

RIVERSIDE LAWYER

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MAGAZINE

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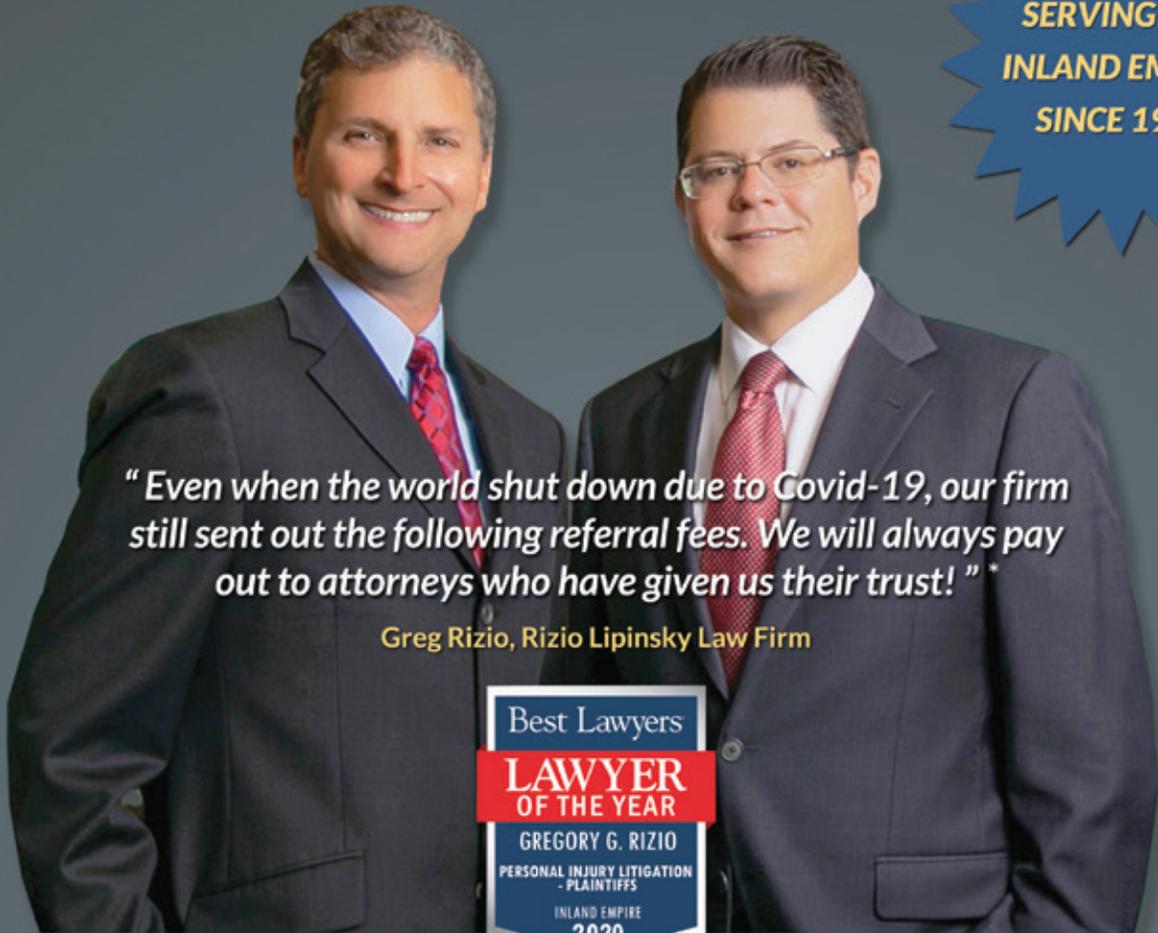


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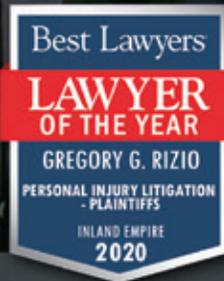
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RIVERSIDE LAWYER

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 \$30.00 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

February

- 1 Civil Litigation Roundtable with Judge Craig Riemer**
Zoom
Noon
MCLE
- 9 Civil Litigation Section**
Noon – 1:15 p.m.
Zoom
Speakers: Brian D. Shapiro & Lauren M. Vogt
Topic: “Lessons Learned in Virtual Depositions & Mediations”
MCLE
- 17 Estate Planning, Probate & Elder Law Section**
Noon – 1:15 p.m.
Zoom
Speakers: Tom Johnson, Judicial Officers, Staff
Topic: “Probate Court Update 2021”
MCLE
- 19 General Membership Meeting**
Noon – 1:15 p.m.
Zoom
Program to be announced
- 25 Juvenile Law Section
Co-Sponsor – Riverside County Public Defender**
Noon – 1:15 p.m.
Zoom
Speakers: Carol Perez, Deputy County Counsel for County of Riverside & Bruce Rudberg, Social Services Supervisor and ICPC Coordinator for Riverside County DPSS-CPS
Topic: “Interstate Compact for the Placement of Children, Part 2”
MCLE

Please see the calendar on the RCBA website (riversidecountybar.com) for information on how to access the Zoom meetings.

EVENTS SUBJECT TO CHANGE.

For the latest calendar information please visit the RCBA's website at riversidecountybar.com.





by Sophia Choi

Happy Lunar New Year! This year, the Lunar New Year falls on Friday, February 12, 2021, and is the year of the ox. Also, Happy Valentine's Day!

The Mock Trial competitions are underway but will be completely virtual this year, making it even more challenging for the students and coaches. I am excited to see the results of all the hard work put into this competition. The first round will be on Wednesday, February 3, and the finalist round will be on Saturday, February 27. Please consider signing up to be a scoring attorney. This may be the only year that you will be able to score from the comfort of your own home!

Consistent with this theme of preparing the next generation of attorneys, the Riverside County Bar Association has partnered up with University of California, Riverside's (UCR) Robert Presley Center of Crime and Justice Studies. The Robert Presley Center of Crime & Justice Studies was established by an act of the California State Legislature in 1994 (Penal Code sections 5085-5088). The Presley Center is located at UCR within its School of Public Policy and is led by co-directors Dr. Sharon Oselin and former Riverside County District Attorney Grover Trask. The Presley Center is now devoted to training the next generation of leaders in the Riverside County's criminal justice system.

In hoping that the RCBA can play a role in shaping the next generation of lawyers in Riverside County, we have partnered with the Presley Center to have a spring webinar series, with RCBA members as panelists, to provide the UCR students with invaluable information on becoming a lawyer. The first webinar will be on March 5 and will focus on

the LSATs and how to get into law school. The second webinar will be on April 13 and will focus on how to survive law school. Finally, the third webinar will be on May 5 and will focus on the practice of law. We will also be introducing the RCBA and Barristers associations to the students in the hopes that they will be future members.

Another important goal of the RCBA is to preserve its rich history, which dates back to 1894. There are many members with various memorabilia related to the RCBA, including old photographs and documents. If you have any or know of anyone with any, please share with us as we do our best to preserve the history of the RCBA in a form that can be maintained for generations to come.

I am happy to report that the RCBA has been chosen to receive the Beautification Award from Keep Riverside Clean & Beautiful (KRCB) based upon our recent renovation during Jack Clarke, Jr.'s presidency. The KRCB recognizes local buildings within the City of Riverside that has beautified (as the name suggests) Riverside, and the RCBA has been so recognized. The RCBA building still has office spaces available, so if you are looking for new office space, contact Executive Director Charlene Nelson for more information.

In honor of Valentine's Day, I will end with this: "All you need is love. But a little chocolate now and then doesn't hurt." -Charles M. Schulz

Sophia Choi is a Riverside County deputy district attorney, past president of the Leo A. Deegan Inn of Court, inaugural president of APALIE, and past vice president of the Korean Prosecutors Association.



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BARRISTERS PRESIDENT'S MESSAGE

by Goushia Farook



Embracing Diversity through Remembrance

When Charlene told me the topic of this month's article was diversity, I had several ideas on what to write about. What a great topic for an article with so many current world applications. The time of writing this article could not have worked out better as the perfect idea came to light. Admittedly, I did not get the article written this month until after the deadline I had imposed on me. However, it ended up for the best. To quote one of my favorite writers, Maya Angelou, "it is time for parents to teach young people early on that in diversity there is beauty and there is strength."

I am presently a member of the Leo A. Deegan Inn of Court. This year, my group was presenting in the month of January. For the 2021 year, the Inn assigned legal movies to each group for analysis which is a highly creative and engaging source of material. My group was assigned the movie *Denial*. If you have not seen this movie, I highly recommend it. The movie centers around a defamation lawsuit filed against a book publisher brought by a Holocaust denier. My team named our group presentation after two Holocaust victims, Else Feldman, and Julius Fucik. By sheer coincidence alone, our presentation was on January 27, 2021, which happens to be International Holocaust Remembrance Day.

It was a such a wonderful coincidence to present on this movie on that day and be able to acknowledge the life of two victims. More than that, it made me think of the topic of this month's article, diversity. The importance of recognizing the need for diversity and the direst of consequences when we fail to do so.

International Holocaust Remember Day is recognized on a global scale on January 27 of every year. On this day, the world remembers victims of the Holocaust and the genocide of the Jewish people. Even the date selected for memorializing Holocaust Remembrance Day has significance. The date was selected as the date the Auschwitz concentration camp was liberated in 1945.

I encourage you all to look further into this amazing day and what it stands for. Share stories of passed loved ones, the strength of survivors and the diversity that makes our world amazing. In the words of Robert A. Heinlein, "A generation which ignores history has no past and no future."

Barristers Professional Shenanigans

On January 22, 2021, the Barristers hosted its first MCLE marathon of the 2021 year and we had a wonderful turn out of approximately 73 attendees. We had two amazing presentations with one hour of credit for elimination of bias and one hour of credit for ethics. Our first presentation was given by the Honorable Judge Keith Davis (Ret.) and the Honorable Judge Linda Miller (Ret). Both Judges are currently with JAMS. As always, elimination of bias in the legal field is an imperative topic of study. Recognizing our implicit biases is one of the integral aspects of ensuring we can eliminate bias in the legal field. Our second presentation was on the topic of ethics presented by the Honorable Judge Jackson Lucky. Specifically, Judge Lucky presented an engaging conversation on the ethics of email and social media. Judge Lucky was able to engage everyone using an interactive polling aspect.

The Barristers thank all our presenters and attendees. We hope you enjoyed the presentations in conjunction with receiving your MCLE credits! We look forward to hosting more MCLE's in the future and in-person events! Until then, we look forward to seeing you all on a virtual platform!

Upcoming Events

February 25, 2021: Virtual Happy Hour (Games and prizes included!) Follow up for RSVP information!

March 13, 2021: Hike at Mt. Rubidoux (Round 2 of getting a chance to meet your pets!) Meet at flagpole at Ryan Bonaminio Park at 10 AM.

Follow Us!

For upcoming events and updates:

Website: RiversideBarristers.org

Facebook: [Facebook.com/RCBABarristers/](https://www.facebook.com/RCBABarristers/)

Instagram: [@RCBABarristers](https://www.instagram.com/RCBABarristers/)

If there are any events you would like to see the Barristers host, MCLE topics you would like to see covered, or community outreach options, please contact us and we would love to explore those ideas with you. You can also reach me personally at goushia@brlfamilylaw.com.

Goushia Farook is an attorney at Bratton, Razo & Lord located in downtown Riverside where she practices exclusively in the area of family law. She is a member of the board of directors of the Inland Counties Legal Services (ICLS) and a member of the Leo A. Deegan Inn of Court and Asian Pacific American Lawyers of the Inland Empire (APALIE). Goushia can be reached at goushia@brlfamilylaw.com.





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AN IMAGINING

by Juanita E. Mantz, Esq.

*"You may say I'm a dreamer
But I'm not the only one
I hope someday you'll join us
And the world will live as one."
Imagine by John Lennon*

As I sit here during the umpteenth month of the pandemic, I think to myself, humans are an adaptable species. Perhaps that is our weakness. We cannot always see danger, even when it is in our faces or sits on our chests. We adapt to circumstances without even realizing the scariness of the situation.

When I first became a deputy public defender more than a decade ago, after years in corporate litigation, I adapted too. At first, I was horrified by all of the people in custody and then like most of us who work within the criminal system, I became somewhat desensitized. That's not to say I stopped caring. I have always cared so much that it hurts. But, somehow even my empathetic soul stopped being shocked by the mass incarceration and subjugation of so many human beings. I stopped being shocked by double digit offers. I stopped being shocked by the abandonment of so many of the mentally ill to the streets and jails.

Last year, that changed for many of us with the killing of George Floyd. The dam finally broke and we said, "No more!"

Last year, deputy public defenders from Riverside County gathered and marched for Black Lives Matter in conjunction with public defender offices nationwide. The real heroes and heroines of the event, who often go unremembered were the organizers. Female attorneys of color and others from my office planned the event. There were speakers, including our own Public Defender Steve Harmon.

We gathered in front of the civil courthouse. There were many of us holding signs with the names of those we have lost to police brutality against Black individuals.

We Riverside County deputy public defenders stood, we spoke, we kneeled, and we chanted. Many of us prayed in our heads for something to finally change. We all pledged to do more.

Have we done more? Ask yourself, have we?

On that day, what feels like eons ago, in this pandemic tinged world, it felt hopeful. On that day, it felt as if things were finally changing. People were finally speaking up. Things that had been unsaid for far too long were being shouted.

Now here we are, months later. Riverside County still lags behind in progressive policies aimed at helping to end the subjugation and mass incarceration of people of color and poor folk.

But, less than 100 miles away, Los Angeles has elected a new District Attorney, George Gascon, who with a stroke of his justice pen ended cash bail for all but serious felonies, and pledged to end most sentencing enhancements, while also putting an end to juveniles being tried as adults.

Where is our progressive prosecutor? Where is Riverside County's empathy? Where is the caring? Where is the love for our fellow humans?

Why should bail and incarceration depend on your California zip code?

Here in Riverside, we all know that the fallback is still incarceration pre-trial and this is while you're still presumed innocent under the law. Pandemic or not, they're still incarcerating many people who deserve to be out of custody fighting their cases.

Call it what it is. Say the truth. Economic disadvantage (in other words, being poor) impacts guilt or innocence through coercion. Every deputy public defender knows all too well that innocent people plead to get out of jail. Ask yourself, especially in these pandemic times, wouldn't you? I would in an instant.

The rates of Covid-19 are skyrocketing in California. The prisons, jails, and state hospitals are severely impacted and those incarcerated are suffering and dying. Yet, there is silence in the face of an emergency. Deafening silence.

Why am I not surprised? Due to adaptation, we have all been complicit in the creation of an unfair, unjust and dangerous criminal system.

But I, for one, will be complicit no more. No more adaptation. It's time for real change.

And a true reimagining.

Juanita E. Mantz is a deputy public defender in Riverside who practices incompetency law representing the most voiceless of all populations. She recently produced an American Studies Association Freedom Course on mass incarceration. She is in the creative writing MFA program at UNO and her memoir is forthcoming. She is a writer, podcaster, and blogger who has been published widely in magazines, literary journals, and anthologies. Read more about her on her author website at <https://juanitaemantz.com>. The opinions expressed in this essay are her personal opinions only.





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BRAINING DIVERSITY: NEUROSCIENTIFIC PERSPECTIVES ON THE LAW

by Carlos E. Cortés

Dramatic advances in neuroscientific research are changing our understanding of how people view the world. This has serious implications for the practice of law. The major player is the brain, the site of an ongoing internal struggle.

First, we have the unconscious brain (System 1). This “protective brain” continuously collects, categorizes, and connects information, while simultaneously infusing it with emotion. Moreover, beneath the radar, it causes us to make instantaneous, *unreflective* decisions. When that emotionally-infused categorical information concerns a group of people, we may develop and act upon often-unrecognized biases.

Second, we have the conscious brain (System 2). Using this “executive brain,” we think, analyze, and make *informed* decisions, while also managing ourselves and empathizing with others. Our conscious brain gives us pride in how clearly we see things and how deftly we balance logic and emotion.

There is one major complication. Systems 1 and 2 wage incessant war. The unconscious brain operates continuously, secretly authoring most of our decisions. In contrast, it takes effort to engage the conscious brain. The conscious brain *can* mute the effects of the unconscious brain, but only when we put our minds to it. Most of the time we don't.

When a piece of information enters the brain, it reaches and triggers the unconscious brain 5-10 times faster than the conscious brain. In other words, the unconscious brain influences how we “feel” about something long before the conscious brain even begins “thinking” about it. I should add that this bifurcated brain process operates surreptitiously within attorneys, judges, witnesses, jurors, and others involved in the legal process. Nobody is immune.

Take jury instructions: withhold judgment until you have heard all of the evidence. Noble idea, but sorry, no cigar. Such behavior is neuroscientifically impossible, because the unconscious brain will automatically collect, classify, connect, infuse emotion, apply biases, and make judgments no matter how restrictive the instructions. System 1 operates relentlessly. Your conscious brain may not know it, but your unconscious brain is already propelling you toward your final judgment.

This unconscious process may be triggered by something as simple as a group label. In 2002, carpenter Alex Salas slipped off a ladder at a Seattle construction site and was seriously injured. He sued the scaffolding subcontractor. The jury ruled workplace negligence because the ladder lacked a textured, anti-slip surface. Yet it awarded no damages to Salas. The Washington Supreme Court overturned that decision, citing the lower court for an “abuse of discretion” in allowing the defense to use Salas’ undocumented immigrant status during the trial. In the 2015 retrial, with immigration status banned, Salas received \$2.65 million in damages.

In 2018, the California state legislature prohibited the open court disclosure of immigration status in civil and criminal cases without a judge's prior consent. The neurological connection: such terms as “illegal immigrant” play upon the unconscious brain and impact decisions. This jeopardizes the “logical” operation of the conscious brain.

What about eyewitnesses? Neuroscientists refer to the idea of “naïve reality.” That is, the brain does not merely photograph the outside world. Rather System 1, the unconscious brain, actually influences what we *think* we objectively see. Or as Confucius said twenty-five centuries ago: “We see what is behind our eyes.”

In one research experiment, a group of subjects was tested to see which ones had liberal or conservative tendencies. Then they all saw the same video of police officers disbanding a protest march. Half of the viewers (a mixture of conservatives and liberals) were told that the protesters were gay rights activists. The other half were told that the protesters were pro-life activists. They were then asked what had occurred.

Among those who “saw” pro-life activists, conservatives tended to interpret the protest as peaceful, while liberals tended to view it as potentially violent. Among those who were told that the protesters were gay rights activists, the perceptions were reversed. Liberals tended to view the protest as peaceful, while conservatives tended to view it as potentially violent. Believing is seeing.

Can such unconscious biases be overcome? To a degree, but not completely, because System 1 operates 24/7, while System 2 requires lots of effort. In my Braining Diversity workshops I address personal strategies for challenging System 1. For example, in your daily life you can make a continuous effort to seek out ideas that contradict your own beliefs and develop the habit of looking for multiple perspectives in all situations.

Don't expect to eliminate *all* biases. That would require becoming non-human. But we *can* develop greater self-awareness, adopt habits of mindfulness, practice humility, and live our lives according to Irish playwright Samuel Beckett's twelve-word injunction, “Ever tried. Ever failed. No matter. Try again. Fail again. Fail better.”

Carlos E. Cortés is a retired history professor who has been a diversity speaker, educator, trainer, and consultant for forty-five years. His books include: The Children Are Watching: How the Media Teach about Diversity (2000); his memoir, Rose Hill: An Intermarriage before Its Time (2012); and a book of poetry, Fourth Quarter: Reflections of a Cranky Old Man (2016), which received honorable mention for the best book of poetry in the 2017 International Latino Book Awards. He also edited the four-volume Multicultural America: A Multimedia Encyclopedia (2013).



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ENVIRONMENTAL JUSTICE IN LONG-RANGE PLANNING

by Amanda Daams and Henry Castillo

Environmental justice has long been an area of significant policy interest in California, and over the course of the last 20 years, the state has enacted several laws to advance environmental justice. California law defines “environmental justice” as “the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”¹

Environmental justice considerations have been playing an increasingly important role in the long-range planning efforts of local jurisdictions within the state. To that end, the legislature passed Senate Bill 1000 (“SB 1000”) in 2016. The bill was authored by Senator Connie M. Leyva, who represents the 20th District, which comprises a large portion of the Inland Empire. SB 1000 requires that local governments address environmental justice in their general plans. The Legislature’s stated purpose in passing SB 1000 included facilitating transparency and public engagement in local governments’ planning and decision making processes, and reducing harmful pollutants and the associated health risks in environmental justice. Additionally, the Legislature wanted local governments to promote equitable access to health-inducing benefits, such as healthy food options, housing, public facilities, and recreation.

Environmental Justice in General Plans

California state law requires that each county and city develop and adopt a general plan.² A general plan is a comprehensive long-term plan for the physical development of a county or city. It is mandated to contain seven elements: Land Use, Open Space, Conservation, Housing, Circulation, Noise, and Safety.³ The general plan may be adopted in any form deemed appropriate by the legislative body, including combining the elements.

Beginning after January 1, 2018, if a county or city adopts or updates two or more elements of its general plan, SB 1000 requires the local government to identify “disadvantaged communities” in its jurisdiction and either include an “environmental justice element” or integrate environmental justice goals in other elements within its update.⁴ A general plan’s environmental justice

policies must identify objectives and policies to reduce the unique or compounded health risk in disadvantaged communities by means of reducing pollution exposure.⁵

To ensure that local jurisdictions comply with the mandates of SB 1000, the California Attorney General has established the Bureau of Environmental Justice, which is taking an active role in advancing environmental justice considerations. Notably, since SB 1000 has gone into effect, the Attorney General has provided comment letters on ten proposed general plan amendments. Attorney General comment letters provide recommendations for compliance with SB 1000 to address the minimum requirements.

One of the main requirements of SB 1000 is that a local jurisdiction’s environmental policies promote civil engagement in the public decision making process. The Attorney General’s office has focused on ensuring that there is public participation throughout the general plan process, particularly from disadvantaged communities. Thus, it is recommended that local agencies make all documents easily accessible on their websites, hold public workshops to discuss their general plans and environmental justice policies with interested community members, provide information in English and Spanish, and address community concerns.

Environmental Justice and CEQA

The California Environmental Quality Act (“CEQA”) codified at Public Resources Code Section 21000 et seq., is the State’s preeminent environmental law. CEQA is primarily a disclosure statute and seeks to ensure environmental impacts are adequately disclosed and mitigated to the extent possible. Currently, there is no requirement to analyze environmental justice in CEQA, but environmental justice issues are increasingly being raised in the CEQA context.

CEQA is concerned with the impacts of projects on the physical environment, and a project’s economic or social effects are not treated as effects on the environment.⁶ Additionally, as a general rule, CEQA does not require an analysis of the existing environment on a proposed project. Only if the project will in some way exacerbate existing environmental hazards or conditions must the agency evaluate the potential impact of such hazards on future

1 Gov. Code, § 65040.12(e)(1).

2 Gov. Code, § 65300.

3 Gov. Code, § 65302.

4 Gov. Code, § 65302(h)(1).

5 Gov. Code, § 65302(h)(1)(A).

6 14 Cal. Code Regs., [hereinafter “Guidelines”] § 15131(a).

residents or users.⁷ Because CEQA focuses on changes to the physical environment (rather than social changes), and CEQA looks at the impacts of a project on the environment, rather than the environment's impact on the project (unless the project exacerbates existing conditions), it has long been argued that environmental justice does not fit within CEQA's purview.

Arguments are increasingly being made, however, that CEQA does require an analysis of environmental justice. Pursuant to CEQA, a project may have a significant effect on the environment if among other things, "the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly."⁸ Additionally, social or economic

impacts may lead to physical effects on the environment,⁹ and social or economic factors may be considered in determining whether a physical change is significant.¹⁰ Further, including an environmental justice analysis would increase the public role in crafting mitigation measures and alternatives for analysis, as well as provide for more transparency when projects with significant and unavoidable impacts on disadvantaged communities are approved, thus furthering CEQA's role as a disclosure statute.

Overall, whether environmental justice should be analyzed under CEQA will need to be considered by the courts. As environmental justice is of primary concern in the State of California and environmental justice issues are increasingly being raised in the CEQA context, it is likely only

a matter of time before the courts will weigh in on this important issue.

Amanda Daams is an attorney at Best Best & Krieger LLP in the environmental and natural resources practice group, specializing in the California Environmental Quality Act.

Henry G. Castillo is an attorney at Best Best & Krieger LLP in the municipal law practice group and advises public agency clients on various legal issues.



7 *California Bldg. Indus. Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 377.

8 Pub. Res. Code § 21083(b)(3); Guidelines

§ 15126.2.

9 see, Guidelines §§ 15064(e), 15131(a)

10 Guidelines §§ 15064(e), 15131(b)

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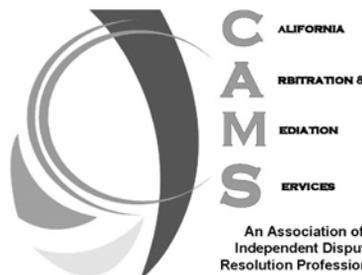
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CREATING AN ANTI-RACISM VISION STATEMENT

by Carlos E. Cortés

The May 2020, Minneapolis police killing of George Floyd launched thousands of anti-racism proclamations. Millions took part in that performative aftermath. Include me among those millions.

Like many people, I wear multiple hats. One is chairing the Mayor's Multicultural Forum in Riverside, California. My half-century hometown is a sizable (330,000-person) city, whose steady but not explosive growth has enabled it to maintain a community feeling. My wife and I continually encounter people we know when we go to a restaurant or take our daily two-mile walks around a nearby lake loaded with noisy ducks, geese, and egrets.

In 1999, when Mayor Ronald Loveridge established his Mayor's Multicultural Forum, he named me its inaugural chair. When Ron retired, his successor, Rusty Bailey, asked me to stay on. I agreed.

The Forum is not an official city organization. Rather it's a voluntary, non-membership gathering of local residents who meet with the Mayor four times a year in ninety-minute sessions to share ideas about making the city a more equitable and inclusive place. Everybody is welcome. Usually two, three, or four dozen people show up — mainly leaders of local organizations, churches, and educational institutions. The Mayor listens, interacts, and often implements our ideas. With a time commitment of only six hours a year, the Forum is the most time-effective entity with which I have ever been involved.

In the George Floyd immediate aftermath, the Forum met via Zoom with the Mayor and Chief of Police. From that meeting emerged the idea of developing an anti-racist vision for the city. Our next Forum consisted of ninety minutes of soul-searching discussion about what should be included in that statement. This was followed by a deluge of emails expanding upon our discussion. Sometimes these ideas provided mutual reinforcement; other times they clashed. As Forum chair, my role was to organize, synthesize, and integrate these sometimes-competing ideas, while also keeping the document succinct (it ended up two pages).

Another challenge. We held our ideas Forum on August 13. Mayor Bailey asked us to complete the vision statement by our next meeting on September 24, so he could take it to the City Council for approval before he left office in December. This meant a demanding weekly schedule. I would send out a draft to the mailing list of some 100 people, participants would respond within five days with recommendations for improvement, and my revised draft

would go out again two days later. With each draft, I also provided a cover letter highlighting my new revisions and explaining the rationale behind each decision. This process was repeated four times.

Fortunately the proffered ideas, even when conflicting, sorted themselves into themes. Actually answers to questions that had not been explicitly asked. So I created five sections, each addressing one of the following questions.

What is anti-racism?

Where does anti-racism begin?

What actions does anti-racism encompass?

What should the city government do?

How will we know if anti-racism is being effective?

In writing the document, I eschewed dense paragraphs. Instead I employed section headings, followed by bullet points. This made the document more readable.

What is anti-racism? While there was some sentiment to provide a traditional definition, instead we opted to "define" it through bullet points. This "living definition" consisted of listing different dimensions of anti-racism: challenging policies; reforming systems; mobilizing the community; and encouraging individual reflection.

Where does anti-racism begin? Forum participants split: the hearts-and-minders vs. the structuralists. We bridged that difference by labeling the section: "Anti-racism begins everywhere," followed by a list of simultaneous starting points, including with both individuals and systems.

What actions does anti-racism encompass? For this we created four short sections: courageous conversations; evidence-based analysis; anti-racist action; and continuous self-reflection. That section became the crossroads of our myriad recommendations, a place where the document could honor the varying ideas of Forum participants.

The fourth section focused directly on what the City of Riverside could do. Fortunately, the creation of our document coincided with the City's consideration of a five-year action plan, so our ideas can become part of those deliberations. The final section called upon the City to conduct an annual assessment of progress in implementing these ideas, including but not limited to "measurable accountability."

By the time of the Forum's September 24 Zoom meeting, we had come together around content, structure, and tone. At the meeting, participants added a few small but important additions. Then came the Mayor's turn. Delighted with the result, he indicated that he was ready to take it to the City Council.

He did so on October 20. By a 6-1 vote, the Council adopted our Riverside Anti-Racist Vision. That action received wide newspaper coverage, including by the *Los Angeles Times*, sixty miles away. The *Times* featured our achievement with a three-column photo of Mayor Bailey and a five-column headline, "Riverside seeks a racial reckoning," followed by a sub-head, "City Council passes 'Declaration of Independence' from racism on a 6-1 vote." The Mayor and the Forum had pulled it off. Now to turn vision into reality.

Carlos E. Cortés is a retired history professor who has been a diversity speaker, educator, trainer, and consultant for forty-five years. His books include: The Children Are Watching: How the Media Teach about Diversity (2000); his memoir, Rose Hill: An Intermarriage before Its Time (2012); and a book of poetry, Fourth Quarter: Reflections of a Cranky Old Man (2016), which received honorable mention for the best book of poetry in the 2017 International Latino Book Awards. He also edited the four-volume Multicultural America: A Multimedia Encyclopedia (2013).

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NEW REQUIREMENTS FOR EMPLOYERS RE COVID-19

by Geoffrey Hopper

As a California employer, you are probably in violation of this new regulation that became effective November 30, 2020. On November 30, 2020, California's Emergency Temporary Standards were published and it was mandated for all California employers to follow by establishing specific written protocols in the workplace for prevention and/or avoidance of the spread of COVID-19. It has been my experience that not only are most employers not in compliance with these new regulations, but most are not even aware of the existence of this mandate. The good news is that Cal OSHA has prepared a detailed template where employers can go online at https://www.dir.ca.gov/dosh/dosh_publications/PPP.doc to complete such. In addition, there is a separate website giving an overall review of this entire topic which is <https://www.dir.ca.gov/dosh/coronavirus/ets.html>.

The website referenced above lists not only the emergency temporary standards which are applicable but, in addition, such provides a listing of FAQs dealing with these emergency temporary standards and fact sheets as well including a copy of the model written program for the protocol. There is also a template provided by Cal OSHA to develop and implement an employer's COVID-19 prevention program which consists of about seven pages and, while it takes about two hours or more for most employers to fill out, it is a good procedure to train and educate both employers and employees as to COVID-19 prevention and assists in creating a greater sensitivity for preparedness of general practices and procedures and is quite helpful.

Failure to comply subjects the employer to penalties, fines, and fees and, of course, if someone becomes infected (and the law currently presumes that any employees who are so infected became that way through the workplace), individuals have not only workers' compensation remedies but now such constitutes arguably an OSHA violation. Violations of OSHA (which can either be Cal OSHA or Fed OSHA) can involve fines and penalties in the thousands of dollars per incident as well as potential imprisonment. These new regulations go beyond social distancing, wearing a face mask, etc. They mandate that the employer develop a written COVID-19 prevention program (PPP) which is recommended to be circulated to all of the employer's employees and have them sign an acknowledgment of receipt of the same. Cal OSHA mandates that the employers maintain these records (which we recommend doing for a period of not less than four years) and that, upon request, they have to be made available to Cal OSHA representatives

as well as the employer's employees and/or their union representatives, if applicable.

On December 15, 2020, Governor Newsom, to further compound the situation, issued an executive order suspending a portion of the emergency temporary standards (ETS) which had specified that the periods of quarantine or isolation exceeded those recommended by the California Department of Public Health (CDPH). Now the CDPH is mirroring the CDC on the quarantine periods for employees who are exposed to COVID-19. The County of San Bernardino has recently published a quarantine calculator that can be found online at <https://sbcovid19.com/quarantine-and-isolation-calculator/> to do these calculations. One of the aspects of these guidelines is that all employees who have close contact (defined as being within six feet of an infected person for a cumulative 15 minutes (does not have to be consecutive) or more over a 24-hour period) but have no symptoms are permitted to discontinue quarantine after the tenth day from the date of the last exposure with or without testing. Accordingly, employees without symptoms under these new guidelines do not have to be out of work for more than ten days. The COVID-19 calculator also addresses the various other situations that can arise and the calculations are the same when individuals have tested positive and/or have other situations that take place.

As it relates to the COVID-19 prevention program (PPP), such is mandated by nearly every employer to follow and such has addressed several areas which are set forth in the template as referenced above and would include:

- 1) A communication system for the dissemination of information about COVID-19 with employees;
- 2) Procedures identification and methodology of addressing COVID-19 matters;
- 3) Protocols for responding and investigating COVID-19 workplace cases;
- 4) Instruction and training on COVID-19;
- 5) Protocols for not only personal protective equipment but also including face coverings and the topic of physical distancing;
- 6) Protocols for having a confidential record-keeping system for COVID-19 matters;
- 7) Protocols for allowance of employees to come back to work as well as the exclusion of those with COVID-19 and/or who have been exposed to COVID-19 infected individuals.

These new temporary standards issued in November establish specific rules for employers. These rules include providing notice of COVID-19 exposure, requirements for exclusion of individuals testing positive for COVID-19, the ongoing requirements of face coverings, social distancing, related requirements for distancing, the requirements of providing training on these various topics, and addressing the situations of outbreaks in the workplace. The employer is required to deal with the situation of outbreaks which is defined as three or more confirmed or probable COVID-19 cases in the same workplace within a 14-day period (by taking specific actions and providing notifications that are specified under the statute, which is rather detailed). There are additional requirements in the situation of a “major outbreak,” which is defined as 20 or more probable or confirmed COVID-19 cases within a 30-day period in the same workplace.

The new regulations also address the issue of paid and unpaid time off for employees and how such applies and the specifics of allowing individuals to return to work. It would be advisable for all employers (as well as their employees) to immediately become familiar with and implement these protocols.

As a further update, on January 21, 2021, President Biden issued several executive orders, one of which is entitled “Executive Order on Protecting Worker Health and

Safety.” The order is to be implemented within two weeks of January 21, 2021, and will provide revised guidance to employers on workplace safety during the COVID-19 pandemic and, on the federal level, whether or not emergency temporary standards are necessary and to be issued by March 15, 2021. Further, a variety of other issues including whether or not enforcement by Fed OSHA is sufficient and is launching a national program to focus OSHA enforcement efforts for COVID-19 violations by employers, look at anti-retaliation principles and finally coordinating a multi-lingual outreach program to inform workers and their representatives of their rights dealing with health violations, our health laws and rules.

As is the situation whenever I discuss COVID-19, because of the ever-changing nature of the laws, rules, and regulations and lack of cases interpreting the same, I would use every disclaimer and caveat imaginable.

Geoffrey Hopper is a past president of the Riverside County Bar Association having practiced labor and employment law for an excess of 30 years, having received an AV rating from Martindale-Hubbell, and having conducted more than 2,000 seminars on the topic, representing both employers and employees and having written a book on the topic entitled Employment Law BS. His website is www.hopperlaw.com and he can be contacted at (909) 798-9800.



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THE CONTINUING SEARCH FOR FORGOTTEN RCBA PRESIDENTS: WILLIAM COLLIER (RCBA PRESIDENT 1914)

by Chris Jensen

In October 1914, it was reported that the Riverside Bar Association had been languishing of late, but a well attended meeting of local attorneys gathered in the local courtroom to adopt a new constitution and bylaws to reinvigorate the Association. The then current officers of the Association included William Collier as president, George French, vice president, and L. C. Kelley, the secretary.

William Collier was born to David and Lydia Collier in a little farming community of Birmingham, Iowa, February 11, 1845. David Collier was a local merchant providing William with a community environment and a “county” education. Near the end of the Civil War, Collier, being a teenager, was called up for what is referred to as the 100 day enlistments in the 45th Iowa Infantry to support Sherman’s March to the Sea. (William Collier was reportedly a charter member of the first G.A.R. (Grand Army of the Republic) fraternity organized in Riverside County.)

Shortly after the war, Collier attended college in Illinois completing a two year program. Returning home, Collier commenced to study law under the tutelage of John H. Craig. Eventually Collier became a law partner with Craig, the partnership lasting until 1884 when Collier moved to Southern California. The Craigs followed Collier to Riverside where a partnership with John Craig’s son thrived.

Shortly after moving to California, William and his brother-in-law, Donald Graham (married William’s sister, Margaret, and she eventually became one of the “who’s who” of Pasadena), purchased a significant interest in Rancho La Laguna (La Laguna now known as Lake Elsinore). William and Donald desired to have a subdivided portion of the Rancho named “Laguna,” but the United States Postal Service denied the request because Southern California already had a community named Laguna. Williams’ sister, Margaret, suggested an alternative, Elsinore. She was a literary fan and thought the name Elsinore, in Denmark, referred by Shakespeare in his story Hamlet, unique. Elsinore it became and still is.

William and Donald sold their interest in Elsinore in 1885. Desiring a competing venture in the area, the two gentleman created and processed a subdivision map in San Diego for the east end of Lake Laguna; note,



WILLIAM COLLIER

Riverside County was not created until 1893. The map recorded was for the new community of Wildomar. The name Wildomar was Margaret’s second community naming effort. This time she chose the name from the beginning of the names of her brother, husband and herself - Wil, Do, Mar.

Real estate development was not William’s only business effort. William did continue his law practice in Riverside. Included among the legal areas handled were

a San Bernardino versus Riverside County case over railroad taxes, contract disputes, trademark disputes for the orange industry, divorce, water rights (equitable relief), judicial foreclosures, libel (representing the newspaper, *San Jacinto Register*), and probate.

By 1910, it appears William was more a farmer in Wildomar than an attorney in Riverside. Although the firm of Collier, Carahan & Craig appeared to be quite active, news around the area regularly referenced William and his wife traveling from Wildomar to his sister’s house in Pasadena or the Colliers traveling from Wildomar to their Riverside home for a bit of weekend respite. When William was mentioned in the local press, he was found mostly providing farm news on rain and crop yields.

By 1914, even in his semi-retired state, William Collier became the President of the Riverside Bar Association. Not much is known of his presidency beyond a few RCBA resolutions for eulogies. However, by October of 1914, an effort was made to reorganize the bar resulting in the creation of a new constitution and by-laws.

William’s last act as president was on February 4, 1915, as host of the annual RCBA meeting and banquet at the Glenwood Inn (Mission Inn). At that meeting, after the evening’s speeches and celebration, the new directorate for 1915 was elected with District Attorney Lyman Evans becoming President.

By the summer of 1915, it was well known William Collier was retired from his law practice. His civic involvement continued, promoting additional development in the Wildomar area among other items.

In early 1916, a new judge was needed for Riverside County. It was fairly much assured Collier would be selected by Governor Hiram Johnson, Collier being an active supporter of the Republican Governor. But at 71 years of

age, Collier declined the formal offer and in fact requested his law partner, Hugh H. Craig, be given the appointment instead. Governor Johnson granted the request and Riverside County had a new judge in Hugh Craig.

Over the next year, Collier actively supported the campaign of Governor Johnson to become United States Senator Johnson. It was a common sight to see Collier at Johnson's side during campaign events in the area. Johnson was eventually elected U.S. Senator and served from March 4, 1917 to August 6, 1945. William Collier remained an iconic presence in Wildomar for the remainder of this life except for his summer months in Oceanside.

On March 16, 1925, a sudden illness struck William. He died the next day. Former RCBA President and District Attorney, Lyman Evans, a lifetime California friend of William Collier, delivered the eulogy at William's funeral. William was buried, not in Wildomar, but in Olivewood Cemetery, Riverside.

The William Collier house still stands in Riverside at 3092 Lime Street; a beautiful example of Riverside architecture of 1895.

Bibliography available upon request.

Chris Jensen, a partner in the law firm of Reynolds, Jensen, Swan & Pershing, is president of the RCBA Dispute Resolution Service, Inc. Board of Directors.



MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective February 28, 2021.

Donna Jackman Cathey – Riverside Superior Court, Riverside

Thomas Dover – Nossaman LLP, Los Angeles

Samer Habbas – Law Offices of Samer Habbas & Associates, Irvine

Riksha S. Lane – Best Best & Krieger LLP, Riverside

Maureen Muratore – Law Office of Maureen Muratore, Rancho Cucamonga

James R. Parrett – Thompson & Colegate, Riverside

John D. Sarai – Shield Law Group, Encino

Maria D. Spear – Cage & Miles, Menifee

Steven Vahidi – Steven Vahidi Law Group, Riverside

Andrea Valencia (A) – Riverside County Law Library, Riverside

Jacob Vander Feer – Brown White & Osborn LLP, Redlands

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PRACTICING RESPONSIBLY & ETHICALLY: THE PROFESSIONAL RULES AND LEGAL DIVERSITY

by David Cantrell & Brad Zurcher

In 2018, at the request of the Board of Trustees of the State Bar of California, the Supreme Court approved substantial amendments to the Rules of Professional Conduct for the first time in nearly twenty years. Many of the amendments were minor, doing no more than reorganizing and renumbering the Rules to facilitate cross reference with those adopted in other jurisdictions. But such was not the case with Rule 8.4.1, which prohibits unlawful discrimination in the practice of law. The replacement of prior Rule 2-400 with Rule 8.4.1 was one of the most significant of the 2018 amendments to the Rules.

The diversity of California's bar does not mirror that of its general population. A 2019 census and analysis conducted by the State Bar makes this point emphatically.¹ The census found that a staggering 68% of California attorneys identify as white compared to a mere 40% of California's general population. While 36% of Californians identify as Hispanic/Latino, the census found that this demographic accounts for a mere 7% of California attorneys. Similarly, the percentage of attorneys identifying as Black or Asian lags behind that of the general population by 2%—a significant amount given that individuals identifying as Black or Asian comprise 6% and 13%, respectively, of California's population. Although the report also identified a strong trend towards increasing diversity, it's clear that the legal industry still has a way to go.

In light of the reality subsequently reflected in these hard data points, in 2018 the Board of Trustees recommended an overhaul of the professional rule on unlawful discrimination. Prior Rule 2-400 prohibited unlawful discrimination in "the management or operation of a law practice." However, it also lacked any real enforcement mechanism. Unique amongst the Rules, Rule 2-400 prohibited the Office of Chief Trial Counsel (OCTC) from investigating or initiating disciplinary action for violation of Rule 2-400 "unless and until a tribunal of competent jurisdiction, other than a disciplinary tribunal...first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred." At best, the OCTC could play second fiddle to other agencies. At worst, it lacked the jurisdiction to investigate valid claims where, for example, an attorney settled a discrimination claim to prevent adjudication by other courts or agencies. Perhaps unsurprisingly, during the sixteen years in which

Rule 2-400 was operative, there was not a single instance of reported discipline for violation of this Rule.²

To rectify this problem, the Commission for the Revision of the Rules of Professional Conduct (Commission) recommended the adoption of Rule 8.4.1. Like Rule 2-400, Rule 8.4.1 prohibits unlawful discrimination. However, unlike Rule 2-400, Rule 8.4.1 does not require that a discrimination claim first be adjudicated by a tribunal of competent jurisdiction before an investigation or disciplinary proceeding can commence. Opponents of this amendment argued that unlawful discrimination accusations should be adjudicated by agencies that are specifically authorized to investigate such claims. In response, Rule 8.4.1 obligates an attorney who is on notice of charges under Rule 8.4.1 to provide a copy of those charges to the federal and California agencies responsible for prosecuting employment discrimination allegations. Further, Comment 6 to the Rule was added to expressly reference the State Bar Court's authority to abate a disciplinary proceeding when the alleged misconduct is already being investigated by another tribunal. These additions protect the original jurisdiction of the OCTC in investigating discrimination claims, but also ensures that complicated cases can still be first litigated in tribunals that possess greater competency in this area of law.

Undoubtedly, an amendment to the professional rules will not resolve the bar's diversity problems. But to the extent unlawful discrimination has played a role in the lack of diversity in California's legal industry, Rule 8.4.1 finally gives the State Bar original jurisdiction to address this problem. Since its adoption, no published case of the Review Department of the State Bar Court has applied Rule 8.4.1. But the rule is young. As with so many of the 2018 amendments, whether the Rule will accomplish its intended purpose—and whether it will influence the diversity of California's legal industry—is a question for the future.

David Cantrell and Brad Zurcher are members of the firm Lester, Cantrell & Kraus, LLP. Their practice focuses on legal malpractice and professional responsibility. David is certified by the California State Bar's Board of Legal Specialization as a specialist in legal malpractice law.



1 First Annual Report Card on the Diversity of California's Legal Profession, published July 20, 2020. The report is available at <http://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-publishes-first-annual-report-card-on-the-diversity-of-californias-legal-profession>.

2 See Commission Member Dissent, Submitted by Robert Kehr, on the Recommended Adoption of Proposed Rule 8.4.1, attached to the summary of the history of Rule 8.4.1, which is available at [https://www.calbar.ca.gov/portals/0/documents/rules/rrc2014/final_rules/rrc2-8.4.1_\[2-400\]-all.pdf](https://www.calbar.ca.gov/portals/0/documents/rules/rrc2014/final_rules/rrc2-8.4.1_[2-400]-all.pdf)

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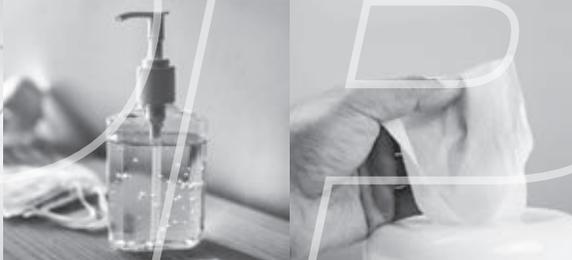


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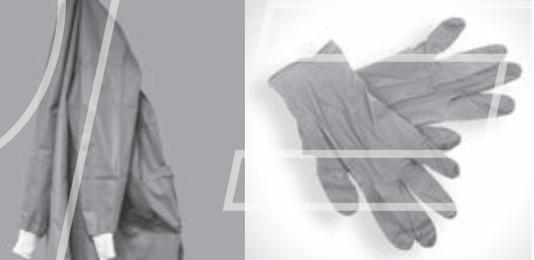
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SEXUAL ORIENTATION & GENDER IDENTITY DISCRIMINATION: DETECTED, DECIPHERED, DISSECTED & DEFINED

by Boyd F. Jensen, II

For those of us within the civil, criminal, or administrative litigation forums, requiring the production of evidence, it was not always hard to detect or decipher whether there was discrimination based upon race or sex. You walked into the corporate boardroom and everyone was white...or male. Even with discrimination about national heritage or religion, one could readily perceive those characteristics or find documents or expressions of belief – whether on Sunday or on particularly Saturday. But orientation...or sexual identity is far less discernable. And to make matters more difficult, it can change. Statistically, there are fewer men than women who are raising children, and choose a same sex lifestyle.¹ This is often before “re-orienting” themselves from a heterosexual identity and that lifestyle. And many see that heterosexual past as their evolution into their new identity including medically aided sex changes.

In *Hope v. California Youth Authority*² previous California courts had already decided that a gay employee may be subjected to a hostile work environment so as to constitute sexual harassment, including orientation harassment under the Fair Employment and Housing Act (FEHA). To establish a hostile environment, sexual harassment exists when the plaintiff proves that the harassing conduct took place because of the plaintiff's sex, without the need to show that the conduct was motivated by sexual desire *Pantoja v. Anton*.³ In *Murray v. Oceanside Unified School Dist.*⁴ an action brought by a teacher against the school district, there was no requirement that adverse employment consequences be suffered before the teacher could maintain an action for sexual orientation harassment under the FEHA. To prevail, the plaintiff must establish that the plaintiff personally witnessed the harassing conduct and that it was in the plaintiff's immediate work environment.

On June 15, 2020, the United States Supreme Court issued a decision in *Bostock v. Clayton County*,⁵ which held that established forms of sexual discrimination included sexual “orientation” and “gender identity.” The

opinion dissected and began to define how we present evidence when it comes to civil rights and discrimination. Note, the migration from the “but-for” evidentiary bar to the more forgiving “motivating factor” for protected sexual traits:

“...the adoption of the traditional but-for causation standard means a defendant cannot avoid liability just by citing some other factor that contributed to its challenged employment decision. So long as the plaintiff's sex was one but-for cause of that decision, that is enough to trigger the law...No doubt, Congress could have taken a more parsimonious approach. As it has in other statutes, it could have added ‘solely’ to indicate that actions taken ‘because of’ the confluence of multiple factors do not violate the law... But none of this is the law we have. If anything, Congress has moved in the opposite direction, supplementing Title VII in 1991 to allow a plaintiff to prevail merely by showing that a protected trait like sex was a ‘motivating factor’ in a defendant's challenged employment practice. Civil Rights Act of 1991, §107, 105... Under this more forgiving standard, liability can sometimes follow even if sex wasn't a but-for cause of the employer's challenged decision.”

In terms of how challenging legal concerns should be defined in the future, Justice Gorsuch treats this 2020 Supreme Court decision in a historic context broadening our application of how legislators, drafters, and litigators approach their responsibilities. First, he writes on page seven, “What did ‘discriminate’ mean in 1964? As it turns out, it meant then roughly what it means today: ‘To make a difference in treatment or favor (of one as compared with others.)’” On page twelve, he drives his purpose further: “Instead, the law makes **each instance of discriminating against an individual employee because of that individual's sex an independent violation...**” (Emphasis added.) Later at page 23, Justice Gorsuch concludes by asking two questions: “But when that same employer discriminates against women who are attracted to women, or persons identified at birth as women who later identify as men, we suddenly roll out

1 Family Equality Council, *LGBTQ Family Fact Sheet* (www2.census.gov) quoting “Gates 2013” at page 2.

2 134 Cal. App. 4th 577 (2005).

3 198 Cal. App. 4th 87, 114 (2011).

4 79 Cal. App. 4th 1338, 1357 (2000).

5 590 US ____ 2020 (No. 17–1618).

a new and more rigorous standard? Why are reasons for taking sex into account different from all the rest?” The answer of legislators, drafters and litigators is obvious. They are not different. That conduct and those actions do not belong in the workplace.

While the *Bostock* opinion broadly defines the criteria of how discrimination will be analyzed, there is still the evidentiary challenges of proof. In the bestselling book *The Help* by first time author, Kathryn Stockett, we are opened up to a culture – an environment where southern white housewives justified the exploitation of black maids by convincing themselves that black people were fundamentally inferior to white people. They were “unclean” and in homes quietly and figuratively, supported by the existing cultural institutions, could be ... and were marginalized. Culturally and institutionally, do we not face that same challenge interacting with persons whose sexual orientation or gender identity does not fit in and may be considered – certainly unhealthy – but also inferior?⁶

6 US National Longitudinal Lesbian Family Study (NLLFS.org) “Publications” menu refers to many studies with information about the quality, characteristics and treatment of Lesbians among many other websites.

When it comes to forms of discrimination, I believe most are working to heal and in good faith to value each other. While we work to get there, we should always be cautious, especially in the workplace where our work is essential and compensable.⁷ Further, where the improper conduct is by other employees, the employer (or its agents or supervisors) who know or should have known of the harassment are required to take immediate and appropriate corrective action.⁸ As members of the California State Bar Association, in my view the finest bar association in the country, let’s help employers and institutions find inclusive non-labeling ways to minimize and eliminate anything untoward that needs to be reported.⁹

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



7 Cal. Code Reg. 11009.

8 29 C.F.R. § 1604.11(e).

9 See also *Riverside Lawyer* Evaluating Sexual Allegations: Practical Advice, May 2018.



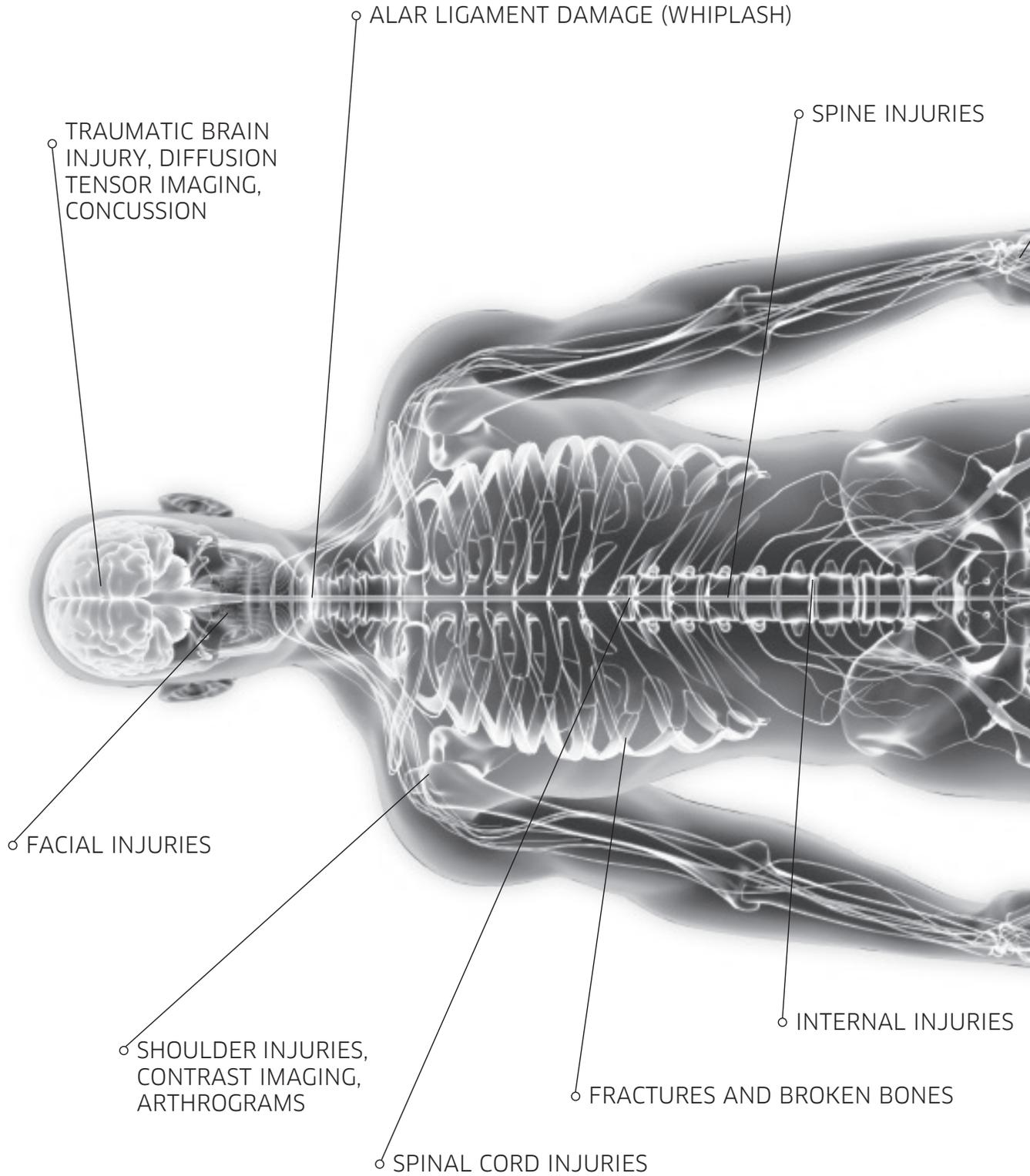
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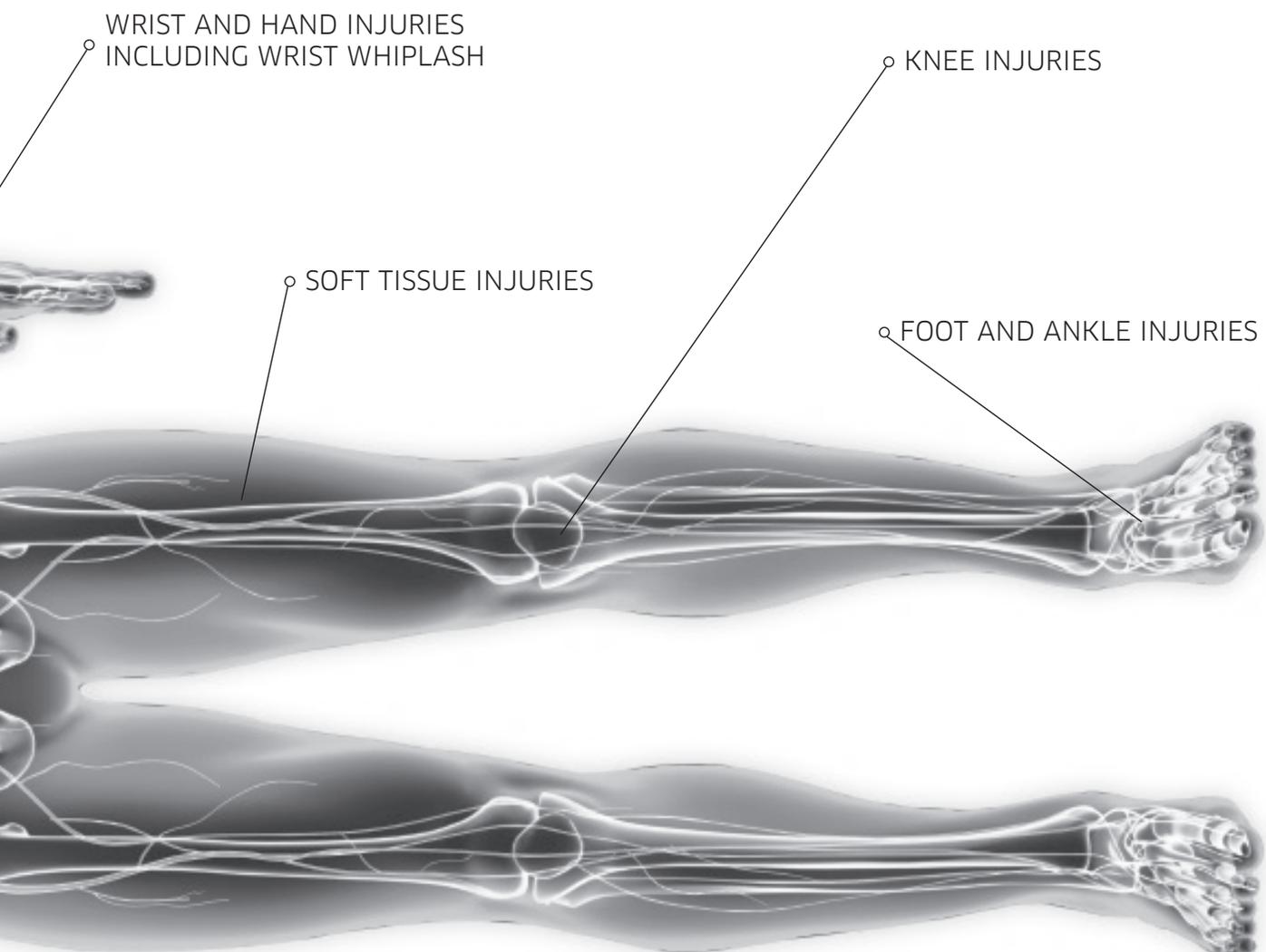
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THE RCBA ELVES PROGRAM 2020

by *Brian C. Percy*

On December 24, 2020, the RCBA's Elves Program concluded its nineteenth annual program of bringing Christmas joy to needy families throughout Riverside County. Despite the challenges of COVID, we were able to make adjustments to our program and still serve a record number of families this year. The Elves provided Christmas gifts, a holiday dinner and gas cards to 68 families (81 children and 197 adults).

This year we worked with the following organizations to identify families in need: the Victim Services Division of the Riverside County District Attorney's office, the Riverside County Probation Department, Supervising Probation Officers in Riverside, the Riverside Police Department, the Family Justice Centers in Riverside, Murrieta, and Indio, My Learning Studio, Wealthykids.org, Temecula Day Reporting Center, and the Lighthouse Social Services organization.

Every year the success of the RCBA Elves Program is solely due to the great support and generosity of you, our membership. Helping others is infectious and Elf participation has grown beyond the RCBA members to include their office staff, their families, clients, and friends.

As you can see by some of the images, all the hard work you did was worth it!

Big thank you to Bill and Pam Bratton, not only for your annual photos, but your financial and personnel support over all of these years.

Now for some recognition.

The Money Elves

Our funds came from direct donations and monies raised during some bar association events held throughout this past year. The money raised provided gifts for each family member, along with a Stater Bros. gift card to buy their holiday dinner fixings and a Union 76 gas card to help out the fam-

ily's holiday travel. I would like to thank the following Money Elves for their support:

Christine Renken, Bruce Varner, Mark Easter, Bratton Razo & Lord, Mike Douty, Matthew Kraus, Judge Craig & Maria Riemer, David Werner, Vicki Broach, Chris Johnson, Colleen Freit-Krauss, Sandra Leer, Barrie Roberts, Don Cripe, Rob Schelling APC, Judith Runyon, Eric Ryanen, Charity Schiller, Kimberly Byrens, Steven Anderson, Mary Karlson, Ward Simmons, Judith Murakami, Judge John Monterosso, Michelle Ouellette, Mona Nermal, Maya Mouawad, Richard Martinez, Debbie Vivian, Pamela Crawford, Danielle Sakai, Haviva Shane, Peggy Barnes, Roxanna Jiminez, Mandy Villareal, Sylvia Perez, Tammy Ingram, Holland Stewart, Ashley Fernandez, Andrew Saghian, Mrunal Shah, Arca Faapouli, Jose Martinez, Cathy Tisnado, Lisa Hurns, Chris Moffitt, Brandon Sanchez, Carol Swanson, Damian Northcutt, Ron Kauffman, Megan Kilmer, Jessica Lomakin, Craig Keller, Greg Snarr, Colleen Ojeda, Ruben Duran, Kara Coronado, Darren Ziegler, Amy Hoyt, Kendall MacVey, Judge Eric Keen, Matthew Forsse, Don Hensel, Scott Dittfurth, Howard Golds, Brittany Reese, Melissa Cushman, Susan Exon, Robert Swortwood, George Reyes, Jeff Van Wagenen, Brian Unitt, Cynthia Germano, Emily Learner, Sarah Wealth, Judge Sheri Pym, Jamie Hickman, Rose Marquez, Mary Stracke, Everett Green, Renee Christiansen, Kellie Husted, Aitken Aitken Cohn, Glen Price, Isabel Safie, Dan Hantman, Judge Kira Klatchko, FV Frank, Judge Irma Asberry, Susan Plummer, Judge Gary Tranbarger, Judge John Vineyard, Julianna Tillquist, Diane Huntley, Erica Alfaro, Neil Okazaki, Laurel Rice, Elizabeth Han, Casey Clements, and Jenece Pritchard.

I would also like to provide a very special "Thank You" to Mark Easter. Mark did a fantastic job of rallying a large



Law Firm of Bratton, Razo & Lord



Marianne & Braden Holly



Paul Lin



Judge Eric Keen

number of his colleagues at Best Best & Krieger to the cause, raising the largest amount by their firm ever. Another huge shout out goes to Bruce Varner and his assistant Carol of Varner & Brandt, who were able, once again this year, to secure a large donation from Stater Bros. This generous donation covered our food card needs for the families and allowed much more of the cash raised to go toward gifts.

The Shopping Elves

It was a joy to experience the festive mood of various individuals, firms, and families as they broke out of isolation at home, put on their Elf hats and used their best bargain-hunting skills to find great deals for our families. We were able to shop, bag, tag, and deliver hundreds and hundreds of presents to the bar association in record time.

This was our first year shopping at Walmart since our previous retailer for the past decade (Kmart) closed down all their local stores. I have had very positive comments about our new location and the selection available to our shoppers. The managers at the Walmart were very generous in providing several staff members dedicated to our night, which helped make our first outing there run smoothly. A big Elves “Thank You” to store managers Russ and Tanya. We look forward to working with you next year.

This year’s Shopping Elves were: Colleen Freitag, Diane Renteria, Christine Renken, Diane and Mike Huntley, Tiffany

Nocon, Molloy Family, Scott and Elizabeth Ditfurth, Judge Eric Keen, Matthew Forsse, Zoe and Alexa Roberts, Barbie Trent, Maria Aarvig & Husband, Mark Easter and EvanRae, Aniko Felson, Shaana Ramos Family, Anthony Beaumon, Dan and Evelyn Ferris, Marty Nicholson, Angela Viramontes, Sophia Contreras and Jennifer, Veronica and Marcos Reynoso, Peggy Barnes, Paul Lin, Alex Barraza, Braden Holly, Trish Gorden, The Bratton Razo & Lord Law Firm: Pam, Bill, Goushia, Danielle, Elisabeth, Sara, Kyle, Chanelle, Juanita, and Gabe; The Law Office of Marie Moreno Myers: Marie, Marika and Toni; Christopher Ortega, and Seidah Akli.

Special thanks to Bruce Larsen who once again volunteered with bagging and transporting of gifts after shopping was done, and all the shoppers that stayed through the checkout process to ensure the gifts were bagged properly.

Walter’s Auto Sales & Service, who once again provided our sleigh for the night. The use of a large Mercedes Sprinter van makes the transport of the vast number of gifts so much easier. A great big “Thank You” to General Manager Steve Kienle and his parts manager Scott Eisengberger for providing our “sleigh.”

The Wrapping Elves

After the shopping was finished, all the gifts were delivered to the RCBA office and filled the RCBA board room and several other workrooms. Because of COVID this year, wrap-



Les Tranberg and Maria Aarvig



Matthew Forsse & Family

ping was not performed on site. We adjusted to the COVID restrictions by having our Wrapping Elves picking up bags for wrapping at their homes or offices and then bringing them back to the RCBA for pickup by the Delivery Elves. In many instances, our Wrapping Elves also became Delivery Elves, making the trip back to the RCBA unnecessary. A huge thank you to this year's Wrapping Elves:

Judge Kenly Kato and staff, Elizabeth Ditfurth, The Bratton Razo & Lord Law Firm, The Law Office of Marie Moreno Myers, Leticia Sanchez, Tania Johnson of the Lighthouse organization, the Family Justice Centers in Riverside, Temecula and Indio, Shaana Ramos and her crew at Wealthykids.org, Elizabeth Santiago, and the Probation Centers in Riverside and Indio.

While we missed having the camaraderie and the sounds of Christmas music and eating goodies while wrapping at the RCBA, fingers crossed that we will return to our usual routine in 2021.

Delivery Elves

Like Santa himself, our gifts were not deterred by COVID. Your gifts were delivered personally (but in a "socially distanced" way) by Delivery Elves throughout Riverside County, including the cities of Corona, Norco, Lake Elsinore, Perris, Hemet, Riverside, Moreno Valley, Indio, Blythe, and several locations in the Coachella Valley. A special thank you to our brave Delivery Elves who donated their time and fuel. They were: Judge Charles Koosed and Family, Everett Green, David Werner, Shaana Ramos and family, Michele Ewing and Lachelle Crivello, Leticia Sanchez, Amanda Hartmann, Elizabeth Santiago, Vanessa Doughty, Tania Johnson with Lighthouse, Monica Podlesny and staff at Family Justice Centers in Riverside, Temecula and Indio, and Probation Officers with Riverside and Indio.

Special Thanks

Once again, big kudos to: the RCBA staff, especially Charlene Nelson, (who works tirelessly for all events, from the very beginning with shopping, bagging, organizing the



Scott and Elizabeth Ditfurth

wrapping, and coordinating the preparation of all deliveries.) Also, much appreciation to the RCBA's Lisa Yang. This event could not succeed without their energy and assistance. Additionally, we are grateful for the assistance of the management and social workers of Light House Social Services, Wealthykids.org, My Learning Studios, Riverside Police Department, Riverside Courts, Riverside Family Justice Centers, the Probation Department of the Riverside County District Attorney's Office, and Probation Offices in Desert Services Division and Indio. One last shout out to Mike Donaldson, who again brought in special "gifts" directly to the RCBA to include in all the family shopping bags. Mike's wife Kirstie and her mother, Jodi Helms and the Helms Christian Pre-School in Murrieta conduct their own annual toy drive at their school and donate all the toys to our cause. Lastly and most importantly, a big thank you to my assistant Anna Gherity and to the staff at Walmart in Riverside.

Finally, a jumbo-sized "Thank you" to all the Elves. You rock! Your wonderful spirit and camaraderie, which are represented in the photos accompanying this article, make this entire endeavor so rewarding to yours truly.

For those of you who still have not yet volunteered as an Elf, I suggest you put it on your agenda for next year.

Brian C. Percy is a past president of the RCBA and chair (i.e. "Head Elf") of the Elves Program.



Sara Tavakoli and Goushia Farook



Elisabeth Lord & Goushia Farook

JUDICIAL PROFILE: HONORABLE JEFFREY ZIMEL

by Betty Fracisco

What do you say when you meet a new judge who is exceptionally well qualified for the job, had a happy childhood, is a big believer in hard work and volunteer service, has maintained friendships from every educational and work aspect of his life, and has a balanced life? I say, "Thank you JNE Commission, former Appointment's Secretary Jenkins, and Governor Newsom." Riverside County has once again been blessed.

The judge in question is Honorable Jeffrey Mark Zimel (rhymes with "Kimmel"), born in Santa Monica and raised in Torrance.

Although his parents were "Arizona State drop outs," his dad worked for Upjohn before he and his wife started a family business, Zimel Eurothane Service, which even involved him and his sister Michelle, shipping, receiving, and driving. His middle class parents instilled in him a strong work ethic that included "lots of volunteer service." Judge Zimel admits to a happy childhood in a loving family, with parents who felt it important that he work hard and attend college.

High school at West Torrance High School was a collage of soccer, baseball, student government, and "lots of friends" (many of whom are friends today). Judge Zimel did well enough academically to be accepted at UCLA, which he considers "the best years of my life." At UCLA, he majored in history, which offered the opportunity to participate in a study at home program at William and Mary College in Williamsburg, Virginia. One of the highlights of his UCLA days was the founding of a new fraternity, Sigma Phi Epsilon, with a group of 15 guys. They still get together twice a year, once for skiing and once for a pool party, which is a family event.

Coming out of UCLA, Judge Zimel thought of both teaching and law as his future, so he took the LSAT. His score, added with the good grades from UCLA, led him to UC Hastings Law School in San Francisco. The weather was a challenge, but he learned about the beauty of getting around without a car. The first summer he did an externship in Washington, D.C., but found that working in legislation was not to his liking. The assistant federal public defender was his moot court teacher and he did an externship for his office. In Judge Zimel's last summer in law school, he worked for a firm in San Francisco on the CAP project, which dealt with federal appeals in death penalty cases.



Hon. Jeffrey Zimel

After graduation from law school, realizing by then he wanted to be a Public Defender, Judge Zimel spent three to four days driving all over the state to interview for a Public Defender's position. His first choice was Los Angeles and after the Bar, he started in a post Bar class of 22, 20 of whom passed the Bar and began their careers together, many of whom are still friends (see a pattern here?). He worked at a number of courthouses between 1991 and 1998, ending up in Torrance. In 1995, Judge Zimel married, and after a time, he and his wife decided they wanted to buy a house, preferably in

a less expensive area than LA. His mother had moved to Temecula, so they looked for a home in that area. Judge Zimel's wife was a teacher, which gave them some flexibility on where they could reside. They eventually purchased a home in Temecula and he commuted from Temecula to the courthouse in Pomona.

Judge Zimel decided that he needed to make a change, so he left the Los Angeles County Office of the Public Defender and started a criminal defense practice in southwest Riverside County. He soon found that working by himself was simply not the same as sharing an office, where you could share knowledge and strategies, so he joined the Riverside County Conflicts Panel and tried cases for them, in addition to his private cases. He handled all types of criminal defense cases, including death penalty cases, and several times, he found himself a media personality in the news and on television. Eventually, however, he found private practice lonely and he never liked the business side of private practice. Judge Zimel started thinking about applying for a position with the Riverside County Office of the Public Defender. He was already defending death penalty cases and he was happy to give up managing people/processes. Judge Zimel believes this was the greatest move of his career because the change allowed him to focus on his cases and clients, and he was happier.

So in 2011, Judge Zimel began his eight year stint as a supervising public defender for Riverside County. He was in charge of a group of attorneys for whom he oversaw their work, assigned cases, approved investigations, and gave them advice to help them be better lawyers. He was a lawyer and a teacher, so it was the best of his original aspirations. He supervised the deputy public defenders who were assigned to the courts in the Southwest Justice

Center, Riverside Hall of Justice, and the Banning Justice Center. He then took over the complex litigation unit, which handled cases such as murder, sex crimes, and death penalty cases. Judge Zimel referred to this period as “having one great job after another.”

In 2019, Judge Zimel was transferred out of the complex litigation unit and was assigned to supervise the law clerks. He called this “one year of great experiences,” which was training the young law clerks combined with his passion for the law. Riverside County Public Defender Steve Harmon, whom he described as a good mentor, good person, and good lawyer, had the feeling that Judge Zimel would be a good candidate for the judiciary (he had applied in 2018) and he wanted him to be able to share his complex litigation unit experience before he was called to the bench. In addition, Harmon did not want Judge Zimel to be delayed in taking the bench by the need to transfer his cases to another deputy public defender.

Then COVID appeared. Judge Zimel’s March 2020 appointment with the governor’s appointment secretary was postponed to the end of May and was eventually changed to a Zoom interview. Finally, at the end of August, his appointment to the bench was announced. Four days later, he was sworn in to fill the position created by the retirement of Judge Michael Donner in Riverside. Judge Zimel presided over criminal trials until a commissioner retired two months later. In November 2020, he was transferred to the Southwest Justice Center in Murrieta where he now presides over a calendar of small claims, civil harassment (a growing litigation area thanks to COVID), traffic, and soon, unlawful detainers. The learning curve has been considerable. Most of the people in his court are self-represented litigants and he has learned that for each of these individuals, this is their day in court, and he needs to provide a fair opportunity for them to be heard. He finds himself saying things like “Don’t take this personally, but...” and “Don’t burn bridges.” Listening to the litigants is critical, and after they present their cases he’ll often say, “Is there anything else you think I should know?” just in case the stress of appearing before a judge has made them forget a critical element of their case. He believes they deserve a fair opportunity to be heard.

When asked how being a judge had changed his life, Judge Zimel responded that he is working harder, has more responsibilities, and is more positive. This is the reward of a long career and he feels fortunate that he has taken the right steps along the way. On a personal note, he has been married for 25 years to his wife, who is a counselor to low income and at risk students at Chapparral High School in Temecula, where he coaches the moot court team via Zoom. His older son just graduated from college and is applying to law schools, while his younger son attended community college and is applying to transfer to a four-

year school. It should not be a shock to learn that one of the Judge Zimel’s happiest memories is the surprise 50th birthday party his wife organized, bringing together all those friends from high school, college, law school, and during his legal career. To be a fly on the wall at that party!

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



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