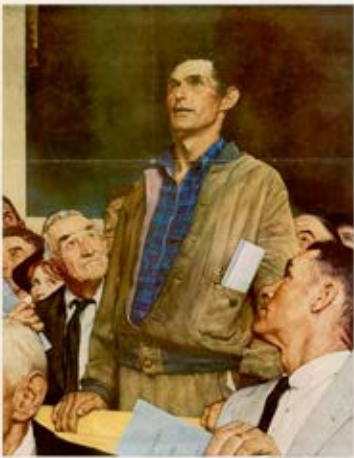


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Ours to Fight For — Freedom of Speech, Freedom of Worship, Freedom from Want, Freedom from Fear

Poster illustrated by four paintings by Norman Rockwell for The Saturday Evening Post magazine's "Four Freedoms" series.

Poster, color, 102 x 73 cm., published by the United States Government Printing Office.

Riverside Lawyer, July/August 2025 1

PRESIDENT'S Message

by Mark A. Easter



So, this is the last column I am writing as RCBA President. When I joined the RCBA Board in 2018, I believed that we had a very special legal community in Riverside County. In my years on the board and then serving as the president the last 20 months or so, I have had the privilege of having that belief confirmed over and over again by observing and working with many of our members serving the legal community and the community at large. And the traits I have repeatedly observed in our members are 1) generosity with their time; 2) concern for the legal community as a whole and not just their individual practices; 3) joy and enthusiasm about serving; and 4) an appreciation for fellowship and collegiality with other members. It is because of this culture that I have encouraged and continue to encourage our younger members to look for places to serve and resist the all-consuming "pull" that the practice of law so often has on practitioners. I would like to take this "final" opportunity to highlight and call out some of our members (and judges) for exhibiting these traits (and I apologize in advance for anyone I overlooked; this is far from a complete list):

- First and making sure I do not ignore what is right under my nose, Jacqueline Carey-Wilson, Melissa Cushman, Abe Feuerstein, and others do an amazing job putting together our monthly magazine. Each month the appearance, format, and content of *Riverside Lawyer* reflects positively on the professionalism of our legal community. Jacqueline also does a great job organizing our annual Reading Day with a local elementary school.
- The RCBA benefits from all of the attorneys who serve and have served as chairs of our various RCBA sections. In particular, this year I appreciated the efforts of Jeremiah Raxter with our probate and estate planning section. Jeremiah

showed great enthusiasm for promoting that section and making sure that its meetings were both well attended and meaningful. Jeremiah has since been appointed Commissioner. Congratulations, Jeremiah!

- Each month the RCBA Civil Litigation Section holds a lunch hour civil litigation roundtable, giving local litigators an opportunity to hear from one of our civil judges on the litigation process, and ask questions. Judge Craig Riemer (Ret.) started this program, and upon his retirement, Judge Harold Hopp took over these sessions. They have generously and enthusiastically given their time to this program, and have been a very valuable resource to our local litigators.
- RCBA has a judicial evaluation committee, which meets and evaluates applicants for our local superior court and court of appeal. Paul Grech does a tremendous job chairing that committee. He and the other committee members take the time to seek the input of other members of our bar on judicial applicants, and I've been very impressed with the concern that they show for the quality of our local bench and making sure that our applicants are fairly and accurately assessed.
- I really appreciate Chris Jensen's dry and honest sense of humor, but also, his interest and enthusiasm for the history of the RCBA and our legal community, and his efforts to ensure the ongoing success of our county's Dispute Resolution Service.
- I have had the opportunity to observe the New Attorney Academy in session and participate in several New Attorney Academy graduations. This is a tremendous program, and I encourage any of our newer attorneys to sign up for it. Robyn Lewis, Greg Rizio and I'm sure others do a tremendous job organizing and presenting this program.
- For years, Melissa Moore, and John Wahlin before her, have faithfully and fairly chaired the Steering Committee for the Riverside County Mock Trial Competition. Having served on the Steering Committee, I know that doing so can be stressful, unseen, and underappreciated. But their service has been vital to the tremendous success of our county competition, which is recognized on a statewide and even nationwide basis. Likewise, our local attorneys and judges, including but not limited to Judge Jack Lucky (Ret.), Judge Eric Keen, Commissioner Kelly Moran, Josh Hanks, Carlos Monagas, Yoginee Braslaw, Ben Hampton, Goushia Farook, and (my "teammate" for years) Victor Wolf, have served as attorney coaches, and have done so with great joy, intensity, dedication, good sportsmanship, and love for their students.
- The Project Graduate program provides a tremendous opportunity to foster youth who are not living in homes, perhaps one of the neediest and most overlooked "people groups" in our county. Alexandra Fong has demonstrated her passion for that program, organizing fundrais-

ers and a graduation program every year. Luis Lopez, Commissioner Malvina Ovanetzova, Alex Barraza and others have also faithfully served as student mentors.

- Our Elves program, which takes place every December, has been a tremendous blessing to hundreds and hundreds of underprivileged families throughout our county. Each year dozens of members of our legal community, along with their families, serve as shopping elves, wrapping elves, delivery elves, and/or money elves, and I applaud you! But the continued success of that program would not have been remotely possible without the hard work and dedication of Elf in Chief Brian Pearcy.
- As president, I have now had the opportunity to attend two RCBA Past Presidents dinners. I have really enjoyed these events, especially this past year, which was one of my first nights out after getting home from the hospital in April. Judge Sophia Choi and Robyn Lewis are the enthusiastic organizers and "hosts" of these dinners. Thank you!
- And I of course have been very blessed to have some outstanding officers and board members assist me and cover for me in the last two years: Megan Demshki, Lori Myers, Elisabeth Lord, Goushia Farook, Malvina Ovanetzova, Alex Barraza, Summer DeVore, David Rivera, Heather Green, Lauren Vogt, Chris Johnson, Erica Alfaro,

and Christopher Jensen. Special shout out to Lori Myers, who after serving in all of the RCBA officer's positions, including president-elect and president, is about to complete her second full year as past president. Our Board meetings won't be the same without her wise, direct, and spirited observations.

- Finally, I am very thankful for all of the help I have received from Charlene Nelson, Lisa Yang, and the rest of the RCBA staff. You have not only been very capable, but always kind, positive, and very helpful. The lawyers in our community are very fortunate to have your support. I know because there was no greater partaker of that support in the past year than myself.

I look forward to more opportunities to interact, circulate, and collaborate with my fellow Riverside lawyers in the months and years to come, and I am grateful to God for preserving my life this past year so that I could be around to do so.

Our installation dinner for incoming President Megan Demshki will be on Thursday, September 11, 2025, at the Mission Inn. Please put that date on your calendar and plan on joining us. In the meantime, have a great rest of your summer!

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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BARRISTERS

President's Message

by Summer M. DeVore



I always knew I wanted to be involved with Barristers, but I did not anticipate just how incredibly rewarding the experience would be. Through this organization, I had the privilege of working alongside exceptionally talented peers and forming lasting friendships. I am deeply grateful for all the opportunities Barristers and the RCBA have provided and for the impact it has had on both my professional and personal growth. Serving as president of the Barristers Board for the 2024–2025 term has truly been an honor.

Thank you, Thank you, Thank you!

As my tenure as Barristers President draws to a close, I want to take a moment to express my heartfelt thanks to everyone who made an impact and contributed to the success of Barristers this term.

To the 2024-2025 Barristers Board – Your dedication, leadership, collaboration, and continued passion for supporting our legal community made this a truly remarkable term. I am extremely proud of what we have accomplished this term, and I have all of you to thank for it, including: President-Elect Sharon P. Ramirez, Treasurer Kevin E. Collins, Secretary Nolan B. Kistler, Members-at-Large Henry Andriano, Derek Diemer, Ellen Peng, Amanda K. Perez, and John (“Jack”) Rafter, and Past President David P. Rivera.

To our **Members** – Whether you attended events, shared ideas, volunteered your time, or simply connected with fellow members, your involvement and energy are the foundation of Barristers and its success. The Barristers Board and I sincerely appreciate your participation and commitment to advancing Barristers’ mission and strengthening our community. A special thank you also goes to our **legal community** for its continued support of Barristers!

To our **Sponsors** – On behalf of the Barristers Board, thank you for your continued support of Barristers! Your generosity played

a vital role in helping us carry out our mission and host successful events throughout the 2024-2025 term. Barristers’ 2024-2025 sponsors include:

- Platinum Sponsors – Law Office of Kenny S. Ramirez; and Stream Kim Hicks Wrage & Alfaro, PC
- Gold Sponsors – Comprehensive Brain Injury Medical Experts; HCN Bank; Law Offices of Harlan B. Kistler; Thompson & Colegate, LLP; and Varner & Brandt, LLP
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- Bronze Sponsors – Best Best & Krieger, LLP; Event Services; and Focus Litigation Solutions

Congratulations to the 2025-2026 Barristers Board!

I would like to congratulate our incoming 2025-2026 Barristers Board, including: President **Sharon P. Ramirez**, President-Elect **Nolan B. Kistler**, Treasurer **Kevin E. Collins**, Secretary **Henry Andriano**, and Members-at-Large, **Derek Diemer**, **Faran Imani**, **Amanda K. Perez**, **Sara Truitt**, and **Elia Vazquez**. I have no doubt that Barristers will continue to thrive under Sharon’s leadership. I look forward to seeing everything this group of talented and dedicated young professionals has in store for next term.

Final Events of the 2024-2025 Term!

- Barristers “Happy Hour” Mixer: Friday, August 1, beginning at 4:30 p.m., at ProAbition located at 3597 Main St, Riverside, CA 92501.
- CLE re Civility: Thursday, August 21, 2025. Networking: 5:30 p.m.; CLE: 6:00 p.m.–7:00 p.m. For more details and to register, please visit: <https://Barristers-CLE-2025.eventbrite.com>.

Stay up to date by following us!

For additional information about our upcoming events and updates, please visit Barristers:

Facebook: <https://www.facebook.com/RCBABarristers/>

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Website: <https://rcbabarristers.wixsite.com/rcba-barristers>

Summer M. DeVore is an attorney with Stream Kim Hicks Wrage & Alfaro, PC in downtown Riverside where she specializes in business litigation. She is also a member of the Leo A. Deegan Inn of Court. Summer can be reached at summer.devore@streamkim.com.



What is the Alien Registration Requirement?

by J.J. Despain

In this new era of immigration law, the current administration has relied on an 85-year-old law to more closely track aliens in this country. The Alien Registration Requirement (ARR) was first codified in the 1940 Alien Registration Act and is part of the Immigration and Nationality Act (INA sections 262 and 266). Though long overlooked, the ARR has reemerged as a tool for immigration enforcement—which means real consequences for noncitizens today.

What Is the Alien Registration Requirement?

Under INA section 262, any noncitizen in the United States who is age 14 or older and has been present in the country for more than 30 days—and who has not already been registered or fingerprinted—is required to register with the Department of Homeland Security (DHS). For children under 14, the obligation falls on the parent or guardian to register the child. The Secretary of Homeland Security (formerly the Attorney General) has the authority to waive this requirement in certain circumstances.

Failure to register is not just an administrative oversight. Willfully refusing or failing to comply constitutes a federal misdemeanor, punishable by a fine of up to \$1,000, imprisonment for up to six months, and potential removal from the United States.

The ARR is closely connected to another provision: INA section 264(e). This statute requires all noncitizens over age 18 to carry their registration documentation with them at all times. Failure to do so is also a misdemeanor—punishable by a fine of up to \$100 and up to 30 days in jail.

While unlawful presence in the United States is not itself a crime under federal law, the failure to register or carry registration documents can be. Immigration law expert Ira J. Kurzban notes that DHS agents have historically used these provisions as a pretext to arrest individuals who lack documentation on their person, even when no other immigration violation is readily apparent.

What Counts as Registration?

Many noncitizens who are concerned about this requirement may have already fulfilled it. Under 8 CFR section 264.1, a variety of documents may qualify as evidence of registration, including:

- Form I-94 (nonimmigrant arrival/departure record)—This record is usually electronic, and replaces the passport entry stamps
- Border crossing cards (I-185 or I-186)
- Notices to Appear (I-862)

- Warrants for Arrest of Alien (I-221S)
- Orders to Show Cause (I-221)
- “Green cards” (I-551)
- Employment Authorization Documents (I-766 or “work permits”)
- Parole notices under INA section 212(d)(5)

This covers most individuals who entered the U.S. with a visa at any point, who ever applied for a work permit or a green card, and who were ever placed in removal proceedings. The individuals who entered the U.S. without inspection or admission, and have not applied for an immigration benefit before, are the ones who most likely are not registered.

Enforcement and Evolving Policy

One of the Trump administration's first executive orders instructed DHS to enforce INA section 262 more proactively. The order acknowledged that the ARR was not in regular use, and noncitizens in the U.S. lacked a direct method to register, prompting U.S. Citizenship and Immigration Services (USCIS) to develop a new registration form and process. To accomplish its task, USCIS created the G-325R form, which has no filing fee, and it is only filed online. USCIS has also encouraged individuals to create online accounts to register.

Importantly, USCIS has clarified that registration is *not* an immigration status, nor does it confer any benefit, protection, or employment authorization under the INA.

Is the ARR Constitutional?

The federal government has always had broad power over immigration and naturalization, under Article I, Section 8 of the U.S. Constitution. The authority to create systems for identifying, registering, and monitoring noncitizens has generally been permitted by the U.S. Supreme Court. In *Hines v. Davidowitz*, 312 U.S. 52 (1941), the Supreme Court invalidated a Pennsylvania state requirement for aliens to register, not because it was deemed unconstitutional but because Congress had that power exclusively.

However, regardless of one's immigration status, there is a constitutional, baseline right of protection against unreasonable searches and seizures, and right against self-incrimination. For example, citizens and noncitizens alike do not have to open their homes to law enforcement officers who do not have warrants. But at the same time, obligations for noncitizens, such as registration, have been largely upheld under the plenary power doctrine, especially when balanced against the

government's interest in national security and monitoring potential threats within our borders.

Conclusion

While alien registration may seem like a relic of the past, it has returned full force as part of today's immigration enforcement landscape. In an era of heightened scrutiny and evolving policy, attorneys should be on the alert of its potential implications.

J.J. Despain is a managing attorney in Boise, Idaho, for Wilner & O'Reilly Immigration Attorneys. He is admitted to the Colorado State Bar and practices mostly family-based and employment-based immigration law. He currently serves as vice president in the Idaho chapter of the American Immigration Lawyers Association. He has participated in events at community centers in Utah and Idaho, and has been interviewed by various media including KTVB, Idaho 6 News, and the Idaho Statesman newspaper in Boise.



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Inland Empire Bankruptcy Forum

by Michael Gouveia

The Inland Empire Bankruptcy Forum (IEBF)¹ is a local organization devoted to all things bankruptcy in the Inland Empire. It was started over thirty years ago to bring together all the stakeholders in the local bankruptcy process.

Judge Meredith Jury (Ret.) remembers that San Bernardino Bankruptcy Trustee and attorney Norman Hanover was the driving force and the first president. In addition, those involved in forming the IEBF were Mark Schnitzer, Bill Simon, Arturo Cisneros, Pat Zimmerman, Judge Riddle, Frank Adams and others.

As a new bankruptcy lawyer in the 1990's, I remember going to the Arrowhead Country Club in San Bernardino for monthly educational meetings. Most of the time, I did not know what they were talking about but it was a way to meet the lawyers, trustees, and judges in the local area.

Current IEBF president, Tinho Mang of Marshack Hays Wood LLP stated, "I became interested in the Inland Empire Bankruptcy Forum because of the consistent, high-quality educational content produced by the organization. Every year, the IEBF puts on two marquee events with all of the judges in the Riverside bankruptcy court, and the IEBF serves as an important bridge between the bankruptcy court and the local community, consisting not just of lawyers, but also accountants, trustees, fiduciaries, and governmental representatives who all participate in the bankruptcy practice."

The local organization is part of the California Bankruptcy Forum which has seven sections throughout the State. The IEBF has several educational zoom meetings or in person meetings each year. This year's meetings included the annual "Bankruptcy Judges Night" in February, "Fair Debt Collection Practices Act" with Anthony Diehl, Esq., "Tax Practice in Bankruptcy" with California Certified Bankruptcy Specialist Jenny Doling, and "Alternative Dispute Resolution" with Orange County Trustee Richard Marshack and Judge Mitchell R. Goldberg (Ret.).

Our local bankruptcy bar organization builds members' knowledge and allows them to connect with other practitioners.

Attorney Shalah Fisher of New Tomorrow Law stated, "The Inland Empire Bankruptcy Forum is an invaluable resource to our local bankruptcy bar. This organization helped me integrate into the bankruptcy community when I was a newer practitioner, allowing me to network with more experienced attorneys and meet our local trustees and judges. My involvement on the board of the IEBF has not only resulted in the culmination of fantastic mentors but

has allowed me to contribute to our legal community in a meaningful way."

Another function of the IEBF is to spread information about the local bankruptcy community.

Happenings this Year:

Riverside Division Bankruptcy Judge Retires

Judge Wayne E. Johnson (Ret.) retired in February 2025 after serving 14 years on the bench. Beginning in the fall of 2025, Judge Johnson will be teaching several courses at Regent University's School of Law in Virginia Beach, Virginia.

New Judge Positions Available in the Inland Empire

There will be two judicial positions in the Riverside Division of the Central District of California. In addition to the retirement of Judge Johnson, in the next year, Judge Mark Houle will transition from the Riverside Division to the Santa Ana Division. The application process closed on June 26, 2025, and the two positions should be filled by early 2026.

Bankruptcy Filings Increase

There was over a 20 percent increase in bankruptcy filings this year. According to the Central District of California's Court News, the Riverside Division had 2081 total cases filed from January 1, 2025 until March 31, 2025. There were 1,744 chapter 7 cases and 324 chapter 13 cases filed. This represented a 21.20 percent increase in filings from the previous YTD.

Upcoming Events

On July 16, 2025, the IEBF holds another Bankruptcy Office Hours—Lunchtime Edition webinar. These free lunchtime events are sponsored by the IEBF to foster community among the stakeholders just like the organization's founders intended. This July's program is "Avoiding Bankruptcy Malpractice" with bankruptcy attorney Anerio Altman and Charles Daff, chapter 7 trustee in the Riverside Division.

On October 25, 2025, the IEBF will hold its signature event, the 31st Annual Consumer Survey in which our local bankruptcy judges speak on the key bankruptcy cases that have occurred in the past year. This event was started by Judge David Naugle (Ret.) in 1994. Brandon Iskander of Goe Forsythe & Hodges LLP will moderate this event, and Judges Mark Houle, Scott Yun, and Magdalena Reyes Bordeaux will hold court at the Riverside County Bar Association's Gabbert Gallery.

If you want to learn about bankruptcy law as it is practiced in the Inland Empire and about upcoming events, please contact us at IEBF.org.

Michael Gouveia is the IEBF's Program Chair and a local bankruptcy lawyer helping families in financial crisis.



¹ Membership in the IEBF is open to all at \$95.00 per person (pro-rated to \$50 after July 1). For more information visit www.IEBF.org.



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Federal Bar Association, Inland Empire Chapter

by Mitchell Suliman

On behalf of the Inland Empire ("IE") chapter of the Federal Bar Association ("FBA"), I welcome you to join! The fundamental goal of our chapter is to serve the IE legal community. The FBA/IE's chapter and corresponding legal community covers matters arising from the two geographically largest counties in the Central District of California – Riverside and San Bernardino counties. These Inland Empire counties cover approximately two-thirds of the District's land area. Historically, the Inland Empire has one of the fastest growing populations, with a current population of over 4.4 million residents. To best serve our growing and vast community, engagement is absolutely necessary.

While the FBA has approximately 100 chapters throughout the country, the FBA/IE chapter encourages membership for any practicing attorney who resides in or primarily practices in Riverside or San Bernardino County. The FBA/IE chapter is committed to supporting the federal bench, the bar, and the greater IE community. In addition to outstanding programming, our chapter serves as a bridge between the bench and the bar on important issues to the IE. The Inland Empire federal bench is composed of three United States District Judges (Honorable Jesus G. Bernal, Honorable Kenly Kiya Kato, and Honorable Sunshine S. Sykes) and three United States Magistrate Judges (Honorable David T. Bristow, Honorable Shashi H. Kewalramani, and Honorable Sheri Pym). All of the Inland Empire federal judges are honorary and active members of the FBA/IE chapter, with the Honorable David T. Bristow currently serving as the chapter's president. The chapter is also composed of several civil and criminal practitioners representing plaintiffs and defendants, and federal, state, and local agencies. The range of practice represented on our current Board and chapter is quite diverse and touches on many matters impacting the Inland Empire.

There are many valuable benefits to joining the FBA/IE chapter to include developing a professional network with the federal judiciary and local practitioners, obtaining significant CLE credit, engaging in legislative issues at the local, state, and national level, and serving in leadership opportunities within our local practice. The chapter encourages both senior and junior practitioners, alike, to join! Additionally, the chapter highly encourages local law students to join! If my simple encouragement is not enough, FBA/IE membership fees are waived for current law students – it's free! During the next academic year, the chapter will also solicit scholarship applications from local law schools and award a \$1,000 scholarship to a deserving law student.

Looking ahead, the FBA/IE chapter has several exciting events planned for this year. In addition to different MCLE

lunchtime programs we will host at the George E. Brown, Jr. Federal Courthouse, I would like to highlight two of the larger events we are organizing:

- The Dean Chemerinsky Constitutional Law Forum and Judges' Night. On July 28, 2025, Erwin Chemerinsky, Dean and Jesse H. Choper Distinguished Professor of Law at the University of California, Berkeley School of Law, will present at the FBA/IE's 24th Annual Constitutional Law Forum at the Riverside Convention Center. Dean Chemerinsky will lecture on the recent Supreme Court term, providing an invaluable opportunity for practitioners to stay up to date on Supreme Court precedent. Additionally, our chapter will present the 2025 Erwin Chemerinsky Defender of the Constitution Award to a nominated individual whose work clearly reflects his or her sworn commitment to support and defend the Constitution.
- Later this year, our chapter will host its annual Judges' Night at the Mission Inn. This annual dinner serves to honor the judges of the Central District of California. The dinner will feature a keynote speaker and the State of the District Court address by the Chief District Court Judge. In 2025, Loyola Law School Professor Laurie L. Levenson delivered a timely, relevant and moving address to the audience. In 2024, the chapter honored the Honorable Virginia Phillips, a foundational and instrumental member of our chapter and the Inland Empire legal community. If it's anything like the last couple of years, this year's event promises to be a great one and worthy of attendance.

On behalf of the FBA/IE board of directors, I invite you to join our organization! If you are not sure about joining, I encourage you to attend one of our programs, which are all open to nonmembers. I believe you will see the value of becoming a member of our chapter. Joining is an easy way to get plugged in, joining presents a pathway to future leadership opportunities on the Board, and joining further promotes a dynamic and well-connected legal community in the Inland Empire. Please do consider joining, and we hope to see you at one of our upcoming events!

Mitchell Suliman is an Assistant United States Attorney and is the president-elect of the Federal Bar Association, Inland Empire Chapter.



Protecting Indian Children in Custody Proceedings

by Jack Osborn

Congress passed the Indian Child Welfare Act (ICWA) in 1978 to protect the interests of Indian children and to promote the stability and security of tribes and families. The legislation was the result of a long history of removing Native American children from their families and placement with non-Native American families or schools for the purpose of assimilating the children into mainstream culture. While the historical practices may have been well intentioned, the result was several generations of Indian children lost their identities. ICWA establishes specific procedural and substantive standards that must be met before an Indian child may be removed from his or her family and placed in an adoptive, foster, or guardianship family.

ICWA provides a system of dual state and tribal jurisdiction over Indian child custody proceedings. Tribes have the right to notice; right to intervene; right to request placement consistent with tribal preferences; right to transfer a case to Tribal Court; and, the right to petition to invalidate any proceedings that do not comply with ICWA. Each of these provisions are codified in California Probate Code section 1459.5(b), California Rules of Court rule 7.1015, and the California Welfare and Institutions Code. A primary goal of ICWA is to favor placement of an Indian child in a situation that will maintain the minor's Indian heritage.

To protect Indian children in a custody dispute in court, there is an express duty to investigate whether the minor is an Indian child. The duty lies with the court, social services, probate or family court investigators, the petitioners, parents, and court appointed counsel. Once a child is identified as Native American, in addition to heightened notice requirements to the Tribe and specific rights retained by the Tribe, there are also additional rights granted to the parents of an Indian Child. The parents are entitled to court appointed counsel, and the parents can also appoint an Indian Custodian or "informal" guardian that is afforded the same statutory rights and privileges as a parent in an ICWA probate proceeding.

The implementation and enforcement of ICWA has not been without controversy. In *Haaland v. Brackeen* (599 U.S. 255 (2023)), the U.S. Supreme consolidated three challenges to ICWA including *Cherokee Nation v. Brackeen*, *Texas v. Haaland*, and *Brackeen v. Haaland*. Each of these cases involve placement or adoption by non-Native American families of Indian children where the biological parents had been found unfit in the face of objections by tribes that placement should be with Native American members.

While in each case the parties argued that that placement with wealthier non-Native American families would be better for the children, the legal challenge was based on racial discrimination, equal protection, and an argument that the enactment of ICWA exceeded the power of Congress. In 2018, the United States District Court for the Northern District of Texas ruled that ICWA was unconstitutional. The Court issued an order finding that ICWA violated equal protection; violated the non-delegation doctrine; and, violated the Tenth Amendment in that it requires states to apply federal standards to state-created claims.

After a mixed decision by the Fifth Circuit Court, the Supreme Court in *Brackeen* weighed in and upheld ICWA in its entirety. In an opinion written by Justice Amy Coney Barrett released on June 15, 2023, the Court explicitly rejected the claim that provision of ICWA exceed the power of Congress, but did not consider the equal protections claim. While the opinion included a lengthy history of the mistreatment of Native American children in the United States, the court left open the door for a future challenge based on equal protection.

Despite an unambiguous ruling upholding ICWA by the United States Supreme Court, there is still inconsistent enforcement of ICWA in the United States. In California, over half of Native American youth in foster care end up in non-relative and non-Native American households. A recent California Supreme Court opined that a fundamental problem in enforcing ICWA is there are inadequate inquiries into whether a child is an Indian child. In *re Dezi C*, 16 Cal.5th 1112 (2024), the Court held that child welfare agencies must investigate whether children have Native American ancestry before placing them in foster care. The case was based on a dispute on whether inquiry of only the parents regarding Indian heritage was sufficient. The Court noted that Welfare and Institutions Code section 224.2 must include an inquiry of "A person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child's extended family....," and "an inadequate Cal-ICWA inquiry requires conditional reversal." While the statute seems to be unambiguous regarding what inquiry is required, when foster care is not at issue, in a different case, *In re Ja*, 091 Cal.App.5th (2024), the court held that when minors are removed pursuant to a detention warrant, inquiry to extended family is not necessary in every case. Consequently, it remains unclear of what constitutes adequate inquiry.

Tribes in California do not approach custody proceedings in the same way. In the Inland Empire, Tribes such as Pechanga, Pala, Agua Caliente, and Yuhaaviatam of San Manuel Nation are unique with their own tribal courts dealing with custody. Other tribes rely on state court, but intervention to protect the rights of the Tribe can be infrequent. Assemblymember James Ramos, a member of the San Manuel Nation sponsored Assembly Bill 81. Signed into law in September 2024, the statute codifies ICWA into California law and makes applicability to any child custody proceeding including adoptions, dependency (including termination of parental rights), voluntary relinquishment of a child by a parent, and guardianship proceedings. Additionally, now there is a movement among tribes to uniformly collect data regarding ICWA inquiries, response by tribes, and effectiveness of ensuring placement is protecting the interest of Native American children.

While Tribes in California and throughout the United States are working to strengthen adherence to the requirements of ICWA, additional equal protection challenges to ICWA are likely. A popular sentiment is that we need to move away from any race-based legislation or policy by the government. However, a compelling argument is equal protection analysis does not apply – ICWA does not classify Indian children on the basis of race, but instead

on a well-established principal that laws affecting Indian affairs are based on political affiliation or political status. The reasoning is the United States through its treaties with tribes has a duty to protect the sovereignty and stability of tribes as separate political entities (*Board of Cnty. Comm'rs v. Seber* 218 U.S. 705, 715 (1943)). Accordingly, ICWA is simply a tool to ensure that tribes can protect their children based on their political status.

According to the 2023 census, California has 445,219 tribal members in approximately 110 federally recognized tribes, with an additionally 81 groups seeking recognition. How we treat Native American children and whether we uphold their right to maintain their cultural heritage has been upheld by the U.S. Supreme Court in *Haaland*, but there is still a long road ahead to ensure all Indian children receive the protection of ICWA by California's Tribes, counties, and the State of California.

Jack B. Osborn is a Partner with Brown White & Osborn LLP and is a Certified Specialist in Estate Planning, Trust and Probate Law. He is admitted to practice before Tribal Courts at Pechanga, Pala, and Agua Caliente Band of Cahuilla Indians.



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Norman Rockwell: Painting *The Four Freedoms*

by Abram S. Feuerstein

Arriving by private jet, the celebrities descended on Norman Rockwell's Stockbridge, Massachusetts art studio to have their portraits painted by "America's artist."

The year was 1972 and by then, Rockwell, who was in his late 70s, had begun to suffer with dementia.¹ The memory lapses may have prevented Rockwell from painting more complex works, but a head and shoulders portrait – that was still easy peasy. First up, headline-making golf pro Arnold Palmer.² Then came Frank Sinatra, who upon learning that Rockwell had agreed to paint his portrait, wrote, elatedly: "I felt like I was dipped in gin."³ John Wayne also arrived, cowboy hat on head and gun on belt, to be painted by Rockwell around the same time that Rockwell portrayed Colonel Sanders wearing his famous white suit.⁴

True, these commissions were not equivalent to his presidential portraits of Eisenhower, Kennedy, Nixon, or LBJ. Nor would they be reprinted and boxed up with works by Grandma Moses⁵ to be sold as a Hallmark greeting card set like some of his earlier work. And unlike his best work, they certainly would never become ingrained into America's image of itself. But Rockwell – a relatively modest man –



Photo of Norman Rockwell in his late 20s.
Source: Library of Congress

nonetheless enjoyed the recognition and the opportunity to work, as well as a decent pay day.⁶

Rockwell had been a "working" artist his entire adult life, with an output of more than 4000 works. He enjoyed early success. Born in 1894 and raised in a lower middle-class family in New York City, he showed an early interest/talent in art, which his parents encouraged.⁷ The family moved to a Westchester suburb when Rockwell was a teenager, but his parents allowed him to attend classes once a week at the New York School of Art.⁸ Later, when he dropped out of high school in 1911, he used money from part-time jobs and signed up for classes at the well-regarded Art Students League in mid-town Manhattan. There, he could work with life models and hone his

craftsmanship.

Rockwell's art heroes were illustrators like Howard Pyle, who painted swashbuckling pirates, or Frederick Remington, who brought the American Wild West to life.⁹ Realist artists who created imaginary characters – a surrealism of sorts. Then there was J.C. Leyendecker, a name mostly forgotten today but whose commercial illustrations made the Arrow Shirt Collar Man famous.¹⁰ The Golden Age of Illustration had not yet ended, and Rockwell realized he could earn his weekly envelope as a part of it. Indeed, he would consider himself an illustrator his whole life and, unlike the N.C. Wyeth art



Early Rockwell Painting; Painting the Little House (1921)

- 1 See Deborah Solomon, *American Mirror: The Life and Art of Norman Rockwell* (Farrar, Straus and Giroux 2013, 496 pp), p. 431 (hereafter, "Solomon"). This article's author, who had little knowledge about Rockwell's life and art prior to reading Solomon's book – one of only a handful of Rockwell biographies – is indebted to Solomon, and she will be cited frequently in this article. One of Solomon's central themes is that Rockwell led a very un-Rockwellian life. Although Solomon shines some light on Rockwell's personal life, Solomon's book is more successful in chronicling Rockwell's career, mostly because Rockwell did not allow others, including his three sons, to get close emotionally to him.
- 2 Solomon, pp. 430-31.
- 3 Solomon, p. 432.
- 4 Solomon, pp. 431-32. According to Solomon, who interviewed the owner of the local Red Lion Inn, Wayne was a "wonderful guest," Colonel Sanders gave out KFC gift certificates to the kids he encountered, and Sinatra, who was "awful," arrived in town "in a long black limousine, spent twenty minutes over at Norman Rockwell's posing for pictures, and left."
- 5 Grandma Moses (Anna Mary Robertson Moses) (1860-1961) was an American naïve or folk artist who gained notoriety in the 1950s when at age 78 she began painting her snowy farm scenes. Rockwell and Moses became great friends after Joyce C. Hall, the founder of the Kansas City-based Hallmark Cards, introduced them to each other. Hall would feature the two artists in his upscale "Hallmark Gallery Artists Group." Solomon, pp. 248-250.

- 6 Solomon, p. 430. The starting fee for a Rockwell portrait was \$5,000 – or \$40,000 in today's dollars.
- 7 Apparently, Rockwell would sketch Dickens characters while his father read the novels aloud. Solomon, p. 31.
- 8 Solomon, p. 36.
- 9 Solomon, pp. 32, 39.
- 10 A large collection of Leyendecker's work can be viewed at the Haggin Museum in Stockton, California. Solomon observes that "Rockwell worshiped Leyendecker's (*Saturday Evening Post*) covers and considered him the single best illustrator in the country." Solomon, p. 62.

clan, Rockwell did not mind when others in the art world categorized him as a “mere” illustrator.¹¹

So, by age 19, Rockwell was selling his work to *Boy's Life*, the magazine of the Boy Scouts of America, where he published hundreds of drawings during a three-year stint as a staff artist and then as its art editor.¹² His association with the Boy Scouts would last another 60 years, during which time Rockwell produced more than 50 original illustrations for the Scouts' popular annual calendar.¹³

But Rockwell found national fame with his cover drawings for *The Saturday Evening Post*. Today it is a little hard to imagine, but in 1916 when Rockwell's first cover appeared for *The Saturday Evening Post*, the widely circulated weekly magazine reached approximately 2 million homes.¹⁴ On Thursday (not Saturday) evenings, newsboys around the country would deliver the publication to waiting and eager readers, who paid 5 cents for the magazine (to be split 3 cents to the publisher, 2 cents to the newsboy).¹⁵ The covers were “stand alone” art pieces, disconnected from stories and feature articles within the magazine, echoed faintly today only by *The New Yorker*. Over a period of five decades, incredibly Rockwell would paint 323 *Saturday Evening Post* cover illustrations.¹⁶

Rockwell: A Narrative Painter

Sometimes the subject matter of Rockwell's magazine covers followed the calendar – a Christmas image of a sleeping and snoring Santa Claus with the elves doing all the heavy lifting, a patriotic July 4th picture, or a nonsensical, topsy-turvy April Fools design in which Rockwell even painted his name upside down. But mostly Rockwell painted everyday images that told a seemingly familiar story – two teenagers on a first date sitting at a drug store's soda fountain counter, a circus clown removing his make-up, children sent to the school principal's office after fighting each other, a family camping trip, a hobo hitchhiker.

Rockwell, known as a “narrative” painter, believed deeply that a painting should tell a story and one easily “read” by as many viewers as possible. He once stressed to a group of art students, “(t)he story is the first thing and the last thing.”¹⁷ Rockwell images were folksy, relatable and lightly humored, with a touch of irony here, a study of opposites there, and often peopled by young children getting into mischief or performing adult-like tasks. Dogs, too, frequently made their way onto the canvases (Rockwell was a dog lover). Disease and tragedy never did. Many of the models used by Rockwell

were his neighbors from the small New York, Vermont and Massachusetts towns in which as an adult he resided. He would dress up friends and family in costumes, stage them like a movie director, and surround them with objects he amassed in his studio. A hired photographer would take numerous pictures so that once a modeling session ended Rockwell could consult the photos to capture the exact desired facial gesture or bodily position. Sketches then followed more sketches, and studies until Rockwell, a harsh self-critic, would be satisfied.

The result: even if the characters created by Rockwell never existed except in his own imagination or art studio, people felt like they knew them, or at least understood the scenes and situations into which Rockwell placed them. This certainly was true of the residents of small town, America, but likely struck an emotional chord, too, with urban dwellers yearning for an idealized country life.

The Four Freedoms

Pearl Harbor was nearly a year away and America had not yet entered World War II. Nevertheless, Franklin Roosevelt used his January 1941 State of the Union address to urge Americans to come to Europe's aid through the Lend Lease Act. Towards the end of his 30-minute remarks, Roosevelt attempted to define the ideals he envisioned for the world, stating: “we look forward to a world founded upon four essential human freedoms.” They were: freedom of speech and expression; freedom of every person to worship in his own way; freedom from want; and freedom from fear. To Roosevelt, these principles were not a “vision of a distant millennium,” but a “basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb.”¹⁸

Despite Roosevelt's lofty remarks, the “four freedoms” part of his speech had been a “flop.”¹⁹ It went mostly unnoticed in the press and ignored by the public.²⁰ That remained true even though the four freedoms became a part of The Atlantic Charter, a statement of principles penned by Roosevelt and Winston Churchill at their August 1941 war conference. And despite Roosevelt returning to the theme repeatedly during the next couple of years it still did not gain traction as a rallying cry to mobilize Americans.

For his part, Rockwell – now in his late 40s – after Pearl Harbor hoped his skills as an illustrator might contribute to the war effort. He was assigned with other artists to promote an army war department responsible for distributing weapons.²¹ Billboards around the country soon featured his

11 Solomon, p. 11, noting that in interviews when asked what type of artist he was, Rockwell would insist he was an illustrator. Indeed, Rockwell's 1960 autobiography was subtitled: *My Adventures as an Illustrator*.

12 Solomon, pp. 53–57.

13 Solomon, pp. 56, 229. Solomon notes that in the 1940s, the Boy Scouts calendar, with a Rockwell reproduced painting at its top above tear off monthly pages below, was the nation's bestselling calendar. Solomon, p. 229.

14 The population of the United States in 1916 was approximately 100,000 million, and the estimated number of homes was between 20 and 25 million.

15 Solomon, pp. 70–71.

16 Solomon, p. 7.

17 Solomon, p. 255.

18 See National Archives, *President Franklin Roosevelt's Annual Message (Four Freedoms) to Congress (1941)*, retrieved at <https://www.archives.gov/milestone-documents/president-franklin-roosevelts-annual-message-to-congress>.

19 See James J. Kimble, “Enduring Ideals: Rockwell, Roosevelt & The Four Freedoms: An Introduction,” collected in *Enduring Ideals: Rockwell, Roosevelt & The Four Freedoms* (Norman Rockwell Museum, Abbeville Press) (“Enduring Ideals”), pp. 35–38. The use of the term “flop” was from an internal Office of War Information memorandum. *Id.*

20 *Id.*

21 Solomon, p. 201; *Enduring Ideals*, p. 39.

poster, "Let's Give Him Enough and On Time," in which a helmeted soldier is firing a machine gun while atop his jeep.²²

In mid-1942, Rockwell met with a former Museum of Modern Art administrator who was now part of an agency overseeing war-themed posters. He was told that one of the most urgent needs was to create a group of posters illustrating Roosevelt's four freedoms.²³ Rockwell then puzzled over the words of the four freedoms and the Atlantic Charter. Not only were the concepts abstract and non-visual, but to Rockwell, they were "so darned high blown" that he "just couldn't get (his) mind around (them)."²⁴ So Rockwell was confronted by a problem: how exactly does one go about painting freedom of speech without resorting to yet another image of Uncle Sam or Lady Liberty?²⁵

Rockwell years later discussed generally the difficulty he had as an artist in generating ideas. "I never woke up in the middle of the night and had a whole new idea," he said.²⁶ But that appears to be precisely what happened with the four freedoms. As he often recounted, while at his Arlington, Vermont home he awoke in bed at 3:00 a.m. and suddenly recalled a town meeting he had attended. At the meeting, one of his neighbors, Jim Edgerton, a hard-working farmer, arose to speak against a proposed measure to construct a new school building to replace one that had burned down.²⁷ Rockwell noticed that everyone had been respectful and tolerant of Edgerton notwithstanding their disagreement with him. The measure passed overwhelmingly despite Edgerton's speech. "My gosh. That's it. There it is. Freedom of Speech," Rockwell reportedly thought.²⁸ He could use everyday scenes to illustrate the four freedoms. He then spent the next few days sketching his ideas.²⁹

Rockwell brought his sketches to Washington, but the reactions were discouraging, and the drawings were rejected.³⁰ A bureaucrat even insulted Rockwell, telling him that in "(t)he last war, you illustrators did the posters. This war, we're going to use fine arts men, real artists."³¹ On the way back to Vermont, Rockwell stopped in Philadelphia and met with his editors at *The Saturday Evening Post*. They loved his ideas, believed the paintings once completed could be published as a series with accompanying articles by noted authors, and urged Rockwell to put aside all his other work so that he could devote his time to the project.³² He hoped to finish all four scenes in two months, but Rockwell spent the next seven tackling the paintings, which he considered among the most important work he had ever done.³³

Rockwell did four different versions of *Freedom of Speech* before he was satisfied.³⁴ In the final composition, the speaker, dressed in plain clothes, is standing and towers above a sitting audience comprised mostly of men dressed in suits and ties.³⁵ A booklet containing a meeting agenda and the annual town budget is visible from the speaker's suede jacket pocket. Rockwell has given the speaker a Lincoln-esque physique — albeit with darker skin to convey that the speaker either is an outdoor laborer or possibly an immigrant. Instead of Edgerton, Rockwell used a man named Carl Hess as the model for the speaker.³⁶ Hess, the son of a German immigrant, owned a small gas station in Arlington. He would pose eight separate times for the painting, standing several times at each sitting.³⁷

Everyday scenes also convey the other three freedoms. In *Freedom from Want*, a family is gathered around a Thanksgiving dinner table as the grandparents deliver a big butter of a ball turkey on a large platter to the waiting family members. In *Freedom from Fear*, parents securely tuck into bed their two children even as the father holds a newspaper with a wartime headline about "bombings" and "horrors." The last freedom painting, *Freedom of Worship*, initially started as a scene from a barbershop in which Rockwell portrayed customers of different religious backgrounds.³⁸ He scrapped that and replaced it with a scene depicting close-ups of several individuals of different faiths engaged in prayer. One holds a bible, three hold their hands clasped together and raised towards their chins, and one woman fingers a rosary. At the top of the painting, Rockwell inscribed the words "Each according to the dictates of his own conscience."

The Saturday Evening Post published the Four Freedoms in successive issues in February and March 1943. They were an immediate sensation. Tens of thousands of admiring letters flooded the magazine's offices.³⁹ The Office of War Information agreed to reprint millions of poster images of the Four Freedoms. The Treasury Department saw an opportunity to use the Four Freedoms in its war bond sales campaign. In April 1943 it released to movie theaters everywhere a five-minute newsreel promoting the Four Freedoms and soon organized a "Four Freedoms War Bond Show" that made its way to department stores in America's major cities.⁴⁰ Rockwell's original paintings and other war-related artifacts would travel from city to city. Celebrities would appear at the shows, including the actual models for the

22 Solomon, p. 201.

23 Solomon, p. 201.

24 The comment is from Norman Rockwell's 1960 autobiography, Norman Rockwell: My Adventures as an Illustrator. See <https://www.nyhistory.org/video/norman-rockwells-four-freedoms>.

25 Solomon, p. 202.

26 Solomon, p. 254.

27 Solomon, pp. 207-09; Enduring Ideals, p. 41.

28 Solomon, p. 202.

29 Solomon, p. 202; Enduring Ideals, p. 41.

30 Enduring Ideals, p. 41.

31 Enduring Ideals, p. 41.

32 Enduring Ideals, pp. 42-3; Solomon, p. pp. 204-05.

33 See generally, Alice George, "Norman Rockwell's 'Four Freedoms'"

Brought the Ideals of America to Life," February 23, 2018, *Smithsonian* magazine, retrieved at www.smithsonianmag.com/smithsonian-institution/norman-rockwells-four-freedoms-brought-ideals-america-life-180968033/ ("George, 'Four Freedoms'").

34 Solomon, p. 205.

35 Solomon observes that the near absence of women in the painting can make it look like a meeting of aging male Elks or Rotarians. Solomon, p. 207.

36 Solomon, p. 207.

37 *Id.*

38

39 Solomon, p. 213.

40 Solomon, pp. 214-15.

Rockwell paintings.⁴¹ A million Americans attended the shows and purchased war bonds. In exchange for an \$18.75 bond with a face value of \$25 upon maturity ten years later, the bond purchasers received a free set of the Four Freedoms reprints.⁴² By the end of the tour in mid-1944, the Four Freedoms had racked up \$133 million in bond sales (or \$2.5 billion in 2025 dollars).⁴³

Rockwell created other lasting war-time images, including Rosie the Riveter, who symbolized the millions of women in the workforce on the home front,⁴⁴ and a series of eleven paintings featuring a fictional young "everyman" soldier, Willie Gillis. But it was the Four Freedoms that were omnipresent. The reprints ended up everywhere. Homes, school-rooms, post offices, libraries, firehouses, restaurants. With Rockwell's illustrations, Roosevelt's Four Freedoms finally had become part of the national vocabulary. The paintings had reinforced to everyday Americans why they were fighting as well as the principles upon which the country had been founded.

Post-War

After the war, Rockwell returned to his magazine covers for *The Saturday Evening Post*. He resumed "telling" his painted stories. And, really, there was little detectable change in his work – the characters in his paintings continued to act with basic decency towards each other, and manifested little if any angst and certainly no outward signs of war-induced gloom about the human condition.⁴⁵ As for the Four Freedoms, in 1947-48 the paintings made another trip around the country as part of a Freedom Train in which they were viewed by 3.5 million American in 326 cities.⁴⁶

News events and social trends did influence some of Rockwell's subject matter. In the *New Television Antenna* (1949), old confronts new as a young man installs a TV roof antenna to the delight of an elderly homeowner. But the height of the antenna is taller than the cross atop a nearby church. Ten years later, at a time when several states still excluded women from juries, Rockwell painted *The Jury* (also known as *The Holdout*) in which the lone female juror stands firm while pressured to change her vote by her male counterparts. A decade later, after visiting NASA, Rockwell painted several images related to America's space program.

Rockwell mostly was apolitical with his paint but in the 1960s he turned his attention to social justice issues and created several iconic Civil Rights images. The most famous, *The Problem We All Live With* (1964), which was published as a *Look* magazine centerfold,⁴⁷ depicts faceless federal

marshals escorting six-year-old Ruby Bridges as she walks to an all-white New Orleans public school. Racial epithets are scrawled on the wall behind Ruby Bridges; a tomato thrown against the same wall lies smashed on the ground. The Norman Rockwell Museum⁴⁸ loaned the painting to the White House in 2011 where President Obama had it installed just outside the Oval Office.



President Obama, Ruby Bridges, and representatives of the Norman Rockwell Museum view Rockwell's *The Problem We All Live With*, July 15, 2011. (Official White House Photo by Pete Souza)

Although he appreciated abstract and other modern art movements, in using realist paint to illustrate a story Rockwell was at odds with modernism. Condescending art critics ridiculed Rockwell during his lifetime for a lack of intellectual complexity in his work. To them, staring at a canvas with large floating color blocks was highbrow, while smiling at a painting of children playing marbles was curb level. However, since his death, every so often a Rockwell exhibit tours the country. Large crowds gather, as they always did, for Rockwell's paintings. Begrudgingly, the critics come around, too, realizing that the narrative quality of the paintings, the basic decency they express, and Rockwell's masterful technique have given the work a deserved permanence.

In 2026, the George Lucas Museum of Narrative Art is scheduled to open in Los Angeles. Housed in a spaceship of a building, the museum will highlight how narrative art has shaped societies even as it is a reflective mirror of them.⁴⁹ The museum owns several of Rockwell's finest works, and they will be a centerpiece of the new museum.

Abram S. Feuerstein is employed as a Riverside, California-based government lawyer. The views, if any, expressed herein are solely those of the author.



41 Enduring Ideals, p. 48.

42 Solomon, pp. 213-217; Enduring Ideals, p. 47.

43 Enduring Ideals, p. 49.

44 The original painting of Rosie the Riveter is at the Crystal Bridges Museum of American Art in Bentonville, Arkansas.

45 Of note, Rockwell had frequent bouts of depression and later received treatment from prominent psychiatric professionals at the Austen Riggs Center in Stockbridge, Massachusetts. See Solomon, pp. 5, 280-283.

46 Geroge, "Four Freedoms."

47 In September 1963, annoyed by its editorial policies and the restrictions on his work, the 69-year-old Rockwell ended his four and one-half decade relationship with *The Saturday Evening Post*. He wrote to the Post's editors: "I have come to the conviction that the work I now want to

do no longer fits into the Post's scheme." Solomon, p. 364.

48 The Norman Rockwell Museum, located in Stockbridge, Massachusetts, houses the world's largest collection of Rockwell paintings, drawings, sketches, and autobiographical material. In the late 60s and early 1970s, Rockwell's third wife, Molly, began to contemplate a museum for Rockwell's work. She took an active role and worked with the local historical society to purchase a historic Main Street building as an initial site for a museum. Solomon, pp. 417-18. The museum moved to a new building in 1993, and Rockwell's Stockbridge studio was moved to the new site. See generally, Norman Rockwell Museum, at nrm.org.

49 See generally, <https://www.lucasmuseum.org/>.

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Taking Sides

by Dean Erwin Chemerinsky

At a time when the United States is more ideologically divided than at any time since Reconstruction, what will it mean to have a Supreme Court that has so consistently and solidly come down on one side of that divide? The Court's October Term 2024, which had its last decisions released on Friday, June 27, presented a number of cases to the justices that posed politically controversial issues concerning the actions of President Donald Trump and also the "culture wars." Time and again in these cases, the Court, in 6-3 decisions, came down on the conservative side. Liberals will decry this and conservatives will applaud it, but no one can deny that this was a year of the Supreme Court taking sides.

Perhaps the most important case of the term was a stunning restriction on the power of federal courts to restrain unconstitutional actions by the President and the federal government. In *Trump v. CASA*, the Supreme Court held that no longer can federal courts issue nationwide injunctions to stop unconstitutional presidential actions and federal laws. The case arose in the context of President Trump's Executive Order to largely end birthright citizenship. Three federal district courts declared this unconstitutional and issued nationwide injunctions. Each of the federal courts of appeals affirmed. The Supreme Court did not rule on the constitutionality of

the Executive Order, but did hold that the federal courts lacked the authority to issue the nationwide injunctions.

The Supreme Court, in a 6-3 ruling split along ideological lines, said that federal courts lack the power to issue such orders. Justice Amy Coney Barrett, writing for the conservative justices, declared that such universal injunctions "likely exceed the equitable authority that Congress has granted to federal courts." Justice Clarence Thomas, in a concurring opinion, put this succinctly: "today puts an end to the 'increasingly common' practice of federal courts issuing universal injunctions."

Justices Sonia Sotomayor and Ketanji Brown Jackson each wrote blistering dissents. Justice Sotomayor said: "No right is safe in the new legal regime the Court creates. Today, the threat is to birthright citizenship. Tomorrow, a different administration may try to seize firearms from law-abiding citizens or prevent people of certain faiths from gathering to worship. . . . That holding renders constitutional guarantees meaningful in name only for any individuals who are not parties to a lawsuit. Because I will not be complicit in so grave an attack on our system of law, I dissent." As Justice Ketanji Brown Jackson wrote in her dissent, "[t]he Court's decision to permit the Executive to violate the Constitution with respect to anyone who has not yet sued is an existential threat to the rule of law."



Front row, left to right — Associate Justices Sonia Sotomayor, Clarence Thomas, Chief Justice John G. Roberts, Jr., Associate Justices Samuel A. Alito, Jr. and Elena Kagan.

Back row — Associate Justices Amy Coney Barrett, Neil M. Gorsuch, Brett M. Kavanaugh and Ketanji Brown Jackson.

Image Credit: Collection of the Supreme Court of the United States

Repeatedly, though not in every instance, the Court upheld actions of the Trump administration that had been enjoined by the lower courts. These matters came to the Supreme Court on its emergency docket, often called the "shadow docket." The cases are decided without the benefit of briefing and oral argument, often with no opinions or only very short explanations.

An example of great judicial deference to President Trump occurred on Monday, June 23, in *Department of Homeland Security v. D.V.D.* A federal district court had issued a preliminary injunction to keep the Trump administration from deporting individuals to South Sudan. Federal law is specific as to where people can be deported to; only if no alternative exists, does the government have the power to pick its own place. It was clear that the Trump administration was violating this law. But the Court, once more 6-3, reversed the lower court and ruled for the government. It was stunning that there was no explanation whatsoever from the Court, while Justice Sotomayor wrote a scathing dissent.

This was also a term when the culture wars came to the Court and repeatedly the Court came down on the conservative side. For example, the Court decided *Mahmoud v. Taylor*, which involved a challenge to Montgomery County, Maryland's curriculum about sexuality and gender identity. A group of parents objected on religious grounds, saying that it infringed their free exercise of religion for them to not have notice of the curriculum and the opportunity to opt their children out of the instruction. The Court, 6-3, agreed with the parents.

Never before had the Supreme Court held that mere exposure to materials that parents find objectionable is enough to violate the Constitution. It is unclear what it will mean in practice. Does it mean that schools must give parents notice and the chance to opt out every time evolution is taught, or an English class has a book with witches, or anything some parent might find objectionable on religious grounds?

Yet another case directly from the culture wars was *United States v. Skrametti*, where the Court upheld, again 6-3, a Tennessee law prohibiting gender affirming care for transgender youth. Twenty-six states, all with Republican-controlled state legislatures, have adopted such a law. Chief Justice John Roberts writing for the majority stressed that the court should defer to the legislatures on this matter.

These, of course, are only a few of the cases from the term. But by all accounts, they are among the most important of the term. And, like a number of other cases, they show a conservative Court that came down solidly on the conservative side of the ideological divide.

By the Numbers

As someone who grew up obsessed with baseball statistics (and still am), I think that a great deal can be learned from looking at the numbers concerning the

Supreme Court. Now that the Court has completed issuing decisions other than emergency matters, it is possible to study the statistics for October Term 2024.

Size of the merits docket. The Court decided 56 cases with signed opinions after briefing and oral argument. This seems to be the new normal for the Court. Last year, the Court decided 59 merits cases. In each of the two years prior to that, the Court decided 58 cases. The term before that it was 54, and the year before that it was 52, the smallest number since 1862.

To put this in perspective, in the 1980s, the Court was deciding over 160 cases a year. The smaller docket began when William Rehnquist was Chief Justice. In his last year, October Term 2004, the Court decided 85 cases. When John Roberts went before the Senate Judiciary Committee in the summer of 2005 for his confirmation hearing, he was asked about Rehnquist's smaller docket. He lamented it. Roberts had been a Supreme Court litigator and said that the Court should decide at least 100 cases a year. Never in his 20 years as Chief has the Court come close to the 85 merits cases of Rehnquist's last term. On the other hand, as discussed below, the size of the emergency docket has increased enormously.

One interesting consequence of the smaller docket is that the justices generally write one majority opinion for each month the Court hears oral arguments. No justice this term wrote fewer than five or more than seven majority opinions.

Lack of interest in reviewing state court decisions. Of the 56 decisions, only three were reviewing state court rulings. This is not a one year phenomena. A year ago, only four decisions were reviewing state court decisions, and the year before that it was five. It certainly means that state court judges can rule knowing that the odds of the Supreme Court granting review in one of their cases is very tiny.

It is not clear why the Court has little interest in reviewing the state courts. It may be that the justices care much more about splits among the federal circuits than they do about disagreements among the state courts. Perhaps they see their role as ensuring uniformity of law applied in the federal courts, with less concern afforded to state courts deciding federal law issues.

Perhaps, too, it may be about the issues that are of most interest to the justices. It is striking that again this year, there were no decisions about the scope of searches under the Fourth Amendment, or the privilege against self-incrimination, or eyewitness identifications, or the confrontation clause. Maybe also this reflects a relative lack of interest in criminal procedure among the justices. The paucity of criminal procedure cases may be a product, in part, of not reviewing state court decisions because the vast majority of criminal prosecutions in the United States occur in state courts.

It is the Roberts Court. After Amy Coney Barrett was confirmed and there were five conservative justices without Roberts' vote, many questioned whether it would still be the John Roberts Court. This was vocalized even more after the Court's decision in *Dobbs v. Jackson Women's Health Center* (2022),¹ where the five other conservative justices overruled *Roe v. Wade* without Roberts' joining them in that result.

But in the years since, it is clear that in every way, it really is the Roberts Court. Again this term, Roberts was in the majority more than any other justice: 95 percent of the time. He dissented only twice in cases on the merits docket, and wrote no concurring or dissenting opinions. He was in the majority in all of what can be regarded as the most important decisions of the term.

The United States Court of Appeals for the Fifth Circuit. Of the 56 decisions, 12, or about 20 percent were reviewing the United States Court of Appeals for the Fifth Circuit. By comparison, the next most frequent were eight decisions reviewing the Fourth Circuit, seven decisions reviewing the Ninth Circuit, and five reviewing the D.C. Circuit.

In 10 of the 12 cases, the Fifth Circuit was reversed. I never have felt that reversal rates should be a basis for criticizing a court of appeals. It is not the role of a court of appeals to try and predict what the Supreme Court will do. And the Supreme Court reversing does not mean it was right and the court of appeals was wrong; it is just that the Supreme Court gets the last word.

But when a disproportionate number of cases come from one Circuit and that Circuit is reversed most of the time, it says something. When it was the Ninth Circuit that was a large part of the docket and often reversed, it reflected a court that overall was to the left of the Supreme Court. Now with the Fifth Circuit, it shows a court that is often aggressively pushing the law to the right and going further than even the conservative Roberts Court wants to. That was certainly true this term. For example, in *Federal Communications Commission v. Consumers Research*, the Fifth Circuit declared a federal law unconstitutional as an excessive delegation of legislative power. Since 1935, not once had the Supreme Court struck down a federal law on that basis. And the Court did not do so in this case, reversing the Fifth Circuit in a 6-3 ruling, with Justice Elena Kagan writing for the Court, and Justices Gorsuch, Thomas, and Alito dissenting.

The growth of the emergency docket. A year ago, the Supreme Court decided 44 matters on its emergency, or often called "shadow," docket. This term, the Court has 113 matters on the emergency docket (and that surely will increase over the summer as the term officially continues until the next begins in October). That is a stunning increase in just one year. Of course, the easiest

explanation is the number of petitions involving challenges to President Trump's actions.

I am among those with great concerns about the Court effectively deciding major issues without full briefing and oral argument on its emergency docket. Sometimes the Court decides without even writing an opinion, such as in *Department of Homeland Security v. D.V.D.* mentioned above, which allowed the Trump administration to deport individuals to South Sudan despite their not having any connection to that country. It also is troubling that the Court pays little attention to rules limiting appellate review of temporary restraining orders or to the usual standards of appellate review, which limit overturning preliminary injunctions to when there is an abuse of discretion by the trial court. Also, it is unclear what, if any, precedential weight lower courts must give to opinions from the emergency docket.

The ideology of the justices. It is no surprise that the justices who were in agreement the most were Thomas and Alito, 97 percent of the time, and then Sotomayor and Jackson, 94 percent of the time. The former are the most conservative justices, and the latter the most liberal.

It does not take statistics to see that for the most high-profile cases that are ideologically divided, this is a Court that has six conservative justices and three liberal justices. Although just nine percent of the cases were 6-3 with Justices Sotomayor, Kagan, and Jackson dissenting, by all accounts, these were some of the most important and most controversial decisions.

I also think relatively little attention should be paid to the fact that 42 percent of decisions were unanimous, about the same as in recent years. That is more a reflection of the cases the justices took than it is of a Court where there is any meaningful consensus about the most contentious issues that come before it.

The age of the justices. One final statistic is important for looking ahead to the Court's future. Four justices are over 70: Thomas 77, Alito 75, Sotomayor 71, and Roberts 70. Kagan is 65 and Kavanaugh is 60. The remaining justices are in their 50s: Gorsuch 57, Jackson 54, and Barrett 53.

No justice retired at the end of the term. All are expected to be back for October Term 2025. Again next year it is likely to be a docket dominated by culture war issues and challenges to President Trump's executive actions. And surely the most important number, this term and next, is 6-3: it is a Court with six conservative justices and three liberal justices. And the bottom line is that it likely will remain a conservative court for many years to come.

Erwin Chemerinsky is Dean and Jesse H. Choper Distinguished Professor of Law at University of California, Berkeley School of Law.



¹ *Dobbs v. Jackson Women's Health Org.*, 142 S.Ct. 2228 (2022).

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United States District Courthouse Central District of California, Eastern Division

by Hon. David T. Bristow

On Tuesday, July 1, 2025, the Riverside County Board of Supervisors unanimously adopted a resolution in support of the expansion of the United States District Courthouse in Riverside. Led by Supervisor Jose Medina, the Board of Supervisors demonstrated its continued steadfast commitment to our federal courts and to the principle of access to justice for all of the residents of the Inland Empire.

Riverside County has been a willing and dependable partner of the federal judiciary and played a leading role in the establishment of the Eastern Division of the Central District of California, which serves all of the Inland Empire. When the Eastern Division was first created, and the timeline for the construction of the Eastern Division courthouse in Riverside became mired in federal bureaucracy, local civic leaders worked with the County of Riverside to develop an alternative plan. The County of Riverside stepped up and committed to funding the construction of the George E. Brown, Jr. Courthouse in Riverside and leasing it to the federal government. Since it opened in 2001, the federal courthouse in Riverside is the only federal courthouse in the nation that is owned by a county, not the federal government, which is both a testament to the County of Riverside and our community, and also a reflection of the challenges we face in the Inland Empire.

Over the past few years, the *Riverside Lawyer* has featured numerous articles regarding the dire lack of federal judicial resources in the Inland Empire, and the corresponding need to expand the United States District Courthouse in Riverside. The Riverside courthouse, with its four courtrooms, shared by six judges, serves the entirety of the Inland Empire – all of both Riverside and San Bernardino Counties, a region covering more than 27,000 square miles with more than 4.7 million inhabitants. It is the only courthouse in the nation where three judges share a single courtroom, and exemplifies why the Inland Empire has the dubious distinction of being the most under-served region in the Nation in terms of federal judicial resources. By way of comparison, if the Inland Empire were a state, it would rank exactly in the middle of the 50 states in terms of population with a population of 4.7 million. Louisiana is the 25th most populous state in the Union, with nearly 4.6 million inhabitants, slightly less than the Inland Empire. Yet Louisiana has three federal judicial districts, with eight

courthouses and forty-nine – 49 – federal judges (22 district judges, 12 senior district judges and 15 magistrate judges), compared to six federal judges in four courtrooms to serve all of the Eastern Division's 4.7 million residents. The disparity in resources is incomprehensible, and yet the Eastern Division struggles to even commence the process to study the need for a larger courthouse, much less to actually increase our judicial resources sufficiently to provide access to justice for our residents.

Last year, in the July 2024 magazine, Daniel S. Roberts, a past president of the Inland Empire Chapter of the Federal Bar Association, described the need for the courthouse and offered a glimmer of hope for an expanded Eastern Division courthouse, with momentum building to finally fund the feasibility study required by the General Services Administration. This study – anticipated to cost less than \$1 million – is a prerequisite to advancing the expansion of the Eastern Division Courthouse. Unfortunately, little has changed since last year's article, as Congress has yet to provide any funding for the Eastern Division feasibility study.

Our challenges with respect to fair allocation of federal judicial resources are, unfortunately, part of the bitter history of the Inland Empire. The denial of our fair share of governmental resources is a dynamic caused primarily by the regions' historic lack of political power. However, over the past fifty years, the population of the Inland Empire has exploded, transforming what was once Southern California's cow counties into one of the fastest growing regions in the Nation. Yet, despite this burgeoning political might, the Inland Empire continues to struggle for its fair share of funding and resources, a fact made plain by the inadequate number of federal judges and courtrooms serving the Inland Empire. Because of the limited amount of federal judicial resources, cases that originate in the Eastern Division cannot all be heard in the Riverside courthouse, and are instead transferred to other courthouses in the Central District in either Los Angeles or Santa Ana. The Eastern Division was created to provide Inland Empire residents their day in federal court in a relatively convenient location. But forcing them to litigate their federal cases in Los Angeles or Santa Ana will inevitably result in many cases not brought at all, as litigants – particularly those in the high and low deserts – will be unwilling to commute four to five hours to court,

and even those who can afford to do so will be required to pay their Inland Empire attorneys the additional cost of traveling to and from those distant courthouse.

In a nation based upon the Rule of Law, a courtroom is the only place where we are able to defend our rights, our property and our liberty. The Inland Empire is being denied its fair share of courtrooms, its fair share of federal judges to serve in those courtrooms and the access to the federal justice system enjoyed by the rest of the

nation. We should not be forced to suffer this indignation, which literally denies a day in court to the residents of the Inland Empire, endangering our rights, our property and our freedom. It is time that we received our fair share of federal court resources. Hopefully, our elected federal representatives will agree and take action.

Hon. David T. Bristow is a United States Magistrate Judge and a past president of the RCBA.



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Graduation of 2024-2025 Class of the RCBA-Riverside Superior Court New Attorney Academy

by Robyn Lewis

The New Attorney Academy, which is a joint collaboration by the Riverside County Bar Association (RCBA) and the Riverside County Superior Court, and with the assistance of the Inland Empire chapter of the American Board of Trial Advocates (ABOTA), is pleased to announce the graduation of its tenth class (there was a 2-year hiatus of the program because of COVID).

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

This year, the Academy began its term in October with the curriculum taught by judges and noted attorneys in the community. Topics of the classes included an introduction to the legal community, a practical and intensive primer on pleadings, depositions and discovery, an introduction to practicing in court (court appearances, legal writing, and research, pet peeves of the bench, etc.), transition into practice (dealing with clients, how to successfully participate in ADR, relations with other attorneys, case management, etc.). Students were given tours of the Historic Courthouse, including a "behind the scenes look" at the clerk's office, the Family Law Court and the Court of Appeal, which was personally given by Associate

Justice Richard T. Fields. The students enjoyed an introduction to trial that included an interactive class on voir dire, tips on openings, closings, and direct and cross examinations from some of the most notable trial attorneys in the Inland Empire.

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

Once again, the Academy was an enormous success, which is due in large part to the efforts of the Riverside County Superior Court and members of ABOTA, most particularly, Judge John Vineyard, Judge Randall Stamen, Judge Chris Harmon, Judge Chad Firetag, Judge Jackson Lucky (retired), Judge Sophia Choi, Greg Rizio, Megan Demshki, and Elisabeth Lord.

If you are interested in obtaining more information about the 2025-2026 New Attorney Academy, please contact Charlene Nelson at the RCBA or Robyn Lewis at robynlewis@jlewislaw.com.

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



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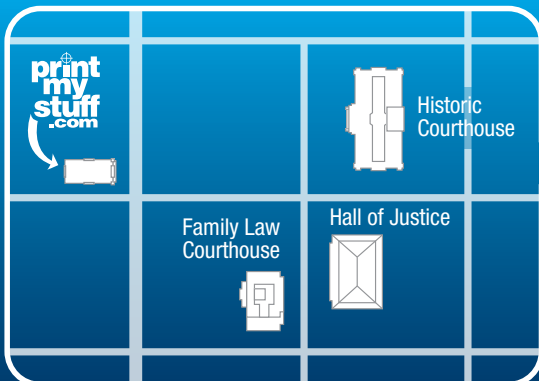
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MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective July 30, 2025.

Malcom S. Bajramovic – Immigration Law Offices of Hadley Bajramovic, Riverside
Maria O. Cook – M. O. Cook Law Office, Riverside
John R. Hale – The United Firm, Rancho Cucamonga
Christine A. Peterson (A) – Peterson Law, San Diego
Ania A. Williams – Office of the Public Defender, Riverside

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OPT-OUT: If you would prefer not to receive hard copies of future magazines, please let our office know by telephone (951-682-1015) or email (rcba@riversidecountybar.com).

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For more information contact
Sherri Gomez at Sherrigomez4@gmail.com

AUGUST

- 21** Barristers Civility CLE
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Program – 6:00 – 7:00 PM
For more details and to register
visit <https://Barristers-CLE-2025.eventbrite.com>

SEPTEMBER

- 11** RCBA Annual Installation of Officers Dinner
5:30 pm Social Hour, 6:30 pm Dinner
Mission Inn
3649 Mission Inn Avenue, Riverside

NOTICE

Notice is hereby given that the RCBA Board of Directors has scheduled a “business meeting” to allow members an opportunity to address the proposed budget for 2026. The budget will be available after August 11. If you would like a copy of the budget, a copy will be available at the RCBA office.

**Wednesday, August 13
at 5:15 p.m.
RCBA Boardroom**

Events Subject To Change

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

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.

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 Statement

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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.

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



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