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MAGAZINE



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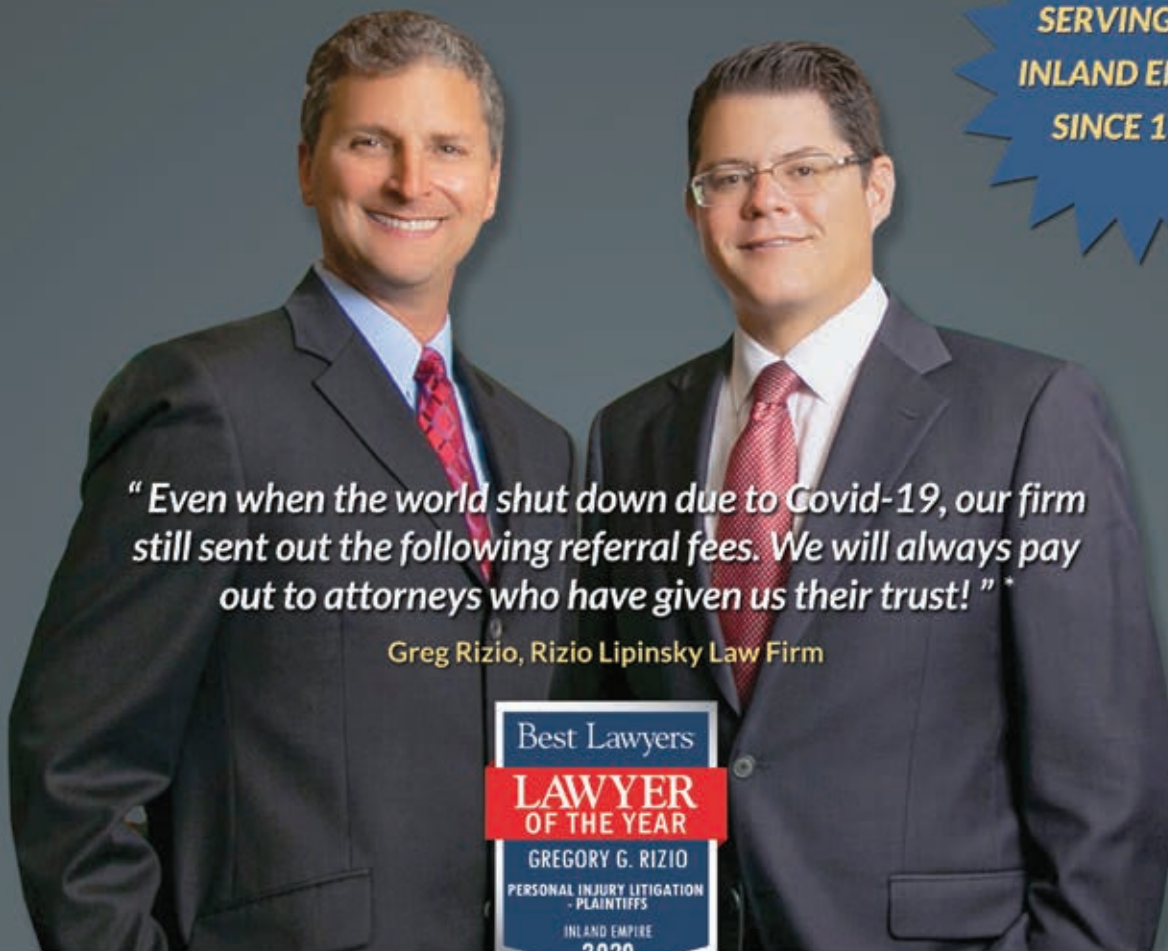


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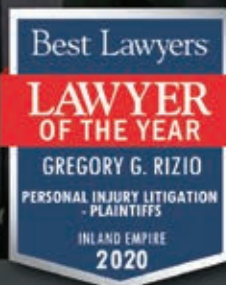
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RIVERSIDE LAWYER

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

March

6 Civil Litigation Roundtable with Hon. Craig Riemer

Noon – Zoom
MCLE

8 Criminal Law Section Meeting

Noon, RCBA 3rd Floor
Speaker: Paul Grech
Title: “Creative Cross Examination”
MCLE

13 Estate Planning, Probate & Elder Law Section

Noon
Gabbert Gallery, RCBA Building
Speaker: Jeffrey Nickerson
Title: “What Every Attorney Needs to Know About Governmental Benefits and Special Needs Trusts”
MCLE

14 Juvenile Law Section Meeting

Noon – Zoom
Speaker: Larisa Reithmeier-McKenna
Title: “New 2023 Legislation & Juvenile Dependency Practice”
MCLE

15 Civil Litigation Section

Noon – Zoom
Speaker: Peter Mort
Title: “Handling Hostility: What an Old Trial Lawyer Learned from a Young Horse Trainer, and Other Tales”
MCLE

17 General Membership Meeting

Zoom
Speaker: Dr. David Cannon, Ph.D.
Title: “Jury Selection and Considerations Post Pandemic”
MCLE

21 Family Law Section

Noon
Gabbert Gallery, RCBA Building
Speaker – Judge Jackson Lucky (Ret.)
Topic - TBA
MCLE

EVENTS SUBJECT TO CHANGE.

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



PM

President's Message



by *Lori Myers*

The importance of jury trials in our justice system cannot be overstated. Jury trials are a cornerstone of American democracy; they are the only way for ordinary citizens to decide the fate of their fellow citizens, and it is their collective decision that determines the outcome of a trial.

Jury trials play a critical role in upholding justice and protecting the rights of a community. They provide an impartial independent judgement of evidence presented in a case. The jurors must decide, based on the facts presented and the applicable law, whether the defendant's guilt has been proven beyond a reasonable doubt, in a criminal trial.

Jury trials also ensure that the accused receives a fair, impartial, and unbiased trial. In essence, the jury serves as the eyes and ears of the community. The jurors represent their community and are entrusted to act as their representatives. It is their collective decision that decides the fate of the accused and ensures that justice is served.

Our criminal justice system depends on jury trials to ensure fairness and justice for all. Jury trials allow for the participation of the community in the criminal justice process. They ensure that the accused will receive a fair trial and that justice will prevail.

Jury trials are essential for holding our criminal justice system accountable. A jury of one's peers is a necessary safeguard to protect citizens rights impartially and fairly. Jury trials give individuals accused of crimes the right to a fair trial, while protecting the community from wrongful

convictions. Furthermore, they serve to protect the public by allowing members of the community to serve as jurors, who can decide whether or not the evidence presented is enough to support a verdict of guilt beyond a reasonable doubt or if it is not, then to return a verdict of not guilty.

I feel blessed that I get to be surrounded by so many smart hardworking colleagues who strive every day to do their part to ensure the system is fair, on all sides. It is a long road to earn the credentials to be a lawyer or judge, and be an advocate for justice in the trenches of the courtroom. But, after 18 years of practicing law, I have to admit—it has been such a rewarding and educational journey and I truly feel honored to have the ability to represent my clients.

Lori Myers is a local private criminal defense attorney and founder of the Warrior Attorney Academy©.



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RCBA Dispute Resolution Service, Inc. (DRS) has an opening on its Board of Directors.



If interested in participating in our Bar Association sibling non-profit management, please send a resume with a cover letter to drs2@riversidecountybar.com.

www.rcbadrs.org

BARRISTERS PRESIDENT'S MESSAGE

by Lauren Vogt



Starting the Year off Strong:

Your Barrister's have been hitting the ground running. Since we last checked in, the Barristers, along with many others, participated in the RCBA's Annual Elves Wrapping Program; have teamed up with Inland Counties Legal Services for their upcoming mentorship and expungement clinics; and even held a few more social events, including our annual Disneyland trip and many Happy Hours.

Wrapping Elves:

Just before the conclusion of the year, the Barristers gathered to assist in the RCBA's Annual Elves wrapping event, where we wrapped hundreds of presents for families in need. I believe this is the third year that I have participated in the event and every year I am in awe of the incredible work this program does. While we just showed up for the wrapping, I would be remiss if I did not mention all of the other work that goes in to making this event happen, including, but not limited to, the selection of families, shopping for the items, purchasing all of the wrapping supplies, wrapping, and ultimately delivering these presents to the families. But thanks to the huge hearts and generosity of the staff at the Riverside County Bar Association and its volunteers and sponsors, once again, the event was a success! On behalf of the



Priscilla George, Sandra Lattouf, Lauren Vogt and David Rivera at the happiest place on earth

Barristers Board, thank you to all of those who assisted and donated to make this event happen. I look forward to participating next year.

Disneyland Adventures:

In January, the Barristers Board had their annual trip to Disneyland!! While the park was jam packed with guests there to celebrate Disneyland's Hundred Day Celebration and Lunar New Year Celebration, we still had a blast stuffing our faces with sweets and goodies (okay, maybe that was just me!).



Barristers Happy Hour

Happy Hour Events:

Since my last article, we have had three great happy hour events and have many more to come. In December, following the Elves Wrapping event, all were invited for food and fun, hosted by Trust Properties. In January, thanks to Aleshire and Wynder, we enjoyed some delicious tacos and beverages at Retro Taco!

And most recently, in February, Melissa Baldwin, with Baldwin Settlements, sponsored a wonderful event at ProAbition. In fact, that event was such a hit, ProAbition was unable to accommodate our large crowd in their bar, so pivoting as good lawyers do, we turned it into a bit of a bar crawl, led by Greg Rizio, who graciously bought all in attendance a few rounds!

All in all, the events were a success, and we thank our wonderful sponsors for making that happen! Keep an eye out for our March and April Happy Hour events, which are sure to be a great time!

Closing Remarks:

We are continuing our plans for the return of our Annual Judicial Reception, which is scheduled for May 17, 2023, so mark your calendars!! This year will be unique as we will also take the opportunity to publicly honor those award recipients from 2020, who were unable to receive their awards, so we hope you will all come out to this wonderful event! Stand by for more updates as this develops.

As a reminder, anyone interested in joining us, is more than welcome and I encourage you to reach out to me at 951-781-6500, or shoot me an email, lvogt@riziolawfirm.com, I would love to chat with you!

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)

Lauren M. Vogt is an associate with Rizio Lipinsky Law Firm.





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PRACTICING RESPONSIBLY AND ETHICALLY

LAWYER AS TRIAL WITNESS

by David Cantrell and Cole Heggi

Every so often, the line between advocate and witness can blur. An attorney is often called upon to advise a client and then represent the same client in litigation relating to the subject of the earlier advice. But in some instances, the attorney may have to take the stand to testify about the factual scenario based on his earlier involvement.

There are many reasons attorneys should be cautious about giving evidence in a case in which they serve as advocate. The first and most obvious reason is that an attorney whose testimony could hurt his client's case is at risk of failing his duty to zealously represent the client. The second reason is the potential for confusing the jury as to whether any given statement by the lawyer is evidentiary or argumentative.¹ A third reason is that the attorney's effectiveness could be hindered by having to argue about the veracity of his own testimony, or by having his testimony impeached by the other side. A fourth reason appears in the context of criminal prosecutions and is the reverse of the third: "Essentially, the danger in having a prosecutor testify as a witness is that the jurors will automatically presume the prosecutor to be credible and will not consider critically any evidence that may suggest otherwise." (*United States v. Edwards* (9th Cir. 1998) 154 F.3d 915, 921.)

Fortunately, California Rule of Professional Conduct ("CPRC"), Rule 3.7 provides guidance for a lawyer confronted with the possibility of becoming a witness in her client's case. Rule 3.7 provides that a lawyer may not represent a client in a trial² in which the lawyer is likely to be a witness unless (1) the testimony relates to an uncontested issue or matter; (2) the testimony relates to the nature and value of legal services rendered in the case; or (3) the client gives informed written consent. (CPRC 3.7(a).)

1 As stated in the official comments to the American Bar Association's advocate-witness rule: "A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof." (ABA Model Rules of Prof. Conduct, Rule 3.7, comment 2.)

2 Rule 3.7, comment 1, provides that the rule applies in "a trial before a jury, judge, administrative law judge or arbitrator," but not in "other adversarial proceedings" or "non-adversarial proceedings, as where a lawyer testifies on behalf of a client in a hearing before a legislative body."

Uncontested issues or matters typically include everyday formalities like whether the client executed a will or other document, although determining whether an issue is sufficiently uncontested to meet the first exception can be complicated and hotly litigated.

The second exception, for testimony about the nature and value of legal services, is more straightforward. Many a lawyer reading this article has given such testimony in the context of a motion for attorney's fees or a request for sanctions without giving it a second thought.

The third exception to the rule forbidding attorney witnesses from being advocates—informed written consent—is the trickiest. Even if the client has given informed written consent that satisfies the CPRC's requirements (see CPRC 1.0.1(e) & (e-1)), it may still be improper for the lawyer to represent the client at trial. CPRC 3.7, Comment [3] provides that "[n]otwithstanding a client's informed written consent, courts retain discretion to take action, up to and including disqualification of a lawyer who seeks to both testify and serve as an advocate, to protect the trier of fact from being misled or the opposing party from being prejudiced." In exercising such discretion, "a court must consider: In exercising its discretion to disqualify counsel under the advocate-witness rule, a court must consider:

(1) "whether counsel's testimony is, in fact, genuinely needed"; (2) "the possibility [opposing] counsel is using the motion to disqualify for purely tactical reasons"; and (3) "the combined effects of the strong interest parties have in representation by counsel of their choice, and in avoiding the duplicate expense and time-consuming effort involved in replacing counsel already familiar with the case."³

Although the prohibition specifically only applies to advocacy and testimony at trial, "most courts recognize that an attorney who intends to testify at trial may not participate in 'any pretrial activities which carry the risk of revealing the attorney's dual role to the jury.' . . . In particular, a testifying attorney should not take or defend depositions." (Ibid. [quoting Ohio case law and citing law from other jurisdictions].)

Finally, it is important to note that, under Rule 3.7(b), a lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called

3 *Doe v. Yim* (2020) 55 Cal.App.5th 573, 583 [citations omitted].

as a witness, “unless precluded from doing so by rule 1.7 or rule 1.9.”⁴

If you find yourself in a situation where you might be required to testify on an important contested issue in your client’s case, you may want to consider Rule 3.7 and related cases before determining whether to accept the

⁴ Compliance with Rules 1.7 and 1.9, which set forth the attorney’s duties of loyalty and confidentiality to current and former clients, is beyond the scope of this article.

representation as this can be a minefield even if the client gives informed written consent.

David Cantrell is a partner with the firm Lester, Cantrell & Kraus, LLP. His practice focuses on legal malpractice and professional responsibility issues. David is certified by the California State Bar’s Board of Legal Specialization as a specialist in legal malpractice law.

Cole Heggi is senior counsel at Lester, Cantrell & Kraus, LLP, where he also represents and advises clients on legal malpractice and professional responsibility issues.



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IN PRAISE OF COURT REPORTERS

by Gabriel White

The March 2019 edition of this magazine published an article by Don Davio, the former managing attorney of the court where I work, entitled “How to Get a Document Before the Court of Appeal.” Here, I want to offer a few thoughts on a different part of the appellate record of civil cases, namely, the record of oral proceedings.

My thoughts are prompted by the Riverside Superior Court’s recent announcement of changes to its policy regarding normal availability and unavailability of official court reporters.¹ As of January 17, 2023, official court reporters are normally unavailable for limited and unlimited civil cases.² In unlimited civil cases, a party who received a fee waiver may request a court reporter, but there is no guarantee that one will be available. And final word as to availability may not come until the day of the hearing.

In the absence of an official court reporter, parties to civil cases have the right to arrange to retain a private court reporter at their own expense.³ Needless to say, a privately retained court reporter is a non-trivial cost, particularly in cases where the dollar amounts at issue are relatively small. Note that Riverside Superior Court does not provide electronic recording of the proceedings as an option, even in limited civil cases.⁴

As part of designating the record in a civil case, the appellant must elect whether to proceed with or without a record of the oral proceedings in the trial court.⁵ And, of course, if the appellant intends to raise an issue that “requires consideration of the oral proceedings in the superior court,” some record of those oral proceedings is

mandatory.⁶ Theoretically, there are a couple of alternatives to a transcript created by a court reporter, whether provided by the court or privately retained, but as a practical matter, those are too rarely used even to merit discussion.⁷ If no record of the oral proceedings was made, the appellant is likely up a creek without a paddle.

Good lawyers, of course, are ever-cognizant of the necessity of creating a trial record in preparation for a possible appeal. Nevertheless, the lack of official court reporters, combined with the substantial up-front costs of privately retained court reporters, can lead to decisions that come back to haunt you (or your client’s appellate counsel). For example, I have seen cases where counsel for both sides stipulated to proceed with trial in the absence of a court reporter for opening and closing arguments. Understandable, perhaps: it saves a day or two of court reporter costs, maybe staves off a delay in trial because a court reporter wasn’t available, and after all attorney argument is not evidence.⁸ Nevertheless, it certainly complicates any attempt to argue on appeal that the jury’s award of damages was the product of passion or prejudice if you can’t cite in the record the improper attorney arguments you believe unduly inflamed the jury.⁹ Appellate counsel trying to deal with an ambiguity in jury instructions not noticed at trial may wish closing arguments had been recorded, either to sustain or attack the verdict.¹⁰

The same point can be framed in terms of the presumptions the Court of Appeal will apply in evaluating an appeal. In the absence of an adequate record to support an appellant’s claim of error, “we presume the judgment is correct.”¹¹ Where the record is incomplete, even if the record we have does not provide sufficient support for a

1 The policy is available on the Riverside Superior Court’s website at <https://www.riverside.courts.ca.gov/GeneralInfo/CourtReporterInfo/court-reporter-info.php> (last viewed 2/6/2023).

2 Under the most recent former policy, in effect since May 2021, official court reporters were provided for unlimited civil evidentiary testimony and recitation of unlimited civil case settlements, but not for limited civil cases, or for any pretrial proceedings, law and motion matters, or case management hearings in unlimited civil cases. See archived copy of court website at <https://web.archive.org/web/20220705125148/https://riverside.courts.ca.gov/GeneralInfo/CourtReporterInfo/court-reporter-info.php> (last viewed 2/6/2023).

3 See Govt. Code, § 68086; Cal. Rules of Court, rule 2.956. The Riverside Superior Court’s “Privately Retained Court Reporter Policy” is also available on court’s website.

4 By statute, in limited civil cases and certain other proceedings (but not in unlimited civil cases), California courts may offer electronic recording as an alternative where a court reporter is unavailable. (See Govt. Code, § 69957.) Riverside Superior Court, however, offers electronic recording only for traffic court trials and unlawful detainer proceedings.

5 Cal. Rules of Court, rule 8.121.

6 Cal. Rules of Court, rule 8.120(b).

7 Agreed statements and settled statements are contemplated by the rules as alternative means for creating a record of oral proceedings in civil matters. (Cal. Rules of Court, rules 8.120(b), 8.134, 8.137.) But in nearly a decade working at the Court of Appeal, I have never come across a record that included an agreed statement or settled statement.

8 *Biron v. City of Redding* (2014) 225 Cal.App.4th 1264, 1269, fn. 1 [“Of course, the statement of an attorney is not evidence.”].

9 See, e.g., *Sabella v. Southern Pac. Co.* (1969) 70 Cal.2d 311, 318 [claim of attorney misconduct generally “entitled to no consideration on appeal unless the record shows a timely and proper objection and a request that the jury be admonished”].

10 See, e.g., *People v. Kelly* (1992) 1 Cal.4th 495, 526 [closing arguments correctly explaining relevant law considered in evaluating prejudice from erroneous jury instruction].

11 *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039

challenged ruling, we must presume such support would be found in the missing portions if it could have been submitted at trial.¹²

It is beyond the scope of this article either to trace how we got to this point or to advocate for practical ways to change things. It does not make sense to me that there are oral proceedings in the trial court of which no record is made, whether by court reporter or some other means. Among other things, the equal access to justice issues raised by current circumstances seem to me obvious and profound. If it were up to me and if money were no object, I wouldn't have any judge take the bench in any courtroom until an official court reporter or alternative means of preserving a record of the oral proceedings was in place. That seems to me as vital a part of the proper functioning of a courtroom as the judge, the judicial assistant, and the courtroom deputy.

¹² E.g., *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 286 ["The most fundamental rule of appellate review is that a judgment is presumed correct, all presumptions and intendments are indulged in its favor, and ambiguities are resolved in favor of affirmance."]; *Buckhart v. San Francisco Residential Rent etc., Bd.* (1988) 197 Cal.App.3d 1032, 1036 ["If any matters could have been presented to the court below which would have authorized the order complained of, it will be presumed that such matters were presented."].

But of course, it's not up to me, and money is always an object. Thus, parties and their counsel need to factor the general unavailability of official court reporters in civil cases into their planning for the logistical and financial demands of litigation.

Gabriel White is a senior appellate court attorney at the California Court of Appeal, 4th District, Division 2, assigned to the chambers of Justice Michael J. Raphael. The views expressed in this article are his own.



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RECOMMENDATIONS FOR MAKING THE MOST OF SOCIAL MEDIA AND BACKGROUND INFORMATION DURING JURY SELECTION

by David Cannon, Ph.D.

I've worked as a litigation consultant since 1998, so I am often asked about what has changed the most in the profession since I began. That one is a pretty easy question – technology has given us access to so much more information. While we have incorporated technology into the way we conduct focus groups, surveys, and mock trials (giving us access to information from mock jurors in real time), the most significant change is availability to information about potential jurors during jury selection.

Jury selection can already feel like information overload with tracking and evaluating mock juror responses to voir dire questions. When we first began looking into juror social media and backgrounds many years ago, we used outside firms to help find the information. We were bombarded with information and screenshots that was not ordered and that often didn't pertain to the correct juror. The information was not first processed, organized, and presented in an orderly, intuitive manner. Too much information was coming too fast for it to be analyzed and interpreted in a truly effective way. Some of the information was so disorganized and irrelevant that it proved to be distracting. This additional online information could be so extensive that it presented unique challenges for a quick and meaningful analysis.

The use of social media and background checks can be very informative during jury selection, but it requires advanced planning to make the most out of the information. Over the years, we have learned how to process the information from social media and background checks in a more meaningful and organized way, so as to minimize a sense of being overwhelmed with data during jury selection. First, we took all of the searches in house and no longer used third party vendors. This gave us greater control of the process and product, as well as an opportunity to best organize and analyze the information within such tight time parameters. This article is intended to give you the benefit of our years of experience to help you better conduct, organize, and use social media and background searches during jury selection.

Planning ahead is huge.

Interpret the information even before it comes in. That is, put a list together of desirable and undesirable characteristics in jurors for your case. Categorize that information by topic. Anticipate what you want to see in

a juror and what you don't want to see in a juror before you even go into court. We put together tables of desirable and undesirable characteristics that can be used to help interpret the social media and background information. Then, we use a trained team of remote individuals to conduct those searches on the morning of the jury selection. Having more team members allows the searches to be conducted more quickly. Team members then look at information that is being entered into the database from the team member who is in court and is taking notes during voir dire. As that information is entered into the database from the in-court team member, those who are offsite are using that information to identify, rule-out, and search for the correct jurors.

Communications are important.

Technology can be very helpful for communications between the team of individuals who are doing the searches offsite and the in-court team members who are processing that information. We use Google Sheets, a live spreadsheet that updates in real time. This way, off site team members can search for jurors and input information about each of those individuals. Everyone is working from the constantly updating spreadsheet, so everyone is on the same page. We have information entered into specific columns for ease of analysis, accompanied by photographs, if available, for those who are in court to be able to identify whether the information from the social media searches corresponds with the juror. If the photo doesn't correspond with the potential juror, the team is informed so additional searches can look for the correct juror.

Organization and color-coding help with a quick analysis and interpretation.

When the team finds information, they input data that is not desirable in red text and desirable information in green text. That way, the reviewer can immediately 'eyeball' each row and see the ratio of good to bad information for each juror. When information is particularly troubling in the social media and background analysis, the reviewer highlights that juror's entire row in red so as to alert the in-court team that the juror is particularly troubling based on information that has been found. That makes it less likely for that juror to slip between the cracks. In the meantime, in-court team members can review the infor-

mation that is coming in from the searches.

The attorney conducting voir dire should not be taking notes.

Rapport is key between the attorney and the venire, so the attorney who is doing the questioning should be focused on just that. In advance of trial, develop and practice voir dire question. This helps make the process easier at trial. But, the attorney should always have someone else in court that is taking the notes and placing them in Google Sheets for the remote team. The in-court assistant should also be revising, updating, and rating jurors (on bias and leadership) as information comes in. This assistant can also communicate with the questioning attorney when both are using an iPad. The assistant may either text the attorney who is conducting voir dire or input follow up questions within the Google Sheet document.

What are we looking for?

Worry less about what you are NOT looking for in a juror as opposed to what you are looking for because we only have control in removing undesirable or less desirable jurors. We really want to weed out people who present differently to the world online than they do in the courtroom. Those individuals may have ulterior motives for serving as jurors. Next, we want to use the information we find online to help inform our juror profiles that were created prior to going into court. Stick to the profiles so as not to be overly distracted by any online information unless that online information is unequivocally compelling. Decisions about peremptory strikes should be planned, organized, and analytical. This helps to minimize mistakes and distractions based on spontaneous decision making and/or assumptions based on single social media posts.

Find what works best for you.

This article contained some brief examples of how we have learned to collect, communicate, and process information from social media and background searches. We recommend for you to find what works best for you, but we suggest placing an emphasis on planning and organizing the data so as not to be overwhelmed or distracted by information during jury selection.

David Cannon, Ph.D., is a co-founder and principal consultant of Trial Innovations, and can be reached by phone at (310) 927-5879 or email at David@Trialinnovations.com..



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ELVES ERRATA

Every year we try to capture the names of all those that participate in the Elves program with our sign-in sheets in order to give thanks and recognition to those that have graciously chosen to be a RCBA Holiday Elf. In the February issue of the *Riverside Lawyer* we published our wrap article about the 2022 Elves Program. After we went to print, we discovered the following people were inadvertently left off the recognition list:

Money Elves

**Judge Jean Leonard and Jim Wiley,
Judge Richard Van Frank**

~~~~~

**Judge Jennifer Gerard and  
Commissioner Wendy Harris**

both generously donated boxes of clothing and toys.

***To anyone who donated time and/or money to the program, or did not sign in for shopping and wrapping, and were not named in our article we thank you for your support.***

# TRIALS: CLOSING STATEMENT / FINAL ARGUMENT

by Boyd Jensen

Almost all lawyers and non-lawyers can recite from attorney Johnnie Cochran in *People vs. Simpson*, “I want you to remember these words. Like the defining moment in this trial, the day Mr. Darden asked Mr. Simpson to try on those gloves and the gloves didn’t fit; remember these words: if it doesn’t fit, you must acquit.”<sup>1</sup>

The United States Federal Court officially states “There is a critical difference between opening statements and closing arguments. In opening statements, parties are restricted to stating the evidence: (‘Witness A will testify that Event X occurred’). In closing arguments, the parties are free to argue the merits: ‘As we know from Witness A’s compelling testimony, Event X occurred, which clearly established who should be held responsible in this case.’.”<sup>2</sup>

Los Angeles Civil Court Rules use the title “Final Argument” preceding section 3.180 where instructions and rules are found about *Graphic Devices Used In Argument* (Section 3.180); *Closing Arguments* (Section 3.181); *Familiarity with Jurors to be Avoided* (Section 3.182); and *Objections to Closing Argument* (Section 3.183). Other important locations, easily found online, for rules and procedures regarding closing arguments include, the *Remote Civil Trials, Procedure Guide For Bench Officers* (February 1, 2021), especially page 26 number 15; Riverside Superior Court Department Pre-trial and Trial Orders affected by the Amendment to Trial Setting Order from Judge Craig Riemer, dealing essentially with remote trials; *Guidelines for Complex Litigation in Riverside Superior Court*; Riverside Superior Court “Local Rules,” affecting closing statements within Civil, Criminal, Probate, Juvenile and Family Law Departments; and similarly within the San Bernardino Superior Court strictures about “closing argument” at SB-Court.org.

Having learned from lawyers, judges, and court staff with more experience and superior expertise, I view closing statements within five trial categories, which influence jurors. The first four categories proceed the last one — the closing statement or final argument. Yet they

are the foundation and the originating components, from which the final argument to the jurors or the court is crafted.

1. The first is obviously **Voir dire**, where the first direct statements to and from jurors occurs. It is an investigative effort to seek fair judges of the facts for your client. The words used and the facial expressions, in direct juror interaction, are the initial “statement,” directly with the deciders of your case.
2. The **opening statement** follows, where an advocate can outline what he believes the evidence will show. Witnesses testimony can be summarized, as well as context for the events, which are the basis of the action. It is an outline fitting within one or more causes of action, and cloaked with facts, which can produce a favorable result.
3. Following the opening statement, **witnesses** are called to offer testimony and insight into the factual basis for the case, and also to overcome or support important defenses. In direct examination and in cross-examination, evidence is produced which will form the basis for the concluding argument, before the case is submitted to the jury. The testimony of witnesses will undoubtedly produce objections and restatements, consistent with court rulings, and closing argument limitations or allowances.
4. Not all evidence comes from the words of testimony of witnesses. Some of the most crucial evidence comes from **photographs, documents, and even site inspections**, which are also introduced into evidence, and will become valuable references in final argument. Many physical elements can find their way into evidence. And perhaps what is depicted, or that evidence’s physicality, may become more important than the contextual testimony offered in the spoken words of a witness. Often as well the testimony of that witness, in describing that piece of physical evidence, as in the OJ Simpson excerpt above, will become the most important argument in closing.

1 Numerous online sources....starting with Wikipedia.org “Johnnie Cochran.”

2 USCourts.gov “About Federal Courts”



Assistant D.A. Thomas Binger giving his closing argument during Rittenhouse trial at Kenosha County Courthouse, in Wisconsin, Nov. 15, 2021. photo: Sean Krajacic/Pool via REUTERS



Assistant District Attorney Thomas Binger holds Kyle Rittenhouse's gun during closing argument photo: Sean Krajacic/Reuters

5. In my experience the most important element of a closing statement or final argument is transparency. One of the most difficult trials and challenging closing statements for counsel, were the ones made by both the prosecuting and defense attorneys in the Kyle Rittenhouse trial in Kenosha, Wisconsin a little over a year ago. It was the shooting by 17-year-old Rittenhouse, which was captured on video, and broadcast on TV ... and rebroadcast incessantly for



Mark Richards makes closing remarks. Source: CNN

over a year before the trial took place. The Rittenhouse's defense was self-defense.

The lead prosecutor for the government, Thomas Binger, in the course of a two hour closing argument tried to convince the jury, that the deaths and maiming was due to the criminal conduct of Rittenhouse...unnecessary conduct, bringing a gun to a location where violence, and indiscriminate behavior was intended by protestors and political extremists. On the day of the shootings, Mr. Rittenhouse traveled to downtown Kenosha, which had erupted in protests, saying he went to Kenosha to protect property and provide medical treatment, but things quickly got violent after someone near him fired a gun. "This is someone who has no remorse, no regard for life, and only cares about himself."<sup>3</sup>

Mark Richards, the defense lawyer making his final statement, introduced the sentiment, "This case is not a game, ... Use your common sense and good judgment...Mr. Rosenbaum (whom Rittenhouse shot) was shot because he was chasing my client,...because he was going to kill him, take his gun, and carry out the threats he made."<sup>4</sup>

Every seat was taken in the court room, and though an extraordinary event, it was stated that the jurors were visibly exhausted, and observers outside the courtroom could be heard loudly chanting to end the arguments and get the matter submitted. After reading 36 pages of jury instructions, the case was submitted, and later after deliberations, produced a verdict acquitting defendant Rittenhouse of all charges.

As advocates, we do not always have the opportunity of representing flawless individuals, who have not made serious mistakes. There are dozens of law firms and vendors for attorneys with suggestions and ideas about dos and don'ts during closing arguments, besides the rules, as set forth above. Including academic articles with a multitude of recommendations backed up by case authority.<sup>5</sup> Based upon my own experience of the over 50 completed civil jury trials, we can feel success as an advocate, if we have been thorough and transparent showing integrity in describing, what everyone witnessed during the trial.

At those times I am very proud to be a lawyer — a member of a Bar Association — surrounded by peers, who have the strength and capacity to do their job, even when most difficult, at the penultimate occasion of argument and advocacy for another — a final closing argument, following an important civil or criminal jury trial.

*Boyd Jensen is with the firm of Garrett & Jensen in Riverside and is a member of the RCBA Publications Committee.*



<sup>3</sup> The New York Times, Lawyers Offer Dueling Narratives in Closing Arguments of Rittenhouse Trial November 15 and updated November 17th 2021.  
<sup>4</sup> For these quotations and the references which follow, see the New York Times article referenced above.  
<sup>5</sup> *Crossing the Line: Techniques of Closing Argument that are Out Of Bounds in Criminal Trials*, Octla Gavel, Spring 2006.

# HOW TO CRUSH YOUR OPENING STATEMENT

by John Pomeroy

When preparing for trial, there are a million things on your list. Coordinating all the players. Deciding which exhibits to use. Deciding what type of juror you are looking for and then, within whatever limits the court sets for you, going through an exhaustive process to choose a jury. It is easy to overlook, and fail to prepare for, your opening statement. That would be a mistake.

Conversely, you might plan every aspect of your opening statement so that you memorize a text and obsess over choosing just the right suit and tie combination. That would also be a mistake.

First we must consider the context: a successful opening statement is crucial because of what has happened before that moment, and to set the table for what is to come.

So what came before the opening statement? That exhaustive jury selection process. Even if you think it is short, it will feel exhausting to each juror that is sworn on your case because it lasted so much longer than one Law and Order episode. During that process, the jurors have heard hints about what the case is about. The court likely read the pleading to them which introduced them to what decisions they will have to make at the end of the trial. You and opposing counsel may have asked specific questions that hinted at the facts of your case. Because you couldn't get too close to the actual facts, however, this may have simply provided a launching pad for the jurors to speculate. You also may have inadvertently offended one juror by kicking off the person who they had just decided was their best friend. Who will they have lunch with now?

Also, jurors generally don't understand jury selection. While you were engaging in legitimate advocacy, they may have seen you as merely playing games and trying to stack the deck in your favor.

The opening statement is one of the only times that you speak directly to the jury. So make the most of it and use it to bolster your credibility.

The court will have recently read the instruction saying that the opening statement is the opportunity for the lawyers to tell the jury what they expect the evidence to show. The jury is hungry for the facts. So get right into them.

Lay out the facts to give the jurors a roadmap of what is to come. Provide crucial facts, but you don't need to give every single detail. Give them the overview in a dispassionate manner. (Passion will come later.) Think

about the elements you need to prove and give some facts to support each element. When you sit down, you want the jurors to feel relieved that they now understand the universe of what facts they will have to consider.

You also want the jurors to believe that the task you are asking them to undertake is doable. So you can list the charges or elements that they will have to decide. You can say a little about what you need to prove on an important element and what you don't need to prove. But the details should be saved for when the court gives final instructions and you make your argument. You don't want to overwhelm the jurors with law at this point.

You also want to avoid surprises. So, if there will be an issue with the way a witness testifies or with certain physical or documentary evidence, you should mention it briefly in your opening statement. Maybe you will have a crucial document that you only have in a poor copy. Maybe a witness that you call will seem hostile to you. Maybe a witness will have difficulty expressing themselves. Maybe a witness will be in custody and come into the courtroom in handcuffs. Maybe there is an issue with how certain physical evidence was handled or tested. Mention such matters, but don't linger too long on them.

Here is the most important rule: Do not oversell any part of your case. If you promise something and then, during the presentation of evidence, fail to deliver even a little bit, it is very difficult to regain that credibility.

Err on the side of being short and sweet. Use PowerPoint or other visual aids if you believe necessary to assist in providing the basic overview, but not in such a way that the jurors spend more time figuring out what is on the slide or being distracted by pictures or other visuals. You want them looking at you and listening to you. You want to be engaging. You don't want to simply deliver a memorized text. The jurors will see that you are being direct with them and they will trust you. When you get to talk to them again at the end, the credibility you built at your opening will be crucial when you argue your case and help you lead them where you need them to go.

Oh, and I would go with a dark grey suit and a tie with a simple pattern.

Good luck!

*John Pomeroy is a deputy county counsel for the Los Angeles County Counsel's Office. The views expressed in the article do not necessarily reflect the views of that office.*





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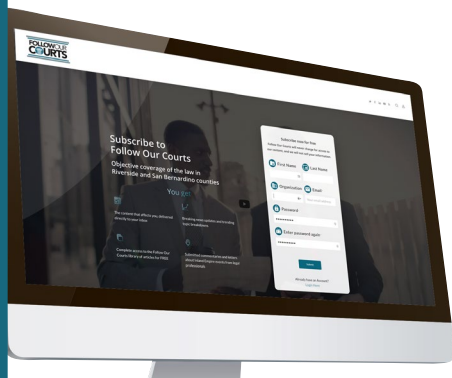
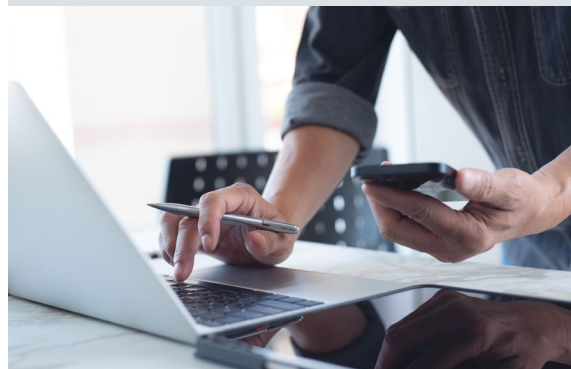
- Riverside County, man jailed 4 years, argue civil-rights precedent for exonerative evidence
- Losing party pays attorney fees even if winning party reimbursed by other, court rules
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# THE CIVIL DIVISION OF THE RIVERSIDE SUPERIOR COURT

*by Honorable Chad Firetag*

I am pleased to provide this article on the status of the Civil Division in Riverside County Superior Court, and I am equally pleased to report that the Civil Division is operating well. In October of last year, I began my tenure as the division's supervising judge, having taken it over from Judge Raquel Marquez who, along with the rest of the court's executive staff and judges, led our division through some of the most pressing and complex times in the history of all our lifetimes. The pandemic created and uncovered many challenges for our court and division, but throughout Judge Marquez' term, she remained a steadfast and steady presence. The litigants and citizens of Riverside County can be extremely grateful for her service. To be sure, I had very large shoes to fill.

A brief snapshot of our Civil Division is as follows: eleven (11) full-time unlimited civil departments, one (1) complex civil department, and five (5) limited civil/unlawful detainer departments. The types of cases heard by our unlimited civil judges are as varied as the geographical boundaries of the county; unlimited civil cases are heard in downtown Riverside, the Southwest Justice Center in Murrieta, the Palm Springs Courthouse, and the Blythe Courthouse. Similarly, our limited civil/unlawful detainer courts are also geographically vast, having locations in Corona, Moreno Valley, the Southwest Justice Center, and Blythe.

I can attest that the judges of the Civil Division, along with the rest of my colleagues throughout Riverside County Superior Court, are some of the hardest working and conscientious judges in the state. Indeed, the judges in our division carry some of the busiest caseloads in the state. By last count, the Unlimited Civil Division currently has 9,171 active cases, which amounts to an average of 770 cases per judge throughout the county. In many other courts throughout the state, civil judges carry caseloads of 500 or less cases. As one might imagine, with increased caseloads comes increased litigation, and in 2022, our legal research department reviewed 5,665 contested motions, ranging from discovery motions to motions for summary judgment. Whether in trial or not, most of our unlimited civil judges issue a tentative ruling the night before, so counsel can be aware of the court's intended ruling.

Regarding trials, the Civil Division has also been extremely busy. In 2022, the Civil Division tried 75 civil jury trials, 19 civil bench trials, and 25 "last day" criminal jury trials. On the limited civil/unlawful detainer department side, each bench officer carries well over a thousand cases, and they too try numerous unlawful detainer and limited civil cases.

Regardless of the workload challenges and despite the other challenges from the COVID-19 pandemic, the court has emerged in many strong and positive ways. I have often said that if the pandemic taught us anything, it is that the courts cannot stay stagnant or do business as we always have, but we need to be innovative and forward-thinking. As many of you who practice civil law in our courts are aware, the Civil Division has fully embraced the idea of conducting most, if not all, of our case management conference hearings, trial setting conference hearings, and law & motion through Zoom, and/or the telephone. Prior to the pandemic, we would typically have about 30-40% of

the attorneys and/or litigants appear by telephone, with the bulk being in-person. But the need to appear in-person for so many short and brief hearings led to many inefficiencies with court and counsel. An attorney practicing in San Diego or Los Angeles would have had to travel two or even three hours just to have a hearing, and then drive back, all at great cost to the client. Even for attorneys who live in Riverside County, given the size of our county, a drive to the Southwest Justice Center or Palm Springs Courthouse might take well over an hour. Today, however, I would estimate that nearly 90-95% of all our case management hearings and law and motion are heard remotely. Attorneys can certainly continue to appear in-person if they wish, but in most cases, attorneys can make their appearance in the comfort of their home or office, and then get back to servicing their clients.

The Civil Division has been presented several other challenges, notably with respect to the number of criminal trials. The court is committed to ensure that civil judges, when available, are ready to try last-day criminal trials. This means that if a civil judge is not otherwise engaged in a civil trial or a pressing civil matter, our judges in civil have taken a criminal trial that would have otherwise been dismissed for lack of a courtroom. The court is committed to providing justice to all of our litigants, both civil and criminal, but certainly the additional work of trying criminal matters has increased our division's workload.

Another challenge the court is experiencing is the declining number of available court reporters for civil. Earlier this year, the court made the difficult decision to stop providing court reporters in civil matters, except for cases where a reporter is statutorily required or for litigants with fee waivers. In all other cases, if a party wants to have a court reporter for law and motion, case management or trial, the party will have to retain a court reporter pro-tem.

In order to alleviate the number of trials, however, the court has invested heavily in mediation programs throughout the county. For instance, in 2022 three assigned retired judges were responsible for conducting 1,344 mandatory settlement conferences with 482 of those cases reaching resolutions. In the months of May and October each year, the court has a "Remote Settlement Month" program in order to settle cases that could not otherwise be diverted to court-sponsored mediation. Typically, the cases that are sent to court-sponsored mediation are less than \$50,000.00 in potential damages, but our Remote Settlement Month program can handle cases that range from more than \$50,000 up to \$250,000.00 and above. Moreover, the "First Friday" program that was first established in the desert continues to settle many cases.

Despite these challenges, the Civil Division is strong and committed to providing effective and efficient justice to litigants, attorneys and the public we serve. I am incredibly grateful to my colleagues and staff for their dedication and hard work.

*Honorable Chad Firetag is the Supervising Judge of the Riverside Superior Court, Civil Division.*





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# KRIEGER AWARD NOMINATIONS SOUGHT

by Honorable John Vineyard

The Riverside County Bar Association has two awards that can be considered "Lifetime Achievement" awards. In 1974, the RCBA established a Meritorious Service Award to recognize those lawyers or judges who have, over their lifetimes, accumulated outstanding records of community service beyond the bar association and the legal profession. The E. Aurora Hughes Award was established in 2011 to recognize a lifetime of service to the RCBA and the legal profession.

The Meritorious Service Award was named for James H. Krieger after his death in 1975, and has been awarded to a select few RCBA members that have demonstrated a lifetime of service to the community beyond the RCBA. The award is not presented every year. Instead, it is only given when the extraordinary accomplishments of a particularly deserving individual come to the attention of the award committee.

The award honors the memory of Jim Krieger and his exceptional record of service to his community. He was, of course, a well-respected lawyer and member of the RCBA. He was also a nationally recognized water law expert. However, beyond that, he was a giant in the Riverside community at large (please see the great article by Terry Bridges in the November 2014 issue of the Riverside Lawyer). The past recipients of this award are Judge Victor Miceli, Jane Carney, Jack Clarke, Jr., Judge Virginia Phillips and Virginia Blumenthal, to name a few.

The award committee is now soliciting nominations for the award. Those eligible to be considered for the award must be (1) lawyers, inactive lawyers, judicial officers, or former judicial officers (2) who either are currently practicing or sitting in Riverside County or have in the past practiced or sat in Riverside County, and (3) who, over their lifetime, have accumulated an outstanding record of community service or community achievement. That service may be limited to the legal community, but must not be limited to the RCBA.

Current members of the RCBA board of directors are not eligible, nor are the current members of the award committee.

**If you would like to nominate a candidate for the Krieger Award, please submit a nomination to the RCBA office no later than May 19, 2023.** The nomination should contain, at a minimum, the name of the nominee and a description of his or her record of community service, and other accomplishments. The identities of both the nominees and their nominators shall remain strictly confidential.

*The Honorable John Vineyard is a judge of the California Superior Court located in Riverside County, is the chair of the Krieger Meritorious Service Award Committee, and a past president of the RCBA.*



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# LOYAL CLAIRE KELLEY—SERVED AS THE RCBA PRESIDENT IN 1920

by Bruce E. Todd



Loyal Claire Kelley

On January 16, 1919, Congress ratified the 18th Amendment which prohibited the production, importation, transportation, and sale of alcoholic beverages. The passage of this amendment was in response to a growing concern by primarily religious groups who felt that the consumption of alcohol resulted in a decay of public morals and health. Some local communities had already implemented bans upon alcoholic beverages even before the amendment was ratified.

Around this same time, Loyal Claire Kelley was making a name for himself within local Riverside County politics and law enforcement. Kelley, who was born on February 24, 1884 in the village of Carey, Ohio, had been elected as the Riverside County District Attorney in 1918. He had previously been appointed as a deputy district attorney in 1914 and he was also serving during that time as deputy city attorney (apparently, one could serve in both positions back in those days).

Since Kelley's tenure as Riverside County District Attorney coincided with the passage of the 18th Amendment, as well as prior

community efforts to eliminate alcohol, local newspaper accounts of his activities highlighted his war on the county's bootleggers. For example, the May 9, 1918 edition of the *Riverside Daily Press*, included an article about Jose Frigosa, who was arrested for carrying 200 quarts of beer and a quantity of wine and whisky in his automobile. It was noted that Kelley was going to be prosecuting Frigosa under the "new" prohibition ordinance, which had been passed by county supervisors. The matter was going to be the county's first test case about whether the bootlegger's automobile itself could be impounded and sold under the new ordinance.

Another article, dated August 4, 1920 in the *Riverside Enterprise*, describes Kelley and Sheriff F. P. Wilson as leading a raid upon Riverside's Chinatown, which resulted in the arrest of 18 men—White, Mexican and Chinese—for having bales of lottery tickets, opium pipes, and "hop." The raid was part of a campaign by the county against gambling and "kindred pastimes."

Yet another article describing Kelley's war on the alcohol trade appeared on August 8, 1921 in the *Riverside Daily Press*, when it was noted that he had directed raids which resulted in the arrest of three bootleggers in Indio.

Regarding Kelley's earlier history, his parents Albert and Helena had moved the family from Ohio to Corona in 1890 when he was six years old. In a later article, which appeared on June 26, 1942 in the *Desert Sun*, it was noted that he had been a "pioneer citizen of Corona." This article mentions that he had attended all of his grade school and high school in a "one room school house" which later became known as the Lincoln School on Victoria Ave. He eventually worked his way through law school and was graduated from the University of Southern California (USC) in 1910. He completed additional courses at Stanford University and then he was eventually admitted to the bar in 1911.

Kelley started practicing law in Corona before moving his practice to Riverside in 1912. He married Neva Alberta Campbell on November 28, 1912. By 1914, he had been selected as a deputy district attorney and, in 1915, he was also appointed as deputy city attorney. By 1918, he went into private practice with O.K. Morton and Jerome L. Richardson in a firm known as Kelley, Morton & Richardson. An article dated May 17, 1918 in the *Riverside Enterprise*, described them as "three of Riverside's best known young lawyers."

This same article also mentions, however, that Kelley was running for the position of the Riverside County District Attorney (which he eventually won that year). In an advertisement in the *Riverside Daily Press* (08/20/1918), in support of his candidacy for District Attorney, it was noted that, while serving as deputy district attorney, he had handled 180 felonies, 900 misdemeanors and 90 juvenile matters. A later article dated September 3, 1921 in the *Riverside Enterprise*, indicates

that he was earning a salary of \$2,500 as the Riverside County District Attorney.

The esteem which he achieved with the local bar also resulted in his being chosen as president of the Riverside County Bar Association in 1920 (*Riverside Enterprise* dated January 17, 1920).

Kelley ran for a second term of office as Riverside County District Attorney in 1922, and was again elected. During this second term of office, he continued his prosecution of illegal bootleggers and whisky peddlers.

An article describing Kelley's continued war on the alcohol trade appeared on April 29, 1922 in the *Riverside Daily Press*, when it was reported that detectives in his employ had arrested seven bootleggers and located three stills of "bootleg booze" in Corona.

Eventually, however, the country decided that it had enough of a prohibition upon alcohol and the 21st Amendment was ratified on December 5, 1933, which then resulted in a repeal of the 18th Amendment. It was the only time in our country's history that one amendment was used to terminate a prior amendment.

By 1925, Kelley had resigned his position as Riverside County District Attorney to enter into private practice. However, his skills of prosecuting criminals resulted in his being appointed as a "special prosecutor" in the infamous "Wineville Chicken Coop" trial of 1925. In that case, noto-

rious serial killer Gordon Stewart Northcutt was convicted of murdering numerous minors and he was ultimately sentenced to death.

Upon Kelley's return to private practice, he partnered with Hayden L. Hews in the firm Kelly & Hews with an office in the Citizens National Bank building. He continued representing prestigious clients throughout the remainder of his legal career.

Kelley eventually passed away on May 15, 1950, and is buried in Olivewood Memorial Park in Riverside.

*Bruce Todd is a current member of the RCBA History Committee, a former long time member of the RCBA Publications Committee and who is now happily enjoying the life of retirement..*



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# LAW LIBRARY CELEBRATES GRAND REOPENING WITH GUEST SPEAKER PATRICIA GUERRERO, CHIEF JUSTICE OF THE CALIFORNIA SUPREME COURT

## Press Release

The Riverside County Law Library (RCLL) is excited to announce that after several months of being closed to the public, the Victor Miceli Law Library will be holding a Grand Re-opening event on Friday, April 21st, 2023, located at 3989 Lemon Street in Riverside.

The Victor Miceli Law Library has been closed since August 2022 and has undergone a major replacement and upgrade of the building's HVAC, electrical, and fire alarm monitoring systems. RCLL took advantage of the closure to renovate the interior of its main reading room which now features a bright and open layout with modern furniture and amenities including flexible study and meeting spaces, multi-purpose activity and learning center, dedicated space for copiers, public computers, and a reconfigured information services center. In addition to the renovations, the law library added an eBooks library

to its collection of selective online legal databases that are available to county residents by remote access.

The Grand Reopening event will begin at 4:00 p.m. at the Riverside County Board of Supervisors chambers located at 4080 Lemon Street, followed by a ribbon-cutting ceremony and reception at the Victor Miceli Law Library. The ceremony will include remarks by the Law Library Board President, the Honorable Jackson Lucky, and special guest speaker, California Supreme Court Chief Justice Patricia Guerrero.

**Sponsorship opportunities are available for this event.** If you are interested to be a sponsor, please contact RCLL Director Victoria Williamson on or before March 24th at (951) 368-0360 or [victoria.williamson@rclawlibrary.org](mailto:victoria.williamson@rclawlibrary.org).



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t: 951-368-0368  
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# OPPOSING COUNSEL: HEATHER GREEN — A NEW FACE FOR RCBA

by Betty Fracisco

Have you met Heather Green, the new Director-at-Large for the Riverside County Bar Association? She's a hard-working, down to earth criminal defense attorney who has spent her whole life in Riverside and has lived to tell her story! Heather was born in Riverside and is the youngest of four children born to parents who were both lawyers, Virginia Blumenthal and Gary Seiser. She didn't aspire to follow in the footsteps of her parents or feel she was living in their shadows. But she loves criminal law, possibly because she grew up with it.



Heather Green

Heather had a “small town” childhood, participating in swim and diving teams and loving dance. Growing up, she always had a job of some sort, including helping out at her mother's office. She graduated from Riverside Poly, and for all four years was involved in competitive dance and Mock Trial, where her mother was her coach and her father came to all the competitions. At the time, she never entertained thoughts of becoming an attorney because “she didn't have the maturity.”

Since one of her brothers was a student there, Heather decided to attend UC Riverside, majoring in political science. She lived in the dorm her first year and then lived off campus with roommates who were sorority sisters from Gamma Phi Beta. She worked part time at the courthouse and she also had an incredible opportunity, an internship with Justice Thomas Hollenhorst at the 4th District Court of Appeals. And during college she had her first back surgery (remnant of a car accident at 17) which she recalled involved four screws, three plates, and a plastic disc. Despite the interruption, she managed to graduate in four years. After graduation she wanted to explore a new way of life, so she went to Barcelona where she studied under a student visa at the University of Barcelona for a year. When she returned, Heather wondered what she would do. She had been working since she was 14, and had held a wide variety of jobs, everything from being a receptionist for her mother to working at Applebees, but she was still unsure about law school.

Heather obtained a full-time job as a clerk for Riverside County Superior Court, working in various roles in the court, in the clerk's office, as a courtroom assistant, and then in a criminal courtroom in the Hall of Justice. She learned how the court runs and learned the life of a case “from the

back side.” After a year of working at the court, she started law school at California Southern Law School where she attended part-time at night, taking six years to complete the program. Unfortunately, during law school she had her second back surgery, this one a fusion done at Cedars Sinai. She also got married and had her first child while in law school. She said working full-time, going to law school, and being pregnant at the same time actually made her better focused.

After graduating from law school, Heather quit her job at the courthouse, began clerking at the Blumenthal firm and started studying for the State Bar. She credits her passing the first time to a study partner she met from UCLA during bar review. After being sworn in, she began practicing criminal law and working on cases from the conflicts panel. She has experienced many aspects of criminal law, which she loves, everything from routine criminal defense to domestic violence and mental health criminal cases. She started with misdemeanor cases and now does three strike cases and cases with gang enhancements. She has a high caseload with approximately 200 cases a month. She is enjoying a very successful criminal defense career.

And what does she do beyond the courtroom and the office? Heather now has two daughters, ages six and ten, and she stays very involved in their lives and activities (even cheerleading). She and her husband, who's in law enforcement, have been married for 11 years. She describes him as a hands on/great Dad, a super supportive husband, partner, and teammate. This became evident when she was diagnosed with thyroid cancer in 2022 and had surgery to remove nodules on her thyroid (which caused her to miss her swearing in as Director-at-Large). Thankfully, a recent ultrasound has her classified as now being a cancer survivor. In addition to the RCBA Board, she also serves on the Board of California Attorneys for Criminal Justice this year. Heather's philosophy is that she strives to live life being honest with her clients and her colleagues...she finds this to be so important. The Riverside County Bar Association is fortunate to have Heather Green as a Director-at-Large for 2023.

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





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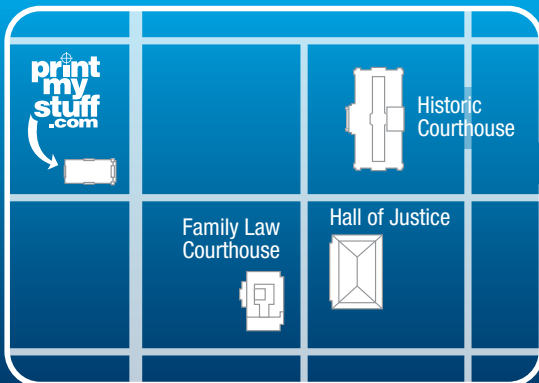
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### Job Openings at Court of Appeal

The Court of Appeal, Fourth District Division Two, in Riverside is seeking three attorneys, two for the writs department and one for a central staff. The job listings will remain open until filled. Appellate Court Attorney Level D - Senior (Writs Department - 2 positions): To obtain more information and apply, go to [www.courts.ca.gov/careers](http://www.courts.ca.gov/careers) and select Job ID 5818. Senior Appellate Court Attorney (Central Staff - 1 position): To obtain more information and apply, go to [www.courts.ca.gov/careers](http://www.courts.ca.gov/careers) and select Job ID 5817

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### Riverside Superior Court Accepting Civil Grand Juror Applications

The Riverside Superior Court is now accepting applications from qualified citizens interested in being nominated to serve as civil grand jurors for the time period July 1, 2023, through June 30, 2024. Duties include, but are not limited to, investigating the operations of county government, researching matters of civic concern, and inquiring into public offenses. A fillable application can be located on the court's website at <https://www.riverside.courts.ca.gov/> by selecting Grand Jury under the Divisions tab. Application deadline: April 3, 2023.

### Conference Rooms Available

Conference rooms, small offices and the Gabbert Gallery meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance, by contacting Charlene or Lisa at the RCBA office, (951) 682-1015 or [rcba@riversidecountybar.com](mailto:rcba@riversidecountybar.com).



## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective March 30, 2023.

**Mark A. Baskett** – Baskett Strategic Partners, Hemet

**William C. Bibb** – Heiting & Irwin, Riverside

**Theresa Brennan** – California Workplace Counsel LLP, Alta Loma

**Joscelyn B. Carrillo** – Law Student, Moreno Valley

**Allison P. Lowe** – Office of the Public Defender, Riverside

**Catherine M. Salazar (A)** – AJG Law PC, Palm Springs

**Marc A. Seligman** – Solo Practitioner, Beaumont

**Holland P. Stewart** – Best Best & Krieger, Riverside

**Ashley B. Sura** – Varner & Brandt, Riverside

**Maggie Wilkerson (A)** – Office of the City Attorney, Riverside

**(A)** – Designates Affiliate Member



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Attorneys with last names beginning with **H-M** (Group 2).

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*For compliance groups who must report for the period ending on January 31, 2023, and thereafter.*

➤ Special Requirements:

- At least four hours of Legal Ethics
- At least one hour on Competence Issues
- At least two hours dealing with Elimination of Bias. Of the two hours, *at least one hour must focus on implicit bias and the promotion of bias-reducing strategies.*

Compliance information is available on the State Bar's website.



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