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RIVERSIDE LAWYER

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ISSUE



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Bleak House Satire
Humor in the Law – Civil Litigation
Can Death Be Funny? NO, But Probate Can Be
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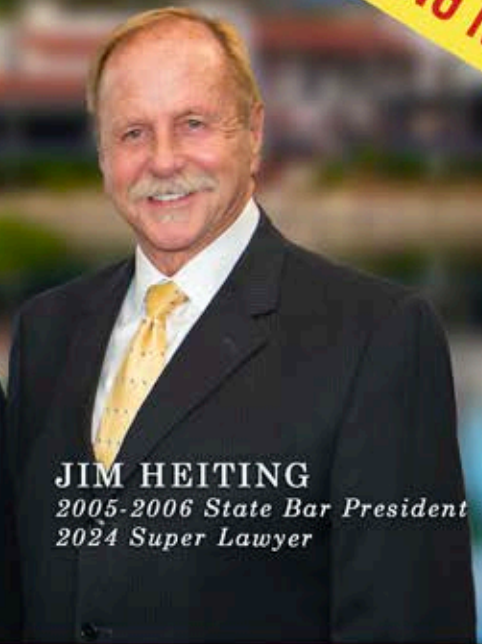
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RIVERSIDE LAWYER

MAGAZINE

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PRESIDENT'S Message

by Mark A. Easter



Meet Some of Our Great Young Citizens!

On May 2, I had the privilege of hosting the 2024 Good Citizenship Awards in Department 1 of the Riverside County Historic Courthouse, co-sponsored by the RCBA and the Riverside County Superior Court. We presented Good Citizenship Awards to students from 28 high schools from all across the County. The students were greeted by Judge Jacqueline Jackson, Judge O.G. Magno, and Commissioner Sharunne Foster. Awards were given out by representatives from the offices of U.S. Congressman Ken Calvert, State Senator Richard Roth, and Assembly members Sabrina Cervantes, Bill Essayli, and Greg Wallis. All of the award-winning students are listed below. Here are just a few examples of these outstanding students.

JESUS PERALES, AMISTAD HIGH SCHOOL, INDIO

Jesus has committed himself to learning and successfully tackled the challenge of achieving literacy in English. Every day after school, he took part in an American literature reading and writing program lead by Riverside County lawyer Jim Parkinson. Jesus increased his reading level by five grades in just one year. Several years ago, Jesus had very little chance of graduating from a traditional high school. Now, he is flourishing at Amistad. He has joined the ASB, is the voice in school announcements, a friendly face working in the student store, and a welcoming host in Amistad's new student orientation program. Amistad is very lucky to have Jesus "on their ship."

WESTON SHOOK, LA QUINTA HIGH SCHOOL

Weston has been on La Quinta's mock trial team for three years, competing as both a witness and as an attorney, and received a Blue-Ribbon Award nomination each year. Weston has served as a "most trusted and reliable" intern for Congressman Raul Ruiz for the last two years. As part of La Quinta's International Baccalaureate (IB) program, Weston has committed to taking



2024 Good Citizenship Award Recipients

more difficult courses. Weston's math teacher, Nathaniel White, is looking forward to watching as Weston ventures out into the world, because "people like him are what this world truly needs the most."

FAITH BUSTOS, VISTA DEL LAGO HIGH SCHOOL, MORENO VALLEY

Faith maintains a 4.2 GPA as a junior at Vista Del Lago. In addition to academics, Faith is vice president of the Debate Club, coordinates social media for the high school's National Honor Society, and is the Student Digital Media Ambassador for the Moreno Valley Unified School District. In addition, Faith served as the manager of the Girl's Volleyball Team and was a camp guide for 7th graders attending the Personal Rotary Youth Development Experience at Thousand Pines Christian Camp. It sounds like the Moreno Valley community certainly has a rising star in Faith!

BRANDON YOO, PALM DESERT HIGH SCHOOL

Principal Sarit Saig describes Brandon as "extraordinary." And rightfully so! Brandon volunteers at Desert Spring Church every week, and he serves as a camp counselor for his church at Forest Home. Brandon has also done humanitarian work in both Puerto Rico and Mexico, helping repair housing for people with financial needs and orphanages. But Brandon also appears to be on his way to a career in the legal field. He interned at Riverside Legal Aid as a freshman, and now he interns for J. Doling Law. Brandon has been on the Palm Desert mock trial team for three years, this past year helping Palm Desert reach the prestigious Elite Eight. Keep it up Brandon!



Brandon Yoo from Palm Desert High School and his mother Janice Choi.

FIETOVOLA LASIKE, NUEVA VISTA HIGH SCHOOL, JURUPA VALLEY

"Vola" recently moved to the United States from Australia. Because many of her credits did not transfer, she was placed at



Fietovola Lasike from Nueva Vista High School.

Nueva Vista Continuation High School. Nevertheless, Vola completed all of her high school graduation requirements by the end of her junior year, and will graduate as valedictorian. Vola served as student board representative to the Jurupa Unified School District. Vola also represented NVHS at the Rotary Youth Leadership Awards Camp. She is an active member of NVHS' Yearbook Club, and voluntarily assists NVHS' cafeteria manager. Vola also reads to kindergartners at Sunnyslope Elementary, and volunteers at her church. One of her teachers said that if "Vola were running for President, she would have my vote!" Make that two of us.

2024 Good Citizenship Award Recipients

<u>High School Name</u>	<u>Student Name</u>
Amistad	Jesus Perales
Beaumont	Orlando Salas
Beaumont Middle College	Amy Meneses
Centennial	Berenice Nieto
21st Century Learning Institute	Maria Davila
Desert Hot Springs	Daniel Marquez
Glen View	Angelo Chacon
Great Oak	Nya Bromley
Indio	Ignacio Velarde
La Quinta	Weston Shook
La Sierra	Audrina Aguilar Laroque
Liberty	Morgyn Young
March Mountain	Cristian Chavez

Martin Luther King
 Murrieta Valley
 Norte Vista
 Notre Dame
 Nueva Vista
 Orange Grove
 Palm Desert
 Palo Verde Valley
 Poly
 Ramona
 Rancho Verde
 Shadow Hills
 Vista del Lago
 West Valley
 Woodcrest Christian

Catalina McCarron
 Abel Hernandez-Perry
 Destiny Curiel
 Natasha Singh
 Fietovola Lasike
 Brody Caponetto
 Brandon Yoo
 Carlos Milke
 Cadence Esterling
 Avree Pieters
 Joy Akinbayode
 Charlotte Coulter
 Faith Bustos
 Caileah Delin Villanueva
 Tyler Sandoval

Have a great month of June—this month we see graduations, the U.S. Open, Father's Day, Juneteenth...and somebody turns 6-0. Yikes. But hey, take a moment sometime this month to complement or bless somebody you know who has been a great father. They'll appreciate it.

Mark A. Easter is the president of the RCBA, a partner at Best Best & Krieger LLC, and has been residing and practicing law in Riverside since 1989.



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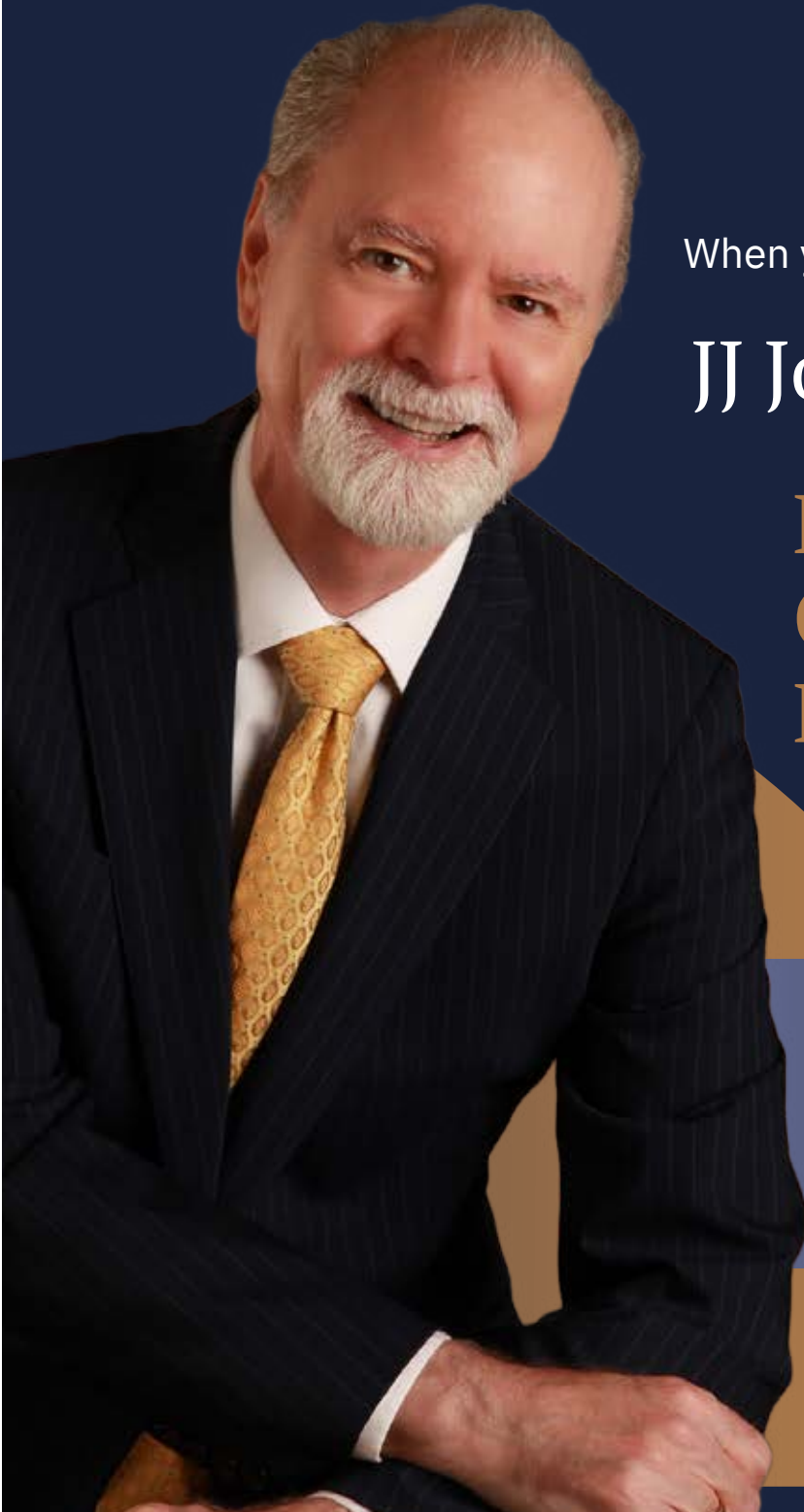
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BARRISTERS

President's Message

by David P. Rivera



The Chewbacca Defense— “Laugh It Up Fuzzball!”¹

Yes, you read the title right. For the uninitiated, the Chewbacca Defense is the comedic legal strategy born of the confluence between *Star Wars*, Johnnie Cochran, and *South Park*. Still a bit lost?

Meet the players: *Star Wars* is, well... *Star Wars*. Chewbacca is the franchise's mighty, iconic Silverback Wookiee. Johnnie Cochran is the criminal defense attorney of O.J. Simpson trial fame. *South Park* is the critically acclaimed animated sitcom. It features the antics of four school-age boys—Stan, Kyle, Cartman, and Kenny—as they grow up in a small Colorado town. The show is irreverent, punctuated by profanity, dark humor, and biting pop culture parodies. It is flat-out *hilarious*! An “all persons fictitious” disclaimer precedes each episode,² many of which depict celebrities (e.g., Chewbacca and Johnnie Cochran).

At its core, the Chewbacca Defense is an attempt by counsel (in a case with bad facts) to confuse a jury with irrelevant information, so that it is unable to decide a case in a rational manner.³ This article examines the origin of the Chewbacca Defense, discusses the legal strategy behind it, and provides a quick look at its surprising, yet extremely limited, place in American jurisprudence.

I. Origin

The Chewbacca Defense dates back more than 25 years to an episode of *South Park* titled, “Chef Aid.” The episode is a satirical portrayal of the infamous O. J. Simpson murder trial.⁴

Alanis Morissette, Canadian American singer-songwriter, has just released a new hit song,

“Stinky Britches.” Jerome “Chef” McElroy, South Park Elementary cafeteria cook and a mentor of sorts to the boys, overhears Cartman singing Stinky Britches. He recognizes it as rip-off of a song he wrote, sang, and recorded 20 years prior. Chef confronts Alanis' record producer and recording company, Capitalist Records, to request that his name be credited to the song. Capitalist Records refuses. It retains Johnnie Cochran and sues Chef for harassment in a case that is treated—solely for confusion's sake—as both a criminal and civil matter. Adding to the confusion, both parties are cast in defensive postures despite the absence of any counterclaim.⁵

Chef's attorney, Stan's dad, delivers a lucid, rational closing argument. Then the fun begins. Johnnie Cochran walks to a display stand, unfurls a picture of Chewbacca, and provides his closing through comical delivery.⁶

Ladies and gentlemen, this is Chewbacca. Chewbacca is a Wookiee from the planet Kashyyyk. But Chewbacca lives on the planet Endor. Now think about that. That does not make sense.

Why would a Wookiee, an 8-foot-tall Wookiee, want to live on Endor with a bunch of 2-foot-tall Ewoks? That does not make sense! But more important [*sic*], you have to ask yourself, “What does this have to do with this case?” Nothing.

Ladies and gentlemen, it has nothing to do with this case! It does not make sense! Look at me, I'm a lawyer defending a major record company, and I'm talkin' about Chewbacca. Does that make sense? Ladies and gentlemen, I am not making any sense! None of this makes sense! And so you have to remember, when you're in that jury room deliberating and conjugating the Emancipation Proclamation... does it make sense? No! Ladies and gentlemen of this supposed jury, it does not make sense! If Chewbacca lives on Endor, you must acquit!

South Park: Chef Aid (Comedy Central Oct. 7, 1998).

The jury finds for Capitalist Records. The judge orders Chef to pay damages of \$2 million within 24 hours or go to jail for 8 million years (later corrected to 4 years).⁷

II. Legal Strategy

The Chewbacca Defense as presented in *South Park* is completely nonsensical. It is not a formal legal strategy. Even so, let's take a stab at dissecting it. It serves as a tool of persuasion. Though absurd in its message, its objectives are sound—confuse, distract, emphasize emotion.

The Chewbacca Defense trades in distraction over clear direction. It seeks to obfuscate, not clarify. It shifts focus away from the core issues of an argument, often introducing irrelevant facts for a jury's consideration.

1 *Star Wars: Episode V - The Empire Strikes Back* (Lucasfilm Ltd. 1980) (Han Solo to a laughing Chewbacca, after Princess Leia calls Han a delusional laser brain.)

2 E.g., *South Park: Chef Aid* (Comedy Central Oct. 7, 1998) (disclaiming, “All characters and events in this show—even those based on real people—are entirely fictional. All celebrity voices are impersonated... poorly.”)

3 *South Park: Chef Aid* (Comedy Central Oct. 7, 1998).

4 *Id.*

5 *Id.*

6 *Id.*

7 *Id.*

It casts doubt into jurors' minds, causing them to question their understanding of a case. When confused, jurors can be more receptive to simplicity, storytelling, and impression.⁸

The Chewbacca Defense then administers the coup de grâce. It appeals to emotion over rational thought. Sometimes it amuses, leaning into feelings rather than facts. It highlights a persuasive narrative over truth as a basis for justice, no matter how nonsensical that narrative might be.⁹

BAM! Two million dollars. Eight million years in prison. Thank you very much.

III. American Jurisprudence

Surprise! The Chewbacca Defense has indeed been brought to bear in an American court, though not in the obvious way.

At trial, a jury returned a conviction against defendant Moise on numerous counts of filing false tax returns after a prosecutor likened defense counsel's closing argument to the Chewbacca Defense. Moise owned and operated tax-return-preparation companies. Evidence showed that he included false information on his clients' tax returns and his own individual returns to minimize tax liabilities.¹⁰

During closing, Moise's counsel pointed out that prior to indictment, the Department of Justice told IRS agents to revise Moise's income and expenses based on a more conservative methodology. Defense counsel said that the agents' work "was so bad" that the jury could not rely on the revised calculations or the agents' testimony.¹¹

In rebuttal, the prosecutor countered that the agents' calculations were not directly relevant to Moise's guilt or innocence, that they had "nothing to do with this case."¹² The prosecutor—referencing *South Park*, Johnnie Cochran, and the Chewbacca Defense—continued:

...[S]ome of you [in the jury] may have seen it. I think it's a *South Park* episode... there's a character... who... plays kind of a shyster attorney. And there's a scene where he's giving his closing, and he puts up a picture of a Wookiee from *Star Wars*. And he said, "That's a Wookiee. What does that have to do with this case?" Nothing. That doesn't make any sense. This case doesn't make any sense.

United States v. Moise, 21-13424, at *4, *6 (11th Cir. Nov. 01, 2022) (FastCase).

On appeal, Moise challenged his convictions arguing that the prosecutor's "shyster attorney" comment discredited his attorney and poisoned the jury's mind against him. The Eleventh Circuit Court of Appeal unanimously affirmed the lower court's decision, explaining that although the

⁸ John Russo, *The Chewbacca Defense - The Power of Pop Culture*, LinkedIn (Feb. 19, 2024), <https://www.linkedin.com/pulse/chewbacca-defense-power-pop-culture-john-russo-ettje>.

⁹ *Understanding the Chewbacca Defense*, Rosenblum Allen Law Firm, <https://www.rosenblumlawlv.com/chewbacca-defense/#:~:text=Introduction%20to%20South%20Park%20and%20the%20episode%20%20Chef%20Aid%20&text=In%20the%20episode%20%20Chef%20Aid,Simpson> (last visited May 23, 2024).

¹⁰ *United States v. Moise*, 21-13424, at *2 (11th Cir. Nov. 01, 2022) (FastCase).

¹¹ *Id.*, at *2, *3.

¹² *Id.*, at *4, *6.

prosecutor's "[shyster] remark was improper... [the] court [found]... nothing in the record to suggest that *Moise* was prejudiced by the... comment." Additionally, the court noted that it was a single comment in an eight-day trial with nothing to indicate that it permeated the entire trial.¹³

Notwithstanding *Moise* alluding to the Chewbacca Defense, its success remains limited to the fictional world of *South Park*.

IV. Summary

The Chewbacca Defense is a hilarious, nonsensical legal strategy that debuted in a *South Park* episode satirizing the O. J. Simpson murder trial. Boiled down, it asserts that it doesn't make sense for Chewbacca, an eight-foot-tall Wookiee, to live on the planet Endor with two-foot-tall Ewoks. None of it makes sense! If Chewbacca lives on Endor, the jury must acquit!

Though not an authentic legal strategy, the Chewbacca Defense has found its way into at least one American court. While its purpose is rooted in sound logic—confuse, distract, emphasize emotion—the Chewbacca Defense is much more successful as comedy than legal strategy.

"Laugh it up, Fuzzball!"¹⁴

Upcoming Events

Wine Tasting in Temecula Valley through Grapeline Wine Tours. June 8, 10:15 a.m.–5:30 p.m. That's right! We're hitting Temecula for wine tasting to mark the near-end of our 2023–2024 term. The idea for this event began at least three years ago and it's finally here! Enjoy pick-up and drop-off in downtown Riverside via chartered bus, with an additional stop in Old Town Temecula for those who would like to join the party from there. Register at <https://RCBABarristersWineTour.eventbrite.com>.

ELECTIONS! June 20, 5:30 p.m. at the Mission Inn's Presidential Lounge. The success of Barristers is dependent not only on our members' active participation, but on the leadership of our board. Active Barristers members are encouraged to vote. Your vote counts!

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¹³ *Id.*

¹⁴ Lucasfilm Ltd., *supra* note 1 (emphasis added).

David P. Rivera is a solo practitioner of business law in Highland, treasurer of the Hispanic Bar Association of the Inland Empire, and a member of the RCBA Bar Publications Committee.

Practicing Responsibly and Ethically Raining on the Humor Parade

by David Cantrell and Cole Heggi

When asked to write an article on this month's theme, the authors were tempted to submit a document showing everything humorous about professional ethics and responsibility—in other words, a blank sheet of paper. But while professional ethics may lack a lighter side, the California Rules of Professional Conduct ("Rules") do touch upon lawyers' use of humor in communications with clients and courts. These are briefly discussed below.

Humor in Client Communications

Using humor in client communications can create a friendly atmosphere, but also poses risks. The Rules, particularly Rule 1.1, require lawyers to provide competent representation. Humor, if misused, can undermine competence by causing misunderstandings or reducing the perceived seriousness of a matter.

Rule 1.4 emphasizes the necessity for clear communication with clients. Humor can obscure important points, leaving clients confused or misinformed. For instance, joking about the likelihood of winning a case can create unrealistic expectations or imply a lack of seriousness. Similarly, humor about sensitive issues like divorce or criminal charges can be seen as unprofessional and disrespectful. Attorneys should carefully consider the context and potential for misinterpretation before using humor in client interactions.

Funny Business in the Courtroom

Humor in the courtroom can illuminate an argument or help to endear the lawyer to the judge or jurors, but it must be used advisedly. Rule 3.3 mandates candor toward the tribunal, and humor that distorts facts can violate this rule. Lawyers must ensure their humor does not interfere with the duty to present accurate information. Rule 8.4 prohibits dishonest or deceitful conduct, and humor that misrepresents legal posi-

tions or facts can lead to severe repercussions.

Additionally, many courts and bar associations have local rules pertaining to the use of humor. For instance, Appendix 3.A of Los Angeles Superior Court Rules provides that a lawyer, whether joking or not, should never "disparage the intelligence, ethics, morals, integrity or personal behavior of one's adversaries, unless such things are directly and necessarily in issue[.]" and should "always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility." (Appx. 3.A(c)(2), (l)(2).) The RCBA has adopted professional courtesy and civility guidelines providing similar guidance. (<https://www.riverside.courts.ca.gov/system/files/general/guidecourtesy.pdf>.)

Making jokes at the expense of judges or opposing counsel can be seen as unprofessional and disruptive; a joke at the expense of a member of court staff may turn a judge against you for life. If you must resort to humor in the courtroom, maintaining professionalism, clarity, and respect is essential.

Comedy Versus Cultural Sensitivity

In all communications, including those that involve humor, lawyers should be acutely aware of the diverse backgrounds of their clients, colleagues, and courtroom participants to avoid offending someone. The Rules specifically prohibit "manifesting, by words or conduct, bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation against parties, witnesses, counsel, or others." (CRPC 8.4.1, comment [2].) Do not make jokes about these.

Even if it were not specifically prohibited by the rules, it goes without

saying that making culturally insensitive jokes is not likely to ingratiate a lawyer with the court, colleagues, or clients. And such jokes will be viewed by most as violative of the aforementioned rules of civility. Proceed with extreme caution.

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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The Funny Side of Copyright Law

by Maryam Shafizadeh

A comic walks into a courtroom...

No, this isn't the start of a humorous joke; it's the reality of copyright law in the world of comedy. From stand-up routines and crowd work to late-night sketches, comedians face the issue: Can copyright law protect their jokes?

Comedians pour their hearts (and funny bones) into crafting hilarious routines. Countless hours are dedicated to honing delivery, rhythm, and facial expressions, ensuring each joke lands perfectly. It's a labor of love, where originality is key. So, the theft of a punchline can be a devastating blow.

There's nothing funny about joke theft. It can damage the reputations of both the original comedian and the copycat. Imagine watching a stand-up act where you already know the punchlines — laughter dies, and it deflates the experience. For up-and-coming comedians, having their material stolen by a big name can be particularly brutal, making it even harder to break through in a competitive scene. Whether one-liners or elaborate routines, written down or performed live — jokes can fall into several copyright-protected categories: literary works (written jokes), audiovisual works (recorded comedy specials), or even sound recordings (comedy albums). Copyright protection, however, hinges on whether the joke is an original work of authorship and if it's fixed in a tangible medium so it can be perceived, received, or otherwise communicated. While recording jokes in writing, video, or audio fulfills the tangibility requirement, originality is a trickier hurdle.

To prove copyright infringement, a plaintiff must demonstrate two key elements: ownership of a valid copyright and copying by the defendant of the copyrighted work. Copying can be established by showing the defendant had access to the copyrighted work and that their work is substantially similar to the plaintiff's.¹

This very dilemma became a reality for comedy writer, Alexander Kaseberg, when he accused late-night giant Conan O'Brien ("O'Brien") of using Kaseberg's jokes on the Conan show ("Conan").

On December 2, 2014, Kaseberg, posted on his blog, "The University of Alabama–Birmingham is shutting down its football program. To which the Oakland Raiders said; 'Wait, so you can do that?'" The following day, O'Brien shared on the Conan show, "Big news in sports. University of Alabama–Birmingham has decided to discontinue its football team. Yeah. When they heard the news, New York Jets fans said, 'Wait can you do that? It's something you can do?'"²

On January 14, 2015, Conan's writers submitted the following joke for the evening monologue: "Yesterday, a Delta flight from Cleveland to New York took off with just 2 passengers. Yet somehow, they spent the whole flight fighting over the armrest." Before O'Brien performed it on air, however, Kaseberg posted on his blog: "A Delta flight this week took off from Cleveland to New York with just two passengers. And they fought over control of the armrest the entire flight."³

On February 3, 2015, Kaseberg posted on the platform formerly known as Twitter, "Tom Brady said he wants to give his MVP truck to the man who won the game for the Patriots. So enjoy that truck,

Pete Carroll."⁴ Afterwards, O'Brien performed, "Tom Brady said he wants to give the truck that he was given as Super Bowl MVP ... to the guy who won the Super Bowl for the Patriots. Which is very nice. I think that's nice. I do. Yes. So Brady's giving his truck to Seahawks coach Pete Carroll."⁵

On February 17, 2015, Kaseberg posted, "The Washington Monument is ten inches shorter than previously thought. You know the winter has been cold when a monument suffers from shrinkage."⁶ Afterwards, O'Brien performed, "Yesterday surveyors[] announced that the Washington Monument is ten inches shorter than what's been previously recorded. Yeah. Of course, the monument is blaming the shrinkage on the cold weather."⁷

On June 9, 2015, Kaseberg posted, "Three towns, two in Texas, one in Tennessee, have streets named after Bruce Jenner and now they have to consider changing them to Caitlyn. And one will have to change from a Cul–De–Sac to a Cul–De–Sackless."⁸ Afterwards, O'Brien performed, "Some cities that have streets named after Bruce Jenner are trying to change the streets' names to Caitlyn Jenner. If you live on Bruce Jenner cul-de-sac it will now be cul-de-no-sack."⁹

Did O'Brien infringe on Kaseberg's copyright?

In the case of the Delta joke, the court ruled in Conan's favor, finding no genuine issue of material fact that Conan created the Delta joke before Kaseberg posted his version.¹⁰

The court also sided with Conan regarding the University of Alabama–Birmingham joke. While Kaseberg presented the joke from the perspective of the team members, Conan's version took the viewpoint of fans, specifically fans of a different team.¹¹

The Court, however, found in favor of Kaseberg on the remaining matters, holding that when the wording and delivery of jokes are practically identical, it constitutes copyright infringement. In the Tom Brady joke, both parties acknowledged that the joke centered around Brady offering his MVP award to the opposing coach, implying that the opposing coach's actions helped Brady's team win.¹² In the Washington Monument joke, both parties used a similar metaphor. The joke relied on the idea that the Washington Monument resembles a phallus and might shrink in cold weather.¹³ In the Bruce Jenner joke, both parties shared about Jenner's then-recent sex change and its effect on streets named Bruce Jenner.¹⁴

While Kaseberg's and Conan's jokes share similar ideas, copyright law, under the idea/expression dichotomy, doesn't protect ideas, facts, or methods themselves. Instead, it protects the creative expression of those ideas.¹⁵ This means the originality of the arrangement and specific words used in the jokes determines copyright protection. Therefore, to show infringement, the plaintiff must prove that the expression of the joke (not just the idea), was original and copied. In this case, while specific wording differed (for example,

4 *Id.* at 1234.

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.* at 1234–35.

9 *Id.* at 1235.

10 *Id.* at 1239.

11 *Id.* at 1246.

12 *Id.* at 1246–47.

13 *Id.* at 1239.

14 *Id.* at 1246.

15 *Id.* at 1239–40.

1 *Foxworthy v. Custom Tees, Inc.*, 879 F. Supp. 1200, 1217 (1995).

2 *Kaseberg v. Conaco, LLC*, 260 F. Supp. 3d 1229, 1233 (2017).

3 *Id.*

Kaseberg used "Cul-De-Sackless" in the Jenner joke, while O'Brien used "cul-de-no-sack"), the Court found the fundamental expressions within the entire joke to be strikingly similar. Consequently, the Court ruled that Conan infringed on Kaseberg's copyright.¹⁶

That's why we can have "knock-knock/who's there," "why did the chicken cross the road," and "so-and-so walks into a bar" jokes.

Comedian Jeff Foxworthy's jokes were also infringed upon. Throughout his career, Foxworthy created calendars, t-shirts, and comedy albums featuring his signature redneck jokes, many following the format "You might be a redneck if...":

"You might be a redneck if ...you've ever financed a tattoo."¹⁷

"You might be a redneck if ...your two-year-old has more teeth than you do."¹⁸

"You might be a redneck if...your dog and your wallet are both on a chain."¹⁹

"You might be a redneck if...your dad walks you to school because you're in the same grade."²⁰

"[Y]ou might be a redneck...[if] you've ever cut your grass and found a car[.]"²¹

Custom Tees, however, started selling t-shirts replicating Foxworthy's redneck jokes, with a slight twist to format. For instance, one shirt read, "If you've ever financed a tattoo . . . you might be a redneck."²²

The Court ultimately ruled in favor of Foxworthy, recognizing the creativity in his specific wording and how he arranged those words for maximum comedic effect. "Copyright is concerned with the originality of the expression, not the subject matter. [Foxworthy] repeatedly stated that he uses other people's ideas, but he puts them in his own words."²³

Interestingly, Foxworthy explained how much work goes into creating an original expression:

A joke is[. . .] a strange thing. And probably to the public, they never realize this. But I have — with a comic, we all have the same bowl of words to work with, and the whole trick is to take the smallest amount of words and put them in the proper order. You know, I've sat backstage with Jay Leno or Gary Shandling and sometimes for ten or fifteen minutes argued about a particular one line in a joke, which word should go where, should you delete this, which word should go to the end of the joke, and so that's why it changes. I mean, it's to get the maximum laugh from, you know, the shortest amount of material.²⁴

Due to the merger doctrine, however, a comedian's expression of a funny idea may not always receive copyright protection. The merger doctrine provides that, "expression is not protected in those instances where there is only one or so few ways of expressing an idea that protection of the expression would effectively accord protection to the idea itself."²⁵ Accordingly, where a humorous idea can only be expressed in a couple of ways, the idea and the joke's expression could be deemed to merge. In such cases, copyright protection for the comedian's specific wording may be limited.

Finally, copyrighted jokes can even be used due to the Fair Use Doctrine — eliminating the need to receive permission from the

¹⁶ *Id.* at 1239-40.

¹⁷ *Custom Tees, Inc.*, 879 F. Supp. at 1203.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 1209.

²² *Id.* at 1203.

²³ *Id.* at 1219.

²⁴ *Id.*

²⁵ *BUC International Corp. v. International Yacht Council Ltd.*, 489 F.3d 1129, 1142 (2007).

copyright owner. Codified in 17 U.S.C. Section 107, Fair Use allows for limited use of copyrighted material, such as commentary, criticism, reporting, teaching, scholarship, or research. Imagine a comedian using a snippet of another's joke into their routine to critique their comedic style.

In determining fair use, factors to consider include:

- (1) The purpose and character of the use: This includes whether it's for commercial or nonprofit educational use, as well as whether the use is transformative. Transformative uses, meaning they add new meaning or present the original work in a new light, are more likely to be considered fair.
- (2) The nature of the copyrighted work: This includes considering the creativity (e.g., novel) or factual nature (e.g., news article) of the work. Additionally, unpublished, creative works generally receive greater copyright protection (less likely to be considered fair), whereas published, factual works are more likely to be considered fair.
- (3) The amount and importance of the portion used in relation to the copyrighted work as a whole: Generally, using a larger portion of the work makes fair use less likely. That's not always the case, however, as even a small portion would not be considered fair use if it's the core element, the heart, of the copyrighted work.
- (4) The effect of the use on the market for the original work: This considers if the use harms the copyright owner's ability to sell or profit from their original work (e.g., by replacing the need to buy the original).

Fair use may allow comedic criticism or commentary on copyrighted material, however, it's important to distinguish between fair use in respect to parody and satire. "[A] humorous or satiric work deserves protection under the fair use doctrine only if the copied work is at least partly the target of the work in question'...This prerequisite confines fair use protection to works whose very subject is the original composition and so necessitates some borrowing from it."²⁶

In other words, parody and satire both use humor to criticize and comment. "Parody, [however,] needs to mimic an original to make its point, and so has some claim to use the creation of its victim's (or collective victims') imagination, whereas satire can stand on its own two feet and so requires justification for the very act of borrowing."²⁷ Therefore, since parody generally uses a copyrighted work for comedic criticism or commentary by imitating the work in a humorous way, and satire uses humor and exaggeration to criticize and comment something besides the original work, such as politics or other topical issues, parody is more likely to be considered fair use compared to satire.²⁸

In conclusion, while a comic walking into a courtroom might sound like the start of a funny joke, infringing on a comedian's copyright is no laughing matter.

Mary Shafizadeh, of the Law Office of Maryam Shafizadeh, specializes in family law and intellectual property. Committed to helping individuals and entrepreneurs embark on new chapters in their lives or businesses, she guides families through family law matters and empowers creative entrepreneurs and digital ventures in the realms of copyright, trademark, and website compliance.



²⁶ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 597 (1994).

²⁷ *Id.* at 580-81.

²⁸ *Why Is Parody Considered Fair Use but Satire Isn't?*, Copyright Alliance, at <https://copyrightalliance.org/faqs/parody-considered-fair-use-satire-isnt/>.



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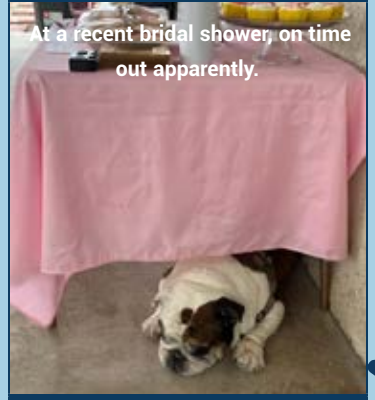
Take Your Dog to Work Day

Dogs bring immense joy into our lives with their boundless enthusiasm, unwavering loyalty, and unconditional love. Their playful antics and affectionate nature have a unique way of lifting our spirits, offering companionship and comfort even on our worst days. Their wagging tails and eager eyes remind us to embrace the present moment and find joy in simple pleasures. *Take Your Dog to Work Day* celebrates this bond, inviting our furry friends into the workplace. It was created by Pet Sitters International (PSI) and first celebrated in 1999. PSI created the day to encourage businesses to allow dogs in the workplace for one Friday each year to celebrate dogs as companions and promote their adoptions from local shelters, humane societies, and rescue groups. Beyond office walls, dogs enrich our lives, teaching us valuable lessons in responsibility, empathy, and unconditional love. They are more than pets; dogs are cherished members of the family. Please enjoy some of our members' favorite photos of their beloved pooches.



Duke

Sam and Marissa Stone



At a recent bridal shower, on time out apparently.

Titus

Chris Johnson



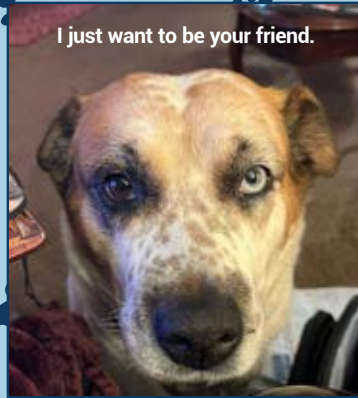
Ranger

Judge Craig & Maria Riemer



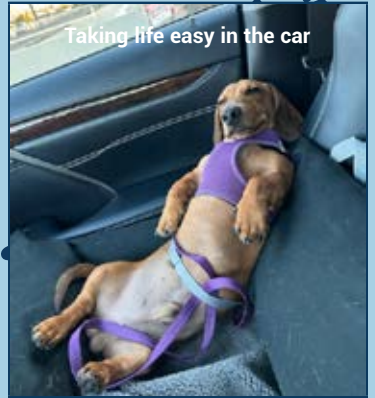
Stella & Koa

Elisabeth Lord



Scrappy

Jacqueline Carey-Wilson



Taking life easy in the car

Archie

JJ and Jean Johnston



Beanie Baby

Joel Selik



Otto

Danielle Ebel and Jason Barth



Sadie & Chief

Kiki Manti Engel



Kona, Sasha & Romeo

Lori Myers



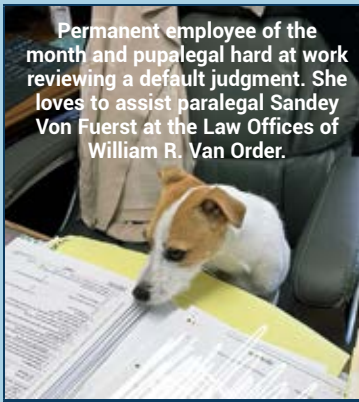
Taylor & Skylar

Robert Nagby



Mickey

Jean-Simon Serrano



Permanent employee of the month and pupalegal hard at work reviewing a default judgment. She loves to assist paralegal Sandey Von Fuerst at the Law Offices of William R. Van Order.

Bailey

Conor P. O'Brien



Rescued from a life on the streets and has since become manager of "pawperations" at Abuzeid Law, he never misses a day of work, enthusiastically greets clients, and is always ready to assist.

Bandit

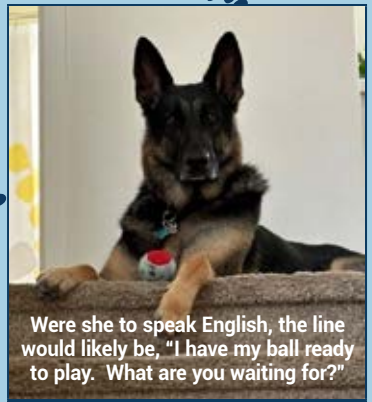
Lara T. Abuzeid



Demonstrating a new product for fly away hair, but for him to keep his large ears in check.

Brando

Ellen Weinfurter



Were she to speak English, the line would likely be, "I have my ball ready to play. What are you waiting for?"

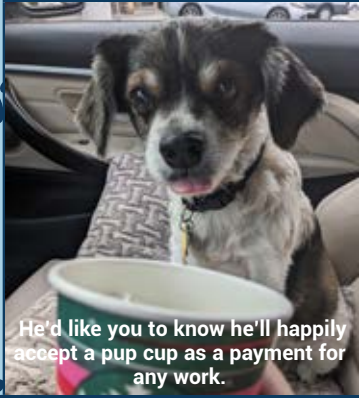
Cali Bear

Stan Dale



Roscoe

Catherine Schwartz



He'd like you to know he'll happily accept a pup cup as a payment for any work.

Charlie

Nesa Targhibi



Charlie

Jean-Simon Serrano



Skyler

Jeff Ferre



Gizmo

Juliet D. Fisher



Forrest & Jenny

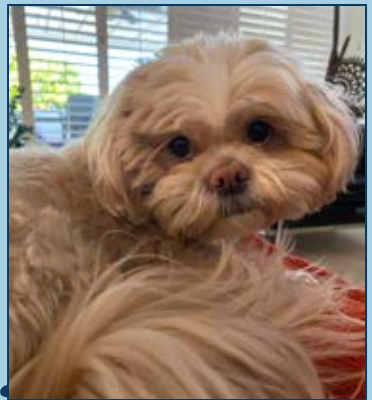
Luis Lopez



"Mommy, take us with you!"

Garth & Koda

Virginia Blumenthal



Jazzy

Michelle Wolfe



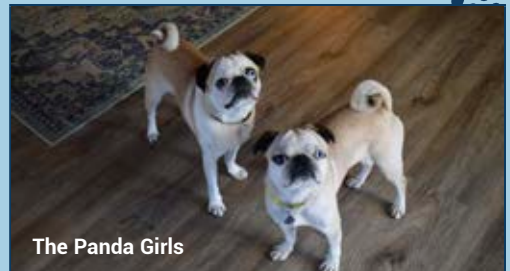
Jager & Cubbie

Lauren Vogt



Nina

Joel Selik



The Panda Girls

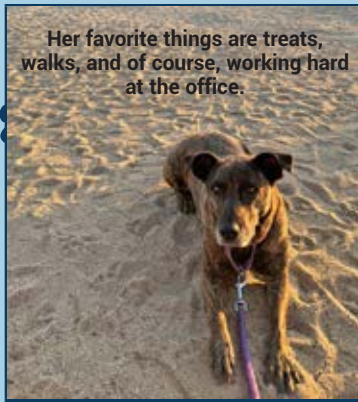
Sisters Ellie and Daisy

Janet Kleiner



Pixie

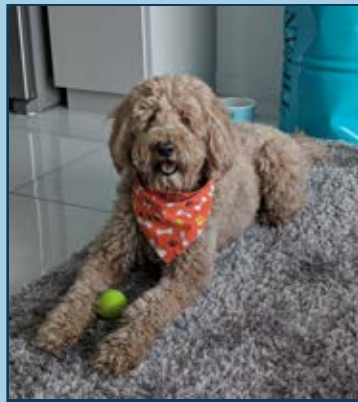
Michelle Wolfe



Her favorite things are treats, walks, and of course, working hard at the office.

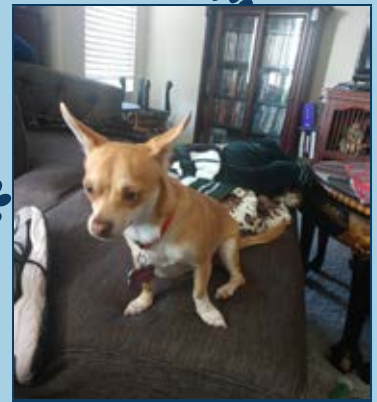
Nelly

Aiskell Roman



Koko

Jean-Simon Serrano



Lucy

Lindy Jeffers



Luigi

Mike and Laura Gouveia



Nabi

Theresa and Phil Savage



Nisha

Sylwia Luttrell



(aka "Poppy Pink Petunia Popstar") She's sitting in the reception area waiting to greet clients.

Poppy

Teresa Rhyne



After my wife and I welcomed our son home from the hospital, Turner wouldn't leave our son's side and had to make sure he could always see him.

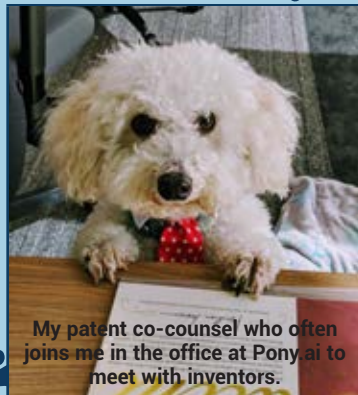
Turner

James A. Perry



Wile E

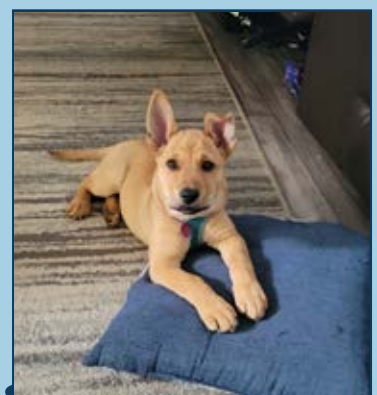
Sylwia Luttrell



My patent co-counsel who often joins me in the office at Pony.ai to meet with inventors.

Zak

Zion Maffeo



Lulu

Elisabeth Lord



Luna

Jean-Simon Serrano



Kona

Kiki Manti Engel



Sadie

Theresa and Phil Savage



Don't let the good looks fool you; he's a handful!

Max

Bob Rancourt & Reuben Gallardo



Copper

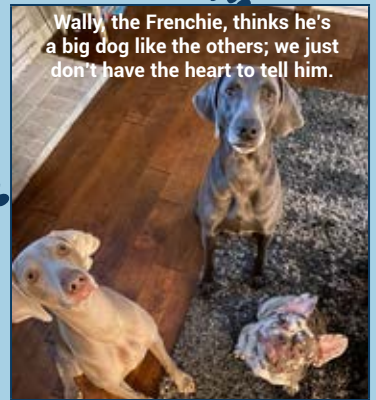
Orquidea & Brigitte Wilcox



Despite their difference in size, Rocky and Wilbur are the best of friends and enjoy wrestling, playing tug-of-war, and chasing each other around the front lawn. Both dogs love treats, cuddling with their owners, and long walks around the neighborhood.

Rocky & Wilbur

Harlan Kistler & Nolan Kistler



Wally, the Frenchie, thinks he's a big dog like the others; we just don't have the heart to tell him.

Sadi, Boss & Wally

Madeline Stanek



Shhh, when the boss is away...

Stella

Stacy Kraus



Ted

Oliver Cleary



Teddy

Sylvia Luttrell



Tucker Axel

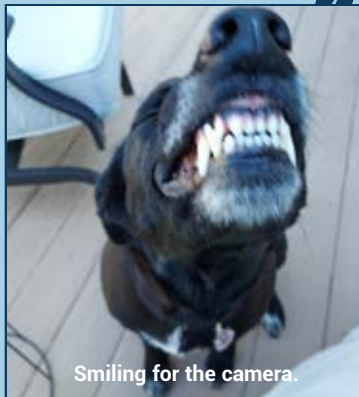
Greg Rizio



One of our most valuable team members and secret weapon, our three-legged lab greets everyone with love and kindness, especially when you have food.

Lincoln

Bruce and Lisa Hughes



Smiling for the camera.

Mulligan

Diane Huntley



Copper

Todd Turoci



Lucifer, our sweet Chihuahua, runs the show; Lucky thinks he's a lap dog, even though he's a 75-pound tomcat of joy, who loves bouncing around and eating.

Lucifer & Lucky

Mary Shafizadeh



Ozzie and Karsin

Michael G. Kerbs



They were in a top-secret work meeting; quite annoyed to be interrupted!

Alexander & Rex

Michelle Ouellete



Rosie

Theresa and Phil Savage



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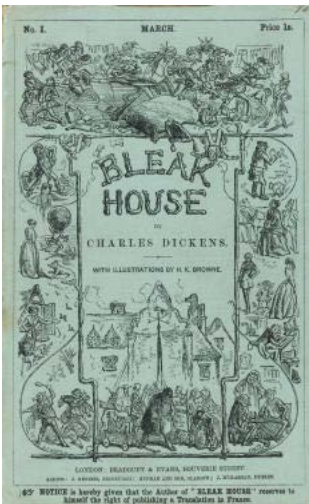
"The method of instruction at this law school for the Juris Doctor (J.D.) degree program is principally in physical classroom facilities."

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Bleak House Satire

by Abram S. Feuerstein



The Original Bleak House Cover

Although Charles Dickens' 1852 novel, *Bleak House*, ranks third on the ABA's list of the 25 greatest law novels ever (Harper Lee's *Mockingbird* of course takes the top position),¹ few lawyers under the age of 40 – or over the age of 40 – seem to have scaled its 1000 pages. But summer is ahead, and ambitious JD readers should consider adding it to the canvas beach bag, or even the Samsonite – assuming the hefty volume does not exceed the airline's weight limit.

Seeing his father sent to debtor's prison, Dickens had witnessed the monstrosities of the English legal system at an early age.² Then, as a teen, he found employment as a junior clerk at a law firm, where he remained for approximately 18 months.³ He soon developed shorthand skills and became a freelance legal reporter. However, observing the courts and the cases withing the legal system left the young Dickens with a distaste for the law and lawyers.⁴ Yet it provided Dickens with plenty of material for fate determinative plot twists sounding in the law, and colorful legal characters that would populate his future novels, including *Bleak House*.

Jarndyce v. Jarndyce

The fictional case of *Jarndyce v. Jarndyce* is at the heart of *Bleak House*. The narrative never really describes the facts and circumstances of the case, but it involves an interminable probate proceeding pending in the Court of Chancery that has engulfed and consumed generations of litigants. Emphasizing the systemic dysfunction of the legal system, Dickens begins the novel describing a dense fog, a fog that is "everywhere" but which is densest where the Lord High Chancellor sits "with a foggy glory round his head," in his High Court of Chancery.⁵ Inside the court, members of the bar are "mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery prec-

edents, groping knee-deep in technicalities . . . and making a pretence of equity with serious faces, as players (actors) might."⁶ Any honorable attorney would warn his client to "(s)uffer any wrong that can be done you, rather than come here," writes Dickens.⁷

As to *Jarndyce*, a case which monetarily has been "squeezed dry years upon years ago," it just "drones on":

This scarecrow of a suit has, in course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises.⁸

Indeed, while the lawsuit has been pending and because at the time anyone with an interest in a Chancery lawsuit needed to join it,

Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in *Jarndyce* and *Jarndyce*,



Portrait of Charles Dickens circa 1860



Characters from Dickens' novels on the steps of the historic Riverside courthouse during the February 20, 2020 Dickens Festival

1 See https://www.abajournal.com/magazine/article/25_greatest_law_novels_ever.

2 Norman MacKenzie and Jeanne MacKenzie, *Dickens: A Life*, (Oxford University Press 1979) ("MacKenzie"), p. 14.

3 MacKenzie, pp. 20-24.

4 *Id.*

5 Charles Dickens, *Bleak House* (Penguin Books 2003) ("Bleak House"), p. 13.

6 *Bleak House*, p. 14.

7 *Bleak House*, p. 15.

8 *Bleak House*, p. 16.

without knowing how or why; whole families have inherited legendary hatreds of the suit. The little plaintiff or defendant, who was promised a new rocking-horse when *Jarndyce* and *Jarndyce* should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; (and) a long procession of Chancellors has come in and gone out...⁹

Although the lives of the *Bleak House* characters become intertwined with the goings on in *Jarndyce*, and some tragically so, Dickens comments that to outside observers the lawsuit has “passed into a joke. That is the only good that has ever come of it.”¹⁰ So, when it settles more than 950 pages later, it is little wonder that uproarious laughter breaks out. The narrator observes that the people leaving the court appeared “exceedingly amused, and were more like people coming out from a Farce or a Juggler than from a court of Justice.”¹¹

Two of the novel’s characters then ask a passerby: What happened? Did he know? Reply: *Jarndyce* happened. But what about it? He did not know, really, nobody ever did when it came to *Jarndyce*. But it appeared to be over “as well as he could make out.” Question: For the day? No, “over for good.”¹²

This seems too good to be true to the two characters who have lived their lives against the backdrop of *Jarndyce*. But, their “suspense was short. . . . Presently great bundles of paper began to be carried out – bundles in bags, bundles too large to be got into any bags, immense masses of papers of all shapes and no shapes, which the bearers staggered under, and threw down for the time being, anyhow, on the Hall pavement, while they went back to bring out more. Even those clerks were laughing. We glanced at the papers, and seeing *Jarndyce* and *Jarndyce* everywhere, asked an official-looking person who was standing in the midst of them, whether the cause was over. ‘Yes,’ he said; ‘it was all up with it at last!’ and burst out laughing, too.”¹³

The big joke, of course, is that there would be no decision on the merits and that all of the money in the probate estate had run out, completely absorbed by costs. The endless “bills, cross-bills, answers, rejoinders, injunctions, affidavits, references to masters, master’s reports, materials of costly nonsense”¹⁴ have ended. The case has melted away. Dickens seemingly reverts to his own voice when he writes, cynically, that: “The one great principle of the English law is to make business for itself. There is no other principle distinctly, certainly, and

consistently maintained through all its narrow turnings. Viewed by this light it becomes a coherent scheme, and not the monstrous maze the laity are apt to think it. Let them but once clearly perceive that its grand principle is to make business for itself at their expense, and surely they will cease to grumble.”¹⁵

To this day, *Jarndyce* at times is cited as if it is a real case,¹⁶ and *Bleak House* remains a symbol of the costs and delays associated with contested civil litigation. In 2011, the Supreme Court decided *Stern v. Marshall*¹⁷ approximately 15 years after Vickie Lynn Marshall filed a Texas probate case against E. Pierce Marshall, the son of billionaire J. Howard Marshall II. Vickie Lynn Marshall, formerly known as Anna Nicole Smith, had been a model and actress before marrying at age 27 the decrepit 89-year-old Marshall.

Marshall died a year after the marriage, and Vickie Lynn claimed half of the estate.¹⁸ The claims wormed their way through the courts based on various jurisdictional challenges and conflicting rulings arising from a Texas probate court (zero for Vickie Lynn) and a federal bankruptcy court overseeing Vickie Lynn’s bankruptcy estate (megabucks). By the time the Supreme Court issued its decision – holding that the non-Article III bankruptcy court could not issue a final judgment on counterclaims filed by Vickie Lynn in her bankruptcy case – both litigants had died (Vickie Lynn at age 39).

Writing for the majority, Chief Justice John G. Roberts quoted Dickens’ description of the never-ending *Jarndyce* case. He then explained, “Those words were not written about this case but they could have been.” It took several more years for an Orange County Federal District Court judge to reject Vickie Lynn’s claims, noting that the litigation had lasted nearly twenty times the length of the parties’ marriage.¹⁹ Eventually, even dense fogs lift.

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



¹⁵ *Bleak House*, p. 621.

¹⁶ See cases collected at Douglas E. Abrams, “Writing it Right: Charles Dickens’ novels in the courts,” *The MissouriBar*, February 8, 2022, Vol. 78, No. 1, fns. 8, 21, retrieved at <https://news.mobar.org/writing-it-right-charles-dickens-novels-in-the-courts/>.

¹⁷ *Stern v. Marshall*, 564 U.S. 462, 468 (2011).

¹⁸ See generally, https://en.wikipedia.org/wiki/Anna_Nicole_Smith.

¹⁹ See generally, Martha Neil, “Federal judge likens Anna Nicole Smith case to ‘Bleak House,’ says 20 years of litigation is enough,” *ABA Journal*, August 20, 2014, retrieved at https://www.abajournal.com/news/article/federal_judge_likens_anna_nicole_smith_case_to_bleak_house_says_20_years_of_google_vignette.

⁹ *Id.*

¹⁰ *Bleak House*, p. 17.

¹¹ *Bleak House*, pp. 973-74.

¹² *Bleak House*, p. 973.

¹³ *Bleak House*, pp. 973-74.

¹⁴ *Bleak House*, p. 14.

Humor in the Law – Civil Litigation

by Boyd Jensen

Life provides unending variety, including events of regret, sadness, happiness, and absolute hilarity. All of which may be subject to the remedies of repair, recompense, removal, and resistance found in civil litigation – including in the most personal parts of our lives – and often revealed in the discovery processes of civil litigation. The purpose of this article is to portray events during litigation, which though not intended for humor, were in fact genuinely and more often subtly humorous. At the time, some may have found the humor displeasing as they were the unintended object of humor, or on the side of the versus, which received the least benefit. And though published articles in legal journals are by this author preferred third person, the following are necessarily in first person.

The Joke Was on Me

During the eighties of the last century, as a young lawyer, I was attempting to select a jury in a personal injury case defending a department store. While handling a few products, an older lady claimed injury. I had already tried a few jury trials, and had learned while watching those more experienced, that more conservative jurors were better for the defense. For example, potential jurors who worked for public agencies, such as the United States Postal Service (USPS), with greater benefits than the private sector, should be cautiously considered. This jury panel had an employee with the USPS that was the only African American. Conflicted about allowing this employee to serve, or dismissing him for fear of racial discrimination, I asked my client, the young store manager what he thought, and he stated the following, "He looks like the kind of person who would shop at our store." I worriedly left him on the panel.

The evidence phase concluded. The jury was dismissed and as routine, advised the court the chosen foreperson was the USPS employee. I panicked. Yet, after deliberation, the verdict was announced for defendant. I was elated, but wanted to talk to the foreperson, to see how this happened, against the conventional wisdom of juror selection. Jurors had reading material they read during breaks, and I noticed he had a magazine rolled up in his hands. In the hallway, I asked him what he was reading, and he embarrassedly showed me his *Soldier of Fortune* magazine! This magazine contained pages of "mercenary employment" and celebrated machismo for adventures -- which could not have been more conservative or defense oriented. My client laughed at my miscalculation, as did this foreperson, as I acknowledged my concerns.

Loss of Consortium

Though arising out of old English law, in California in 2022 this personal injury damage is perhaps most clearly set forth in CACI Jury Instruction 3920 "1. The loss of love, companionship, comfort, care, assistance, protection, affection, society, and moral support; and 2. The loss of the enjoyment of sexual relations [or the ability to have children]." Perhaps no damage in civil practice can produce more embarrassment than the discovery process involving claims of loss of consortium. If a plaintiff complains of a back injury or a neck injury from an accident, in discovery it is not only required, but included within Judicial Council discovery forms, to learn whether the person had back or neck injuries before the incident, the nature of those injuries, whether they were disabling; and the same following the incident. Similarly, incident effects on sexual relationships, and even once in an amusement park ride incident, where "the injury" was said to have been the "unauthorized grasping of a woman's breast." The details of that very respectful but personal cross-examination, when fully understood by the plaintiff herself produced a quick settlement.

A humorous situation occurred during cross-examination of an older, strident man, who authorized the inclusion of the loss of consortium claim alongside his wife's injury claim following an automobile accident. He testified that his wife was no longer able to "vacuum the floors or do the dishes." He testified of his distaste for "cleaning toilets" and walking around the house to "collect garbage" to put out on the street. As he started in on "washing dirty clothing," he sensed that perhaps he wasn't looking very manly to anyone in the room, including the male court reporter, because of what he unwittingly disclosed. There was a pause and he looked at his male attorney and said "maybe I better restate things." He started to smile, and then his smiling turned into chuckling and within seconds, we were all chuckling and had to go off the record. When we came back on the record, the loss of consortium claim was dismissed, and I think we all felt respect and pity for his onlooking wife.

Experts: Gumball and Popcorn

Representing many public businesses, including amusement parks and fairs, incidents happen in all kinds of scenarios. One incident back in 1989 involved a performer, who walked through-out an amusement park entertaining guests, acting like he had a "pet rat" that would run up and down his body and jump out towards the audience to surprise and thrill them. He did this with a small stuffed animal with a face like a rat, which he held in his hands and quickly manipulated to disguise and give the appearance that it was alive.

A small crowd gathered at one location, while he was performing, and when he projected the "pet rat" up and out towards the audience, a nice lady fell backwards into a planter. She claimed injury and sued the amusement park, for negligence. But did the amusement park's or the performer's conduct fall below the standard of care required to prove negligence? How do you set the standard of care for a performer, entertaining park patrons, who choose to stop and enjoy the performance?

I learned that there was actually a clowning profession, which had meetings, knew one another and referred customers to their peers, depending upon the clowning need. Therefore, I located an older woman who called herself, "Popcorn" and a younger man called "Gumball" about the age of the performer sued in the incident. In deposition, they testified favorably for my clients about the standard of care in terms of using props, such as a pet rat, and the crowd responses they intentionally elicited, especially surprise.

The humor in the situation became patent during a pre-trial motion to exclude these witnesses as experts. Plaintiff's counsel failed in that effort, but I give her due credit, because she professionally was able to continue, and even cross examine two clowns, before a very entertained jury; and maintaining her composure, while the rest of us tried hard to be respectful and cover our wry smiles.

With Affection – Judge Elwood Rich

On the wall near the main entryway of the Riverside County Historic Courthouse is a picture of Judge Elwood Rich. Judge Rich was an institution in



the Riverside County Superior Court, conducting numerous settlement conferences and arbitrations over many years, especially after he retired from serving as a Superior Court judge on the civil panel. I became familiar with Judge Rich as a new lawyer, when required to file a writ with the Court of Appeal to overturn his denial of a motion to amend a complaint. I was new. I had just graduated from law school. I took the task seriously, fearful if I lost, it would end my career, so I drafted an 80-page writ. Much to my relief, the appellate court granted the writ, which overturned Judge Rich's denial to amend the complaint.

I don't think anybody in the law firm paid much attention to my brief, because it was a simple auto accident case. But about 10 years later, I found out Judge Rich did. I was assigned a settlement conference with Judge Rich on another auto case. He met with both counsels to begin with, and then when I met with him

alone, he asked me about the 80-page writ filed with the Court of Appeal, and his denial being overturned. He took great pleasure in my discomfort and embarrassment.

In the years which followed, when I had many other settlement conferences with him, and even an arbitration, we would laugh about that brief. As time went on, and he retired with the respect and affection of the local bar, I hold it as a badge of honor that I prepared that extensive brief, not because of the case, but because it allowed me, through his humorous reaction, a more personal relationship with a fine and esteemed jurist.

Boyd Jensen is a member of the Riverside County Bar Association Publications Committee, an Advocate Member of the American Board of Trial Attorneys, and has been rated AV Preeminent for over 35 years.



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Can Death Be Funny? NO, But Probate Can Be

by Jeremiah Raxter

Are you ready to embark on a thrilling journey through the land of legal labyrinths and last wills? Hold onto your gavel, folks, because we're diving headfirst into the world of probate law!

Picture this: you're sipping your morning coffee, minding your own business, when suddenly, Aunt Mildred's cat, Mr. Whiskers inherits the family fortune. Yes, you heard that right. In the whimsical realm of probate law, anything is possible, and sometimes the family pet gets a bigger slice of the pie than dear old cousin Bob. To be honest, sometimes the cat deserves it more than cousin Bob.

But fear not, intrepid reader, for we are about to embark on a quest to demystify the area of law known as probate.

To begin, let's delve into the realm of wills. Ah, the bedrock of turmoil in the probate cosmos. Consider the case of poet Heinrich Heine, whose testamentary will became a legendary tale. He pledged to bequeath all his possessions to his widowed wife with a peculiar stipulation: she must remarry. While this might seem like a whimsical nudge to encourage his widow to seek companionship, the truth was far from romantic. Given his wife's reputation for being dull and excessively vain, Heine slyly remarked that if she were to remarry, "there will be at least one man who will regret my death."

Some estate plans are downright hilarious. Take the case of Charles Vance Miller, a prominent Canadian attorney who passed away in 1926. As a childless bachelor with a penchant for pranks, Miller's last will reflected his quirky sense of humor. In a masterstroke of mischief, Miller aimed to have the last laugh among his legal cohorts. He divvied up his Jamaican timeshare among three attorneys who shared a mutual distaste for each other. Valuable Ontario Jockey Club shares were bequeathed to men who had been vocally opposed to racetrack betting. Catholic brewery shares were given to anti-drink Protestant ministers.

Taking jabs in wills is nothing new. The fifth Earl of Pembroke used his 17th-century will to take a sly jab at Cromwell. The will provided, "I give to the Lieutenant-General Cromwell one of my words ... which he must want, seeing as he hath never kept one of his own." – Philip, fifth Earl of Pembroke.

Coming full circle, do you think you're a hardcore Frisbee fan? "Steady" Ed Headrick, the inventor who not only perfected the Frisbee, but also chose to become one. Headrick used his will to request that his ashes be placed inside a limited run of Frisbees for friends and relatives.

He was quoted to say "When we die, we don't go to Purgatory. We just land up on the roof and lay there." – Ed Headrick. The will states that any left-over memorial Frisbees be sold to raise funds for a Frisbee museum.

The only things guaranteed in life are taxes and death. Probate by design is filled with both. In 1966, Fredric Baur

invented an innovative way for the manufacturing company Procter & Gamble to stack chips aka the Pringles can, rather than tossing them in a chip bag. He was so proud of the achievement, he understandably wanted to go to his grave with it. So, when Baur passed away in 2008 at the age of 89, his children buried his ashes in one of the iconic cans. Honestly, good on him, and very environmentally conscious.

But wait, there's more! Probate court isn't just about divvying up possessions like a bizarre game of Monopoly. It's also the stage for family feuds that would make the Kardashians blush. From long-lost relatives crawling out of the woodwork to stake their claim on a relative's estate or siblings squabbling over who gets the family portrait (spoiler alert: it's usually neither of them), probate court is the ultimate showdown of familial folly. Estates have been known to be open for years fighting over flea market glass statues. In Latin, "sentimental value" translates to "aureum pretium pro advocatorum stipendiis" which translates to "golden price for attorney fees." It's a playful but true interpretation of "sentimental value equals lots of attorney fees" in Latin.

Probate may start with a will, but ends ultimately with a burial.

Sandra West, a California socialite, and heiress to an oil fortune, passed away at the young age of 37. In her will, she stipulated an unusual request: to be buried "in my lace nightgown ... in my Ferrari, with the seat slanted comfortably." Honoring her wishes, her family laid her to rest in her powder-blue 1964 Ferrari 330 America. To safeguard against theft, they encased the car in cement. It turned out to be a wise decision, as pristine models of the 330 America from that era can now fetch prices well exceeding \$300,000.

And finally, it's hardly shocking to discover that Gene Roddenberry, the creator of *Star Trek*, held a profound fascination for space. Roddenberry made history as the first individual to have his cremated remains sent into space! Now that's the very legal definition of an out-of-this-world departure.

While death itself is no laughing matter, probate and final wishes can often carry a touch of humor. It's the final opportunity for individuals to see their eccentric or witty requests fulfilled, ensuring their unique desires are honored, even if they raise an eyebrow or elicit a chuckle.

Jeremiah Raxter is principal attorney with RAXTER LAW, P.A., practicing in all areas of probate and probate litigation, and is the co-chair of the RCBA Estate Planning, Probate and Elder Law Section.



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Judge Lucky is a passionate technologist who has built and programmed computers for decades. He has been an instructor for multiple organizations on virtual ADR. He is sought after to teach lawyers and judges throughout the state of California due to his ability to explain complex legal and technical topics in plain language.

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Humor*

by Honorable Scott C. Clarkson

Your sense of humor is a very strong tool in the judging world. Weird, funny, ironic, stupid, or crazy things will arrive like clockwork each workday, whether in pleadings, oral arguments, or internal courtroom procedures and requirements – and of course, there is the General Services Administration.¹

Judges have all types of ways to express their humor; in court, it's best to maintain a dryness with a dab of irony.² It's a terrific way to de-escalate a tense moment. Don't expect counsels and parties to get your humor, or to express that they get it, and certainly don't confuse courtesy laughs for true appreciation of attempted humor. Remember, you are never as funny as you think you are.³

- 1 There will come a time when you learn that a plumbing leak behind your chamber's wall, which could be fixed with one visit to Home Depot and \$600, will require a GSA review, estimate and charge to your court of \$16,000.
- 2 Everyone having spent time in my court is rolling their eyes about now. But, as Jules said in Pulp Fiction, "I'm trying, Ringo. I'm trying real hard to be the shepherd." Do as I say, not as I do. I'm not the best example of making humor work.
- 3 The known standard comment about this author is, "He apparently doesn't care that he's not that funny."

The first rule in humor is to never punch down. Certain news media outlets try to work in humor, and they don't understand why it rarely works. That's because most of their "comedy/news analysts" are punching down with an obvious agenda.

Never, ever, use a counsel or their argument as a pivot for a laugh. If it happens, don't wait; apologize immediately. On the other hand, the slight use of pointed irony with respect to an argument is always compelling and a credit to your position as a preeminent jurist.

Honorable Scott C. Clarkson is a judge with the United States Bankruptcy Court, Central District of California..



**Excerpted from 27 Articles for Bankruptcy Judges: A Bankruptcy Judge's Insights on Trying to Get It Right (American Bankruptcy Institute 2024), and reprinted with the permission of the American Bankruptcy Institute (www.abi.org).*

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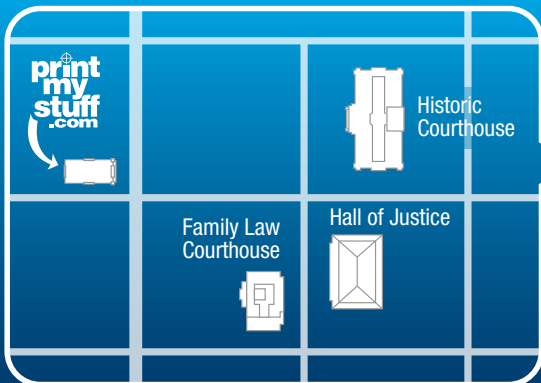
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Crystal Chaidez-Quinones (A) – Gaudy Law Inc, Upland

James B. Creighton – Creighton Law, La Quinta

Berenise V. Lett-Bermudez – Immigrant Defenders Law Center, Los Angeles

Desiree D. Lewis – Gaudy Law Inc, Upland

Justin R. Marlies – Solo Practitioner, La Quinta

Samuel L. Stone – Office of the Public Defender, Riverside

Victoria M. Wyatt – Office of the City Attorney, Riverside

(A) – Designates Affiliate Member



CALENDAR

JUNE

- 10** Roundtable with Judge Hopp
12:15, Zoom
MCLE
- 11** Civil Litigation Section Meeting
Noon, Zoom
Topic: "Lis Pendens Practice"
Speakers: Michael G. Kerbs and Daniel E. Katz
MCLE
- 14** General Membership Meeting
Noon, Zoom
Topic: "A Conversation with the State Bar of California: Get Informed on Hot Topics and Share Your Perspective"
Topics to include: Fee Increase Sought for 2025; Options for Structuring Fee Assessment, Key 2024 Initiatives, Other Areas of Interest- Rule 8.3 Reporting, Client Trust Account Reporting
Speaker: Leah Wilson, Executive Director of the State Bar of California
- 18** Family Law Section Meeting
Noon, RCBA Gabbert Gallery
Program TBA
- 19** Estate Planning, Probate & Elder Law Section Meeting
Noon, RCBA Gabbert Gallery
Speaker and Topic TBA

Events Subject To Change

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

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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.

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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.



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