsequent to *Feres*, the Supreme Court could find no risk of harm from applying diverse laws to FTCA claims. In the Court's view, even if it conceded prejudice against servicemembers by the application of nonuniform laws, allowing them "no recovery would prejudice them even more."[27]

Modern courts no longer rely so heavily on this particular rationale when imposing a *Feres* bar.[28]

C. FTCA Recovery Is at Odds with Servicemembers' Other Benefits

As discussed above, the FTCA constituted a waiver of sovereign immunity, creating governmental liability *where none had existed before*. The *Feres* Court extracted from this principle a policy rationale in support of the Feres doctrine. It pitted FTCA recovery against remedies

14 *Feres,* 340 U.S. at 142.
15 *Id.* at 141.
16 *Id.* at 141–142.
17 *Indian Towing Co., Inc. v. United States*, 350 U.S. 61, 65 (1955) (stating that "the Federal Tort Claims Act cuts the ground from under that [sovereign immunity] doctrine."); *Rayonier Inc. v. United States*, 352 U.S. 315, 319 (1957) (stating that "the very purpose of the Tort Claims Act was to waive the Government's traditional all-encompassing immunity from tort actions and to establish novel and unprecedented governmental liability.").
18 *Indian Towing*, 350 U.S. at 64.
19 *United States v. Brown*, 348 U.S. 110, 112 (1954) (rejecting parallel private liability argument); *United States v. Muniz*, 374 U.S. 150, 159 (1963) (the "Government's liability is no longer restricted to circumstances in which government bodies have traditionally been responsible for misconduct of their employees"); *Ortiz v. United States*, 786 F.3d 817, 841 n. 2 (10th Cir. 2015) (the "parallel private liability" rationale did not last five years).
20 28 U.S.C. § 1346(b).
21 *Feres*, 340 U.S. at 142–143.
22 *Id*. at 143.
23 *Id.* at 144.
24 *Id.* at 142–143.
25 *Id.*
26 *Id.* at 143.
27 *Muniz*, 374 U.S. at 161–162 (In Muniz, federal prisoners sought to recover under the FTCA for harm suffered from government employees during confinement. The government presented a *Feres* doctrine defense. The Court specifically weighed the "governing law" rationale as applied to prisoners (who, like servicemembers, lack free will in choice of habitat) and found it inadequate to deny prisoners' FTCA claims. In doing so, the Court did not explicitly denounce this rationale as applied to servicemembers, but it clearly stated that its examination is the same in either context.).
28 *Johnson*, 481 U.S. at 695 (Scalia, J., dissenting) (citing *United States v. Shearer*, 473 U.S. 52, 58, n. 4 (1985)) ("The first of them, *Feres*' second rationale [that the military needs uniformity in its governing standards], has barely escaped the fate of the 'parallel private liability' argument, for though we have not yet acknowledged that it is erroneous we have described it as 'no longer controlling.'").

already existing to servicemembers via the system of veterans' benefits.[29] The Court was skeptical that Congress intended to provide servicemembers a comprehensive system of veterans' benefits while also permitting them recovery under the FTCA.[30]

In support of this rationale, the Court stated that our veterans' benefits compensation system "is not negligible or niggardly."[31] Additionally, the "primary purpose of the Act [i.e., FTCA] was to extend a remedy to those who had been without; if it incidentally benefited those already well provided for, it appears to have been unintentional."[32] In support of this premise, the Court emphasized that Congress failed to include in the FTCA any provision that adjusted FTCA recovery to the compensation that veterans receive through the benefits system.[33] "The absence of any such adjustment is persuasive that [Congress had] no awareness that the Act might be interpreted to permit [FTCA] recovery for injuries incident to military service."[34]

However, this justification is sorely at odds with Supreme Court decisions both before and after *Feres*. These decisions allowed injured servicemembers to bring FTCA claims, despite having already been compensated through the veterans' benefits compensation system.[35] In *Brooks v. United States* and *United States v. Brown*, the Supreme Court clearly held that veterans' benefits are not an "exclusive remedy" that places a ceiling on FTCA awards.[36] In both cases, the Court stressed that Congress had given no indication to believe otherwise.[37]

In light of *Brooks* and *Brown*, the "veterans' benefits" rationale seems specious.

D. Permitting Liability Will Damage Military Disciplinary Structure

Ironically, the strongest rationale for the *Feres* doctrine never appeared in the *Feres* opinion at all. Four years after *Feres*, in *United States v. Brown*, the Supreme Court cautioned that permitting civil courts to scrutinize military decisions might endanger the military disciplinary structure, thereby reducing military operational effectiveness.[38] The Court concluded this rationale weighs strongly against permitting servicemembers to assert an FTCA claim.[39]

To elaborate, the military's ability to operate effectively is based on the chain of command. A superior officer's right to command should not be questioned, nor a subordinate servicemember's duty to obey. The FTCA is inconsistent with this principle because it places jurisdiction of claims in a civilian court. In doing so, it requires a civilian judiciary to second-guess military decisions. This very act of civilian adjudication (much less a judgment against the government) erodes faith in military discipline. If servicemembers cannot maintain discipline, our military cannot operate.[40]

This rationale becomes more compelling when viewed in tandem with the *Feres* doctrine's "incident to service" condition. Each is related to the other. Military discipline is more significantly affected when a servicemember acts in the line of duty, and any injury suffered as a consequence of those actions is more likely suffered "incident to service."[41]

The "military discipline" rationale, though forceful, is not without criticism. What if Congress, in drafting the FTCA, intended for servicemembers to have an FTCA remedy (as is actually indicated by the statutory language) because they thought that denying it would negatively affect military discipline? In 1987, Justice Antonin Scalia raised this question in his dissenting opinion in *United States v. Johnson*. In Justice Scalia's view, servicemembers' collective morale might deteriorate due to a *Feres* bar of an otherwise legitimate claim of one of their own.[42]

Despite Justice Scalia's critique, the "military discipline" rationale remains the leading justification for a *Feres* bar because it lends the strongest support to the *Feres* doctrine's "incident to service" condition.[43] However, as a practical matter, it does little to inform when that condition has been met. After all, virtually any claim involving

29 *Feres*, 340 U.S. at 144–145.
30 *Id.* at 145.
31 *Id.*
32 *Id.* at 140.
33 *Id.* at 144 (providing examples of possible adjustments, including a requirement that servicemembers elect a remedy under either the FTCA or the veterans' benefits system (but not both), or crediting the larger remedy under either option with that of the smaller).
34 *Feres*, 340 U.S. at 144.
35 *Johnson*, 481 U.S. at 697 (Scalia, J., dissenting).
36 *Id.* at U.S. 681, 697–698 (citing *United States v. Brown*, 348 U.S. 110, 111 n. * (1954); *Brooks v. United States*, 337 U.S. 49 (1949)).
37 *Id.* at 697–698.
38 *Brown*, 348 U.S. at 112 (attributing the military discipline rationale to the *Feres* Court, even though the *Feres* Court never mentioned it). Notwithstanding the *Brown* Court's citation to *Feres*, it is more correct to say that *Brown* identified a new rationale to explain the *Feres* doctrine.
39 *Brown*, 348 U.S. at 112.
40 *Id.*
41 *Johnson*, 481 U.S. at 690 (explaining that the *Feres* doctrine bars injuries incurred "incident to service," because they are the types of claims that would require civilian courts to weigh sensitive military affairs at the expense of military discipline).
42 *Johnson*, 481 U.S. at 700.
43 *Muniz*, 374 U.S. at 162 (quoting *Brown*, 348 U.S. at 112) ("*Feres* seems best explained by the peculiar and special relationship of the soldier to his superiors, [and] the effects of the maintenance of such suits on discipline…") (internal quotations omitted); *Costo v. United States*, 248 F.3d 863, 866 (9th Cir. 2001) ("…[D]anger to discipline… has been identified as the best explanation for *Feres*."); *Monaco v. United States*, 661 F.2d 129 (9th Cir. 1981) ("[T]he protection of military discipline ... serves largely if not exclusively as the predicate for the *Feres* doctrine.").

military decisions or judgments can run afoul of *Feres*.[44] In 1987, the Ninth Circuit Court of Appeals addressed this dilemma in *Johnson v. United States*.[45]

IV. The Ninth Circuit

The Ninth Circuit *Johnson* court acknowledged military discipline as the leading *Feres* rationale. At the same time, the court was troubled that the "incident to service" test had resulted in "confusing interpretations" because it was not self-defining. The court undertook to reconcile these inconsistencies by focusing on the nature of a servicemember's activities at the time of the government's tortious conduct. Those activities were more likely to result in injury "incident to service" if they were "of the sort that would directly implicate the interests that the *Feres* doctrine was designed to protect," particularly military discipline.[46]

In the end, the *Johnson* court identified four factors as bearing significantly on the nature of activity: (1) the place where the negligent act occurred; (2) the plaintiff's duty status when the negligent act occurred; (3) the benefits accruing to the plaintiff because of his status as a service member; and (4) the nature of the plaintiff's activities at the time of the negligent act.[47]

The Supreme Court has not definitively embraced the *Johnson* factors, but the Tenth Circuit Court of Appeals employed them as recently as 2015, in *Ortiz v. United States*.[48]

V. Repercussions—The Broad Application of the *Feres* Doctrine

The *Feres* doctrine has been extensively criticized as overly-broad, leading to inconsistent results that bear no relation to the doctrine's original justifications.[49] Three types of cases illustrate this viewpoint: injuries from military-sponsored recreational activities, injuries to family members, and injuries from medical malpractice.

A. Military-Sponsored Recreational Activities

Well-established legal precedent holds that injuries resulting from military-sponsored recreational activities are barred by the *Feres* doctrine, even if those activities are not related to military duties.[50]

In *Costo v. United States*, Costo and a fellow Navy sailor drowned while off-duty during a Navy-sponsored rafting trip, due to the alleged negligence of civilians in charge of operating the rafting program. The court, applying the *Johnson* factors, held that *Feres* barred the sailors' estates' claims because the rafting trip was provided as a benefit to military service and because administrative oversight of the rafting program was placed in the base's commanding officer.[51]

B. Family Members

Claims for injuries to the family of servicemembers are reviewed under the "genesis" test, which seeks to determine if those injuries were directly or indirectly caused by the government's tortious conduct. Injuries are indirect when they stem from harm caused by the government in the first instance to the servicemember (the servicemember's harm flows through to the family member). Claims for indirect harm are barred by *Feres*. In contrast, direct injuries do not derive from an intermediary servicemember, but are the result of a direct relationship between the government's conduct and the family member's injury. Direct injuries are not barred by *Feres*.[52]

In *Ritchie v. United States*, Ritchie alleged that Army officers caused his infant son to die shortly after birth, due to harm suffered as a result of ordering Ritchie's wife, a servicewoman, to participate in physical training while pregnant, in direct contravention of doctors' instructions. Ritchie claimed his wife's physical training led to the premature birth and subsequent death of his son.[53]

After addressing the *Johnson* factors, the court employed the "genesis" test to ask if the alleged harm to Ritchie's son had its genesis in injuries to Ritchie's wife. The court determined that the son's injuries derived from injuries suffered by his mother as part of her military service. The court held that *Feres* barred Ritchie's suit because judicial review of orders issued to the mother by her superior officers would impermissibly require the court to second-guess the military disciplinary structure (even if judicial review would barely affect that structure).[54]

C. Medical Malpractice

Courts consider medical care to be a military benefit provided "incident to service" and have consistently

44 *Pringle v. United States*, 8 F.3d 1220, 1224 (10th Cir., 2000) (citing *Dreier v. United States*, 106 F.3d 844, 848 (9th Cir. 1997).)
45 *Johnson v. United States*, 704 F.2d 1431, 1436 (9th Cir. 1983).
46 *Id.*
47 *Id.* at 1436–1439 (identifying the four factors relevant to determining "incident to service" injuries, and explaining that the third factor, "benefits accruing," includes recreational benefits (e.g., horse rentals) in addition to medical benefits available to servicemembers, because of their status as military personnel) (emphasis added).
48 *Ortiz*, 786 F.3d 817.
49 *Johnson*, 481 U.S. at 700 (Scalia, J., dissenting); Costo, 248 F.3d at 875; *Persons v. United States*, 925 F.2d 292, 295, 299 (9th Cir. 1991).
50 *Costo*, 248 F.3d at 868.
51 *Id.* at 867. The *Costo* court contradicted itself regarding the duty status of the sailors. Initially, the court said the sailors were "off duty and on liberty." Later, the court said they were "on active duty but on liberty."
52 *Ritchie v. United States,* 733 F.3d 871, 875 (9th Cir. 2013).
53 *Id.* at 873.
54 Id. at 874–879.

applied the *Feres* doctrine to bar medical malpractice claims "predicated on treatment provided at military hospitals to active duty service members."[55]

In *Daniel v. United States*, Rebekah Daniel, a Navy officer, learned she was pregnant and submitted her resignation, which was to become effective at a later date. Until then, she took family leave to cover the remainder of her service time. Prior to her military discharge, while on leave but still on active duty, she gave birth at a domestic military hospital, where she died due to complications during childbirth. Rebekah's husband filed an FTCA claim alleging that her death resulted from negligent medical care for a condition unrelated to military service.[56]

The *Daniel* court noted that the "military discipline" rationale did not support applying the *Feres* doctrine to *Daniel*. Even so, after a cursory review of the *Johnson* factors, the court regretfully adhered to established precedent for medical malpractice in this context: it barred the claim under *Feres*.[57]

55 *Daniel v. United States*, 889 F.3d 978 (2018), cert. denied, 139 S. Ct. 1713 (2019); *Smith v. Saraf*, 148 F.Supp.2d 504, 514 (D.N.J. 2001).
56 *Daniel*, 889 F.3d at 980.
57 *Id.* at 980–982.

VI. Summary

The Supreme Court's *Feres* doctrine denies FTCA claims to servicemembers who suffer injuries "incident to service."

There are problems with the *Feres* doctrine. First, *Feres*, a judicially-created doctrine, does not alter judicial precedent; instead, it changes the plain language of an act of Congress (which endeavored to make the United States liable in tort to all persons, including servicemembers). Second, the doctrine's "incident to service" test is overly-broad and imprecise. As a consequence, the doctrine can foster inconsistent application and unjust results that do not reconcile with stated policy rationales.

These problems can be addressed. Congress can amend the FTCA to better avoid injustice or the Supreme Court can revisit *Feres* and its interpretation of the FTCA. Either one would be welcome.

David P. Rivera is a solo practitioner of business law in Highland, a member of the RCBA Publications Committee, and the recently elected treasurer of the Barristers.

Coming Soon to a Federal Court Near You – Federal Takings Claims

by Daniel S. Roberts

In addition to the protections it affords the accused – grand jury indictment, protection against double jeopardy, and of course protection from self-incrimination – and the original Due Process Clause, the Fifth Amendment to the U.S. Constitution also includes the "Takings" Clause, which reads "nor shall private property be taken for public use, without just compensation." The criminal provisions of the Fifth Amendment obviously arise daily in our federal courts. And of course, the Due Process Clause underlies everything that goes on there. Federal courts have not, however, recently been deeply involved in disputes involving the Takings Clause.

The reason for this is straightforward. Because the Fifth Amendment does not prohibit all takings of private property for public use, but only takings that are "without just compensation," the U.S. Supreme Court held in *Williamson County Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), that there was no cognizable claim under the Takings Clause if the government provides an adequate process for obtaining just compensation. California (like nearly every other state) provides such a process, via an inverse condemnation action in state court. Under a later U.S. Supreme Court case, *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005), a state court's resolution of such an inverse condemnation suit has a preclusive effect on the question of just compensation. The end result was that a property owner could not sue in federal court under Section 1983 for violation of the Takings Clause prior to seeking just compensation in a state court inverse condemnation suit, and the outcome of that inverse condemnation suit was *res judicata*. There was simply no role left for the federal courts to play.

I write "was" because all of that changed on June 21, 2019, when the U.S. Supreme Court, in a 5-4 decision, captioned *Knick v. Township of Scott, Pennsylvania*, 588 U.S. ___ (2019) overruled *Williamson County* and held that a federal takings claim under Section 1983 is viable immediately upon an uncompensated taking, regardless of whether the property owner has sought compensation via an inverse condemnation claim. In this case, Ms. Knick owned 90 acres of land in Scott Township. Her property included a small family graveyard where the ancestors of her neighbors were allegedly buried. The Town notified Ms. Knick that she had to keep the graveyard open to the public under a local ordinance requiring that all cemeteries be open to the public, which the Town asserted was required under Pennsylvania common law. She sued in federal court alleging the ordinance constituted a taking in violation of the Fifth Amendment, but she had not first sought just compensation via an inverse condemnation action in state court. Accordingly, the District Court dismissed her case under *Williamson County* and the Third Circuit affirmed. The Supreme Court, however, overruled *Williamson County* and reversed and remanded for further proceedings.

On the one hand, *Knick* merely transfers the venue of some inverse condemnation cases from state to federal court. A property owner alleging an uncompensated taking before *Knick* had to bring that claim in state court, but now he or she has the option of bringing that claim (at least if the allegation is of an actual "taking" – the federal constitution does not expressly apply to "damaging" of property like the California Constitution does) in state or federal court. In fact, the majority opinion states "Our holding . . . will simply allow federal court takings claims that otherwise would have been brought as inverse condemnation suits in state court." The federal courts will now be in the business of adjudicating inverse condemnation suits.

On the other hand, this opens a whole host of new issues for the federal courts to work out as they become enmeshed in the area of local land-use law. Because the federal constitution protects – rather than creates – property rights, the question of whether there has been a taking is usually governed by state law. To determine that state law, federal courts in California will have to wade into the state's "muddled and disorderly array of inverse [condemnation] cases."[1]

And, of course not all takings cases are initiated by the property owner; there are also direct condemnation cases by public agencies seeking to use their power of eminent domain. In California, a condemning agency

1 Van Alstyne, *Modernizing Inverse Condemnation: A Legislative Prospectus*, 8 Santa Clara L. Rev. 1, 26 (1967).

may obtain possession of property, pre-judgment, by depositing with the state treasury the probable amount of compensation that will be awarded.[2] *Knick* holds that the government violates the Takings Clause as soon as it takes property without just compensation, and the property owner may sue under Section 1983 at that point. Where the government obtains pre-judgment possession, it has already taken the property. Is a deposit to the state treasury – not the property owner – an "uncompensated" taking? Even if not, what if the owner disputes the adequacy (or justness) of the deposit? In either case, can the property owner bring a takings case in federal court challenging such an (at least partially) uncompensated taking, resulting in two parallel cases (one state, one federal) in a race to final judgment of valuation? Should one of those cases be stayed pending conclusion of the other? If so, which one?

These are just a few of what will likely be a myriad of the questions and issues that are left to our federal courts to work out in light of *Knick's* overruling of *Williamson County*.

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

2 *See* Cal. Civ. Proc. Code § 1255.410.

29th ANNUAL RED MASS

Tuesday, October 1, 2019, at 6:00 p.m.

Sacred Heart Catholic Church

12704 Foothill Blvd., Rancho Cucamonga, California 91739

The entire legal community and persons of all faiths are invited to attend the 29th Annual Red Mass on Tuesday, October 1, 2019, at 6:00 p.m. The mass will be held at Sacred Heart Catholic Church, which is located at 12704 Foothill Boulevard in Rancho Cucamonga. We are pleased to announce that the chief celebrant will be the Most Reverend Gerald Barnes, who serves as the Bishop of the Diocese of San Bernardino. A dinner reception in the parish hall hosted by the Red Mass Steering Committee will follow the mass.

The Red Mass is a religious celebration in which members of the legal community of all faiths invoke God's blessing and guidance in the administration of justice. All who are involved in the judicial system, including lawyers, judges, legal assistants, court personnel, court reporters, court security officers, and peace officers, are encouraged to attend the Red Mass with their families.

The Honorable Irma Poole Asberry
will be presented with the
Saint Thomas More Award
&
The Most Reverend Gerald Barnes
will be presented with the
Saint Mother Teresa of Calcutta Award

At the complimentary dinner following the mass, the Red Mass Steering Committee will present the Saint Thomas More Award to the Honorable Irma Poole Asberry and the Saint Mother Teresa of Calcutta Award to the Most Reverend Gerald Barnes. The Saint Thomas More Award is given to a lawyer or judge who gives hope to those in need, is kind and generous in spirit, and is an overall exemplary human being. The Saint Mother Teresa of Calcutta Award is given to anyone with those attributes who is a member of the legal community or who has made contributions to the legal community. For further information about this event, please contact Jacqueline Carey-Wilson at (909) 387 4334 or Mitchell Norton at (909) 387-5444.

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Riverside U.S. Attorney's Office Sees Rapid Growth

by Joseph B. Widman

The U.S. Attorney's office in the Inland Empire, which is responsible for federal criminal matters in Riverside and San Bernardino counties, has doubled in size in the last year due to an influx of new federal prosecutors hired by U.S. Attorney Nick Hanna. With those additional prosecutors, the office has seen a sharp increase in the number of federal criminal cases and defendants charged based upon offenses allegedly committed in the Inland Empire. Due to a shortage of federal district judges in Riverside, however, most of those cases are being assigned to district judges in Los Angeles.

Joseph B. Widman

As the chief of the U.S. Attorney's branch for the Inland Empire, and as a longtime board member and past president of the FBA's Inland Empire Chapter and president of the Honorable Joseph B. Campbell Inn of Court of San Bernardino, I have heard from many area attorneys and witnesses who are greatly inconvenienced by having to travel to Los Angeles from all over the Inland Empire to have their federal cases heard. Notwithstanding the lack of federal judges available to adjudicate felony criminal cases, the U.S. Attorney's Office has taken the lead in providing additional support for this population in the form of prosecutors to support federal criminal investigations and bring charges in cases from this sprawling and heavily-populated region.

The Central District

The Central District of California is made of seven counties, namely, Riverside, San Bernardino, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, and Orange. The district has a population of about 19 million people, making it the most populous district in the country by far, with more than 5% of the U.S. population and about half of the population of the State of California.

The district's Eastern Division consists of Riverside and San Bernardino counties, which are the fourth and fifth most populous counties in the State of California, respectively. Together they make up nearly 25% of the total population of the Central District. The population of the Eastern Division is larger than 25 U.S. states and some major federal districts, including the Southern District of California. The Eastern Division also has vast swaths of federal lands, including Joshua Tree National Park, the San Bernardino National Forest, military bases, tribal lands, and the region's principal federal prison complex in Victorville. Like much of the rest of this district, the Inland Empire is exceedingly diverse, racially, ethnically, and economically.

Notwithstanding that the Eastern Division has about a quarter of all the population of the Central District, and covers more land than the entire rest of the district combined, currently there is only one federal district judge in Riverside, Honorable Jesus G. Bernal. (There are also three Riverside-based federal magistrate judges, but they are not authorized to handle felony criminal cases and, unless the parties consent, they cannot handle most civil cases.) By contrast, there are about 15 active (i.e., not on senior status) district judges in Los Angeles and three in Orange County, which has about 70% of the population of the Eastern Division.

Judicial Vacancies

The legal community of the Inland Empire desperately needs additional district judges in Riverside to serve this region. The people of the Inland Empire deserve equal judicial service and support from the federal government as those living in Los Angeles and Orange Counties. Based upon its share of the district's population only, not factoring in civil and criminal case filings, the Eastern Division should have about six district judges. We have one. As a result of the lack of district judges in Riverside, the vast majority of civil and criminal cases with venue in the Inland Empire are assigned to district judges who sit in Los Angeles. That requires the attorneys, the witnesses, the law enforcement agents, and crime victims to travel great distances, typically in rush hour traffic, from all over the Inland Empire to Los Angeles. For example, for attorneys and witnesses from the Coachella Valley, being involved in a case pending in Los Angeles means a round trip of over 200 miles and, depending on when they leave, as much as three or four hours of stop-and-go traffic in the morning and again in the evening on the way home. This is a regrettable example of the people of the Inland Empire not getting their due when compared to their neighbors to the west.

And current population trends suggest that these discrepancies will only grow over time. Recent figures show that Southern Californians are moving inland away from

the Pacific coast. In 2018,[1] Riverside County experienced a larger inflow of new population than all but three of the nation's biggest 176 counties. From 2010 to 2017, the annual inflow for Riverside County ranked number five on this list. Similarly, San Bernardino County experienced domestic population inflow in the top 50 among the nation's biggest counties. By contrast, in 2018 both Los Angeles and Orange counties experienced domestic population outflow, with Los Angeles County experiencing a net population loss.

The U.S. Attorney's Office for the Inland Empire

Since taking office in early 2018, U.S. Attorney Nick Hanna has aggressively hired new federal prosecutors to serve the Inland Empire. To date, a total of seven new federal prosecutors have been hired with additional new prosecutors on the way. This has doubled the number of Riverside-based assistant U.S. attorneys to 14. These Assistant U.S. Attorneys are bolstered by two special assistant U.S. attorneys who are cross-designated deputy district attorneys from the San Bernardino and Riverside County District Attorney's Offices, respectively. These are state prosecutors who focus on bringing federal charges with federal penalties against repeat or child exploitation offenders from their home county. The U.S. Attorney's Office is continuing to consider applications for Assistant U.S. Attorney positions in Riverside and highly qualified candidates are encouraged to apply.

These new federal prosecutors in the Inland Empire reflect the U.S. Attorney's Office desire to aggressively expand its footprint and presence in the Inland Empire, to ensure that the people of this huge and populous region are receiving their fair share of federal law enforcement presence and commitment. In so doing, the U.S. Attorney's Office is seeking to change the status quo in terms of the amount of attention and support provided by federal law enforcement in this region, in hopes that the we will see additional federal district judges in Riverside to hear the many new cases being filed by the U.S. Attorney's Office, instead of requiring the parties, witnesses, and attorneys to travel to Los Angeles, where only the judge is located. The U.S. Attorney's Office feels an obligation to the people of this region, who are entitled to have the federal government active in their region to protect public safety, vindicate victims' rights, and ensure the rule of law.

Joseph B. Widman is Chief of the U.S. Attorney's Office in Riverside.

1 Jonathan Lansner, "Riverside County has nation's 4th largest population inflow: 18,980 more arrivals than exits in '18," *Press Enterprise* (Riverside, CA), June 25, 2019.

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Legislation and Regulations: The Role of Private Counsel

by Boyd F. Jensen II

Clarence Darrow stated, "**The only real lawyers are trial lawyers, and trial lawyers try cases to juries.**" However sometimes trial lawyers working within narrow or specialized commercial industries can become catalysts for legislative and regulatory change. Analyzing recent developments within a narrow commercial industry – the amusement industry – one may observe the important role of private counsel, in addition to government lawyers and lawyers acting as lobbyists.

Before cell phones, Los Angeles gangs would use fax machines to transmit meeting/gathering details to known bars and clubs. Besides mall parking lots, amusement parks were a common gathering place, especially those that allowed unsecured public parking.[1] As a result of the increased consternation this caused, and multiple jury trials, changes to the law were sought, using private counsel, as opposed to publically elected officials or lobbyists.

This resulted in the drafting of Penal Code section 490.6.

> *(a) A person employed by an amusement park may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the person employed by the amusement park has probable cause to believe the person to be detained is violating lawful amusement park rules.*

The motivation for the law was well intended, but the effect went far beyond occasional gang activity. Parks like the Santa Cruz Beach Boardwalk Amusement Park, where public transportation – Santa Cruz Beach Train – and private park admissions intersect, pose special problems for park security, with oversight, not of the public per se, but particularly for the safety of park attendees. Penal Code section 490.6 provided an increased level of confidence for "amusement park" private security departments.

But what started with the Penal Code in 1996, by 2001 had morphed into the establishment of an entire Amusement Ride and Tramway Unit of the California Division of Occupational Safety and Health, with an entire series of regulations specifically designed for permanent amusement ride operators. This unit regulates parks like Six Flags, Disney, Universal, Sea World, and Knott's Berry Farm. Labor Code sections 7920-7932 authorized the formulation of regulations, which are now found in Article 6 *Administration of Permanent Amusement Ride Program* (Permanent Amusement Rides Administrative Regulations) sections 344.5 – 344.17; and *Subchapter 6.2 Permanent Amusement Ride Safety Orders* (Permanent Amusement Rides Technical Regulations) sections 3195.1 – 3195.14.[2]

Private lawyers for the above-mentioned well-known amusement parks participated, as well as private attorneys from the amusement industry generally. Meetings were held and testimony was offered by experts, experienced California State inspectors of the already existing tramways and portable rides, as well as prominent consumer advocates.[3]

Private counsel was also used within the specialized world of fairs and carnivals. Contrasting with Southern California, perhaps the most well known amusement parks and attractions venue in the world, would be states without major amusement parks such as Arizona, where there are primarily family entertainment centers, but with a rich history of fairs, including a yearly top 15 fair – the Arizona State Fair.[4]

In Arizona, private counsel was contacted to provide recommendations for regulating *portable* carnival-type amusement rides and devices and permanent rides. The specialized need in Arizona was retaining local control by those persons, whom the fairs and carnivals served; not just in Phoenix the location of the Arizona State Fair, but in some far reaching locations between the counties of Cochise, Santa Cruz, Apache, Greenlee and La Paz.

In 2009 Arizona Revised Statutes were amended with the following new codified categories: Section 44-1799.61 Definition of amusement ride; Section 44-1799.62

1 See an interesting history of gang activities and meetings *Los Angeles Crips and Bloods: Past and Present* by Julia Dunn found at Ethics of Development in a Global Environment (EDGE) / Poverty & Prejudice / Gangs of All Colors (Updated 7/26/1999.) https://web.stanford.edu/class/e297c/poverty_prejudice/gangcolor/lacrips.htm.

2 The *Administrative Regulations* are found specifically at Division 1. Department of Industrial Relations; Chapter 3.2. California Occupational Safety and Health Regulations (CAL/OSHA); Subchapter 2. Regulations of the Division of Occupational Safety and Health; Article 6. Administration of Permanent Amusement Ride Program. The *Technical Regulations* are specifically found at Division 1. Department of Industrial Relations; Chapter 4. Division of Industrial Safety; Subchapter 6.2. Permanent Amusement Ride Safety Orders.

3 Kathy Fackler was a prominent consumer advocate, as her son had been injured at Disneyland in 1999. She went on to establish the website saferparks.org, which maintains information about regulatory and statutory developments and ride incidents.

4 See *CarnivalWarehouse.com* 2015 - 2018 Top 50 Fairs.

Municipality and county powers, public inspection exception, violation, classification; Section 44-1799.63 Amusement ride owners and operators, requirements, denial of entry, and Section 44-1799.64 Enforcement.

Each section was carefully crafted to take into account local control, cultural variances and both remote and urban Arizona environments; all the while respecting municipal, Arizona State, reservation and United States regulatory, enforcement and other governmental interests.

The most recent statutory design, dramatically affected by the efforts of private counsel, was signed into law by the governor of Utah on March 25, 2019. Besides fairs and festivals, the State of Utah, has a traditional local family owed 100 acre amusement park, in operation since 1886, and serves millions of patrons each year. The Lagoon Amusement Park offers over 50 rides, including 10 roller coasters, a zoo, water park attractions, and a natural water lake. Just about every aspect of amusement ride/device operation can be found in this amusement park, supported by a community with fewer than 18 thousand residents.[5] And they recently introduced a ride they designed and built themselves – Cannibal Roller Coaster – featuring the steepest drop in North America and the tallest beyond vertical drop on a roller coaster.[6]

5 See https://en.wikipedia.org/wiki/Farmington,_Utah.
6 https://en.wikipedia.org/wiki/Cannibal_(roller_coaster)

The Utah Statutory model: defines terms; creates the Utah Amusement Ride Safety Committee within the Department of Transportation, which provides for the appointment of a director; establishes an Amusement Ride Safety Restricted Account; grants the Utah Amusement Ride Safety Committee certain rulemaking authority to administer the provisions of the law; provides for establishing safety standards for amusement rides, instructs that the director shall certify qualified safety inspectors to perform in-person inspections of amusement rides, and requires an owner-operator of an amusement ride to; cause a qualified safety inspector to perform an annual in-person inspection of the amusement ride, perform or cause to be performed a daily inspection of the amusement ride, obtain an annual amusement ride permit, and establishes minimum liability insurance requirements.

While I believe Clarence Darrow was right about the import of lawyers who have to account for their words to juries, I believe Thomas Jefferson was wrong. He stated "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution." There is another anchor, and that is private lawyers drafting legislation, including even constitutions, Mr. Jefferson.

Boyd F. Jensen II, a member of the Bar Publications Committee, is with the firm of Jensen & Garrett in Riverside.

The CPRA and Obtaining County Confidential Social Services Records

by Jacqueline Carey-Wilson

Records held by government agencies are for the most part public records and are subject to disclosure under the California Public Records Act (CPRA). As will be discussed below, certain public records are confidential and can be disclosed only under specified exceptions or in the interest of justice.

The California Constitution provides that "[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of the public officials and agencies shall be open to public scrutiny."[1] These records can be obtained through the CPRA.[2] In enacting CPRA, the legislature declared "that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."[3] All state and local agencies are covered under the CPRA. However, the judicial branch and the legislature are exempt from the CPRA.[4]

A public record includes "any writing containing information relating to the conduct of the people's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics."[5] Any person may make an oral or written request to inspect and/or obtain a copy of identifiable public records.[6] If the record request is vague, the government agency must assist the person to identify records and information that are responsive to the request or to the purpose of the request; describe the information technology and physical location in which the records exist; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.[7]

The public agency has met its obligation if:

(1) It is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the person making the request to help identify the records;

(2) The records are made available;

(3) The agency determined that an exemption applies; or

(4) The agency makes available an index of its records.[8]

Beginning with the date the request is made or received, an agency has ten calendar days to determine whether there are identifiable or disclosable public records.[9] The agency must give an estimated time and date when the records may be available. (Ibid.) In unusual circumstances, the time limit to respond may be extended by fourteen days. (Ibid.) "Unusual circumstances" includes the following: (1) the need to search for records in field or separate offices; (2) the need to search for and examine voluminous amount of records; (3) the need to consult with another agency with a substantial interest in the records; and (4) the need to compile data or create a computer program to extract the data.[10]

The government agency may postpone producing copies of the records until the person requesting the records pays the direct costs of copying the records.[11] If the government does not comply with the CPRA request, "[a]ny person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter."[12] If the person instituting the proceeding prevails, he or she may be awarded costs and reasonable attorney fees.[13]

• Social Services Records

As stated above, a public agency may withhold a record that is exempt from public disclosure. The exemptions are specifically identified in Government Code section 6254. Information that is confidential or privileged under other laws is exempt from disclosure.[14] Confidential information includes any records kept by public social services agencies.

Welfare and Institutions Code section 10850 provides that "[a]ll applications and records concerning any indi-

1 Cal. Const. Art. 1 § (3)(b)(1)
2 Gov. Code § 6250, seq.
3 Gov. Code § 6250.
4 Gov. Code § 6252, subd. (a), (f).
5 Gov. Code § 6252, subd. (e).
6 Gov. Code § 6253.
7 Gov. Code § 6253.1.
8 Gov. Code § 6253.1, subd. (b)(d).
9 Gov. Code sec. 6253, § (c).
10 *Ibid.*
11 Gov. Code § 6253,subd. (b).
12 Gov. Code § 6258.
13 *Ibid.*
14 Gov. Code § 6242, subd. (k).

vidual made or kept by any public officer or agency in connection with the administration of any form of public social services for which grants-in-aid are received by the State shall be confidential, and shall not be open to examination for any purpose not directly connected with the administration of that program." Records kept in connection with county agencies that protect children, the elderly, and dependent adults are protected under this code section. Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of $500, or both.[15]

• Adult Protective Services

Elder abuse reports held by a county are confidential and may be disclosed only under limited circumstances.[16] Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, law enforcement, the probate court, the office of the district attorney, the office of the public guardian, counsel representing an adult protective services agency, or an investigator of the Department of Consumer Affairs.[17] The court may also order disclosure of the elder abuse reports.[18]

Records and investigations regarding incidents of elder abuse are sought by parties in civil and criminal cases. The information is provided to parties falling into one of the exceptions provided by Government Code section 15633.5. Parties who do not fall into one of the exceptions can file a motion to compel the agency to provide the confidential information. At the hearing on the motion to compel, the court will typically review the confidential records in chambers as provided in Evidence Code sections 915. Release of this information will turn on whether "[d]isclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice."[19]

• Child Protective Services

A county's child protective records are also statutorily protected and may be disclosed only under very limited circumstances.[20] An intentional violation of the section's confidentiality provisions constitutes a misdemeanor punishable by a fine.[21] "Included within the sphere of confidentiality are agency records relating to juvenile contacts as well as police reports. Even if juvenile court proceedings are not instituted and the matter is handled informally, the juvenile's records relating to the incident remain confidential."[22]

Juvenile records are under the exclusive jurisdiction of the juvenile court.[23] Parties wanting access to this information are required to file and/or serve the following: *Request for Disclosure of Juvenile Case File* (JV-570); *Notice of Request for Disclosure of Juvenile Case File* (JV-571); a blank copy of *Objection to Release of Juvenile Case File* (JV-572); *Proof of Service – Request for Disclosure* (JV-569); *Order on Request for Disclosure of Juvenile Case* File (JV-573); and *Order After Judicial Review* (JV-574).[24] These forms are available in the forms section on the California Courts' website: http://www.courtinfo.ca.gov/.[25]

The juvenile court must review the petition, and if good cause is not shown, the court can summarily deny release of the records.[26] If the petition shows good cause, the court may set a status hearing on the release of the records.[27] "In determining whether to authorize inspection or release of juvenile case files . . . the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public."[28] In order to release the records, "the court must find that the need for discovery outweighs the policy consideration favoring confidentiality of juvenile case files.[29] The court may permit disclosure of the records "only if the petitioner shows by a preponderance of the evidence that the records requested are necessary and have substantial relevance to the legitimate need of the petitioner."[30]

Obtaining government records can be difficult and costly, but may prove to be an invaluable resource in your litigation.

Jacqueline Carey-Wilson is a deputy county counsel with the County of San Bernardino, past president of the RCBA, and editor of the Riverside Lawyer.

15 *Ibid.*
16 Welf. & Inst. Code § 15633.
17 Welf. & Insti. Code § 15633.5.
18 *Ibid.*
19 Evid. Code § 1040.
20 Welf. & Inst. Code § 827.
21 Welf. & Inst. Code § 827, subd. (b)(2).
22 *Lorenza P. v. Superior Court* (1988) 197 Cal.App.3d 607, p. 610; see Cal. Rule of Court 5.552, subd. (a).
23 Welf. & Inst, Code § 827, subd. (a)(3).
24 rule 5.552.
25 All rule references are to the California Rules of Court unless otherwise noted.
26 rule 5.552, subd. (e)(1).
27 rule 5.552, subd. (e)(2).
28 rule 5.552, subd. (e)(4).
29 rule 5.552, subd. (e)(5).
30 rule 5.552, subd. (e)(6).

Judicial Profile: Judge Johnnetta E. Anderson

by Jennifer Small

On December 7, 2018, Governor Edmund Brown announced the appointment of Johnnetta E. Anderson ("Anderson") to a judgeship in the Superior Court of California, County of Riverside. And those very same values that directed her practice of law, and influenced how she managed attorneys, are what drove her ascension to the bench.

Judge Johnnetta E. Anderson

Attorneys are often encouraged to participate in some sort of outreach, particularly with youth, with the abstract idea that something positive will come from those interactions. We know representation matters. We know diversity fosters dynamic results. Sometimes we forget how impactful kindness and compassion can be. The Honorable Johnnetta E. Anderson's desire to enter into the field of law began with an interaction with an attorney when she was young. She felt kindness and compassion emanating from this attorney. She felt protected and although she was just a kid, she felt that through this attorney, she had a voice. Johnnetta knew at that point she wanted to stand up for others. To be a voice for the voiceless. To engage with kindness and compassion. To offer protection to those who were in need.

Anderson grew up in Los Angeles in an environment where the stakes were high and the chances were low. Still, with the support from her family and mentorship, she graduated from California State University, San Bernardino. Sticking to her desire to be a voice for others, Anderson worked with children in the juvenile system. Although satisfying, there was more for her to do. Her capacity for service was not yet met.

Not one to be boastful or draw attention to herself, Anderson operates with quiet determination. She has been that way since she attended California Western School of Law where she earned her Juris Doctor degree. While in school, Anderson commuted daily to San Diego for class, managed a spouse and their children, and influenced and supported other members of her family. Even back then, I saw firsthand how she involved herself with student organizations, lending herself to be of service and to help support others.

As a deputy public defender for many years, Anderson worked steadfast to ensure she exceeded her duty to advocate for her clients. As she grew, as an attorney, spouse, mother, grandmother, sister, and daughter, so did her yearning to advocate for her community. Anderson came to realize that her love of advocacy did not have to be limited to one side or another. Her need to be of service to the community could be fulfilled in a greater capacity. She would be an advocate for justice.

Anderson's quiet determination is powerful. It drives her to maintain her core values and not waiver from them. Being open minded. Striving to always do the right thing. As Anderson stated, "being open minded and always wanting to do the right thing seems basic." But in practice, those things take work. Those things take empathy and the ability to see the humanity in all people.

With the goal of "being the change [she] wants to see" Anderson is using her intellect, work ethic, empathy, and compassion, to serve her community and advocate for justice for all. Anderson currently sits in Department 2F in Indio.

Jennifer Small has been an attorney for 13 years and is currently a deputy public defender, representing gravely disabled individuals throughout Riverside County in probate proceedings.

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective September 30, 2019.

Ferdinand D. Acosta – Solo Practitioner, Carson
Sumangala Bhattacharya – Bhattacharya Law Office, Rancho Cucamonga
Kevin E. Collins, Jr. – Solo Practitioner, Riverside
Sharilyn Nakata – Inland Counties Legal Services, Riverside
Benjamin I. Schiff – Law Office of Benjamin I. Schiff, Palm Springs
Jennifer R. Schinke – Blomberg Benson & Garrett, Rancho Cucamonga
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