

# RIVERSIDE LAWYER

May 2011 • Volume 61 Number 5

MAGAZINE

## Press-Enterprise Wins Second Case in United States Supreme Court.

In 1980, a Riverside Supreme Court department closed the courtroom to public access during the voir dire in a capital case.

conversations on the case, the court eventually brushed it aside in deciding the major issue. In addition to our brief on the merits, coordinated

## Judge Rejects Obama's 'Don't ask, Don't tell' Argument

WASHINGTON - A district court judge Tuesday rejected the Obama administration's claims that allowing gays and lesbians to begin openly serving in the military could hurt their

Last month, U.S. district court Judge Virginia Phillips promised an injunction against "don't ask, don't tell" after she found that the 17-year-old policy, which barred gays and lesbians from

## Pyrite Group to Pay \$1.7 Million for Cleanup of Stringfellow Acid Pits

RIVERSIDE, CA - The Pyrite Canyon Group will pay \$1.65 million for cleanup of a Superfund site in north-Riverside County, the U.S. Envi-

The money for past cleanup costs will be used to reimburse Superfund and for cleanup at other sites across the country. A recent settlement

## Insurers Lose in Stringfellow Acid Pits Jury Trial

Insurance companies must pay to clean up a hazardous waste dump, the Stringfellow Acid Pits. A Riverside County, California jury on May 16, 2010

damages are entered in favor of the State of California for the clean-up of the Stringfellow Acid Pits for the insurance companies' breach of contract, the case will proceed to trial

### In This Issue:

*Press-Enterprise Cases*

*Stringfellow Memories*

*Log Cabin Republicans v. United States: The End of DADT Begins in Riverside*

*The Right to Bare Libel*



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This is Soheila Azizi, Principal of Soheila Azizi & Associates  
and Class of 1993 graduate.

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# RIVERSIDE LAWYER

MAGAZINE

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# MISSION STATEMENT

## Established in 1894

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

## RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

Serve its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

## Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

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, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

*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 6<sup>th</sup> day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are \$25.00 and single copies are \$3.50.*

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

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

# CALENDAR

## May

- 10 CLE Brown Bag**  
RCBA John Gabbert Gallery – Noon  
“How to Reserve a Motion Date Online in Riverside Superior Court”  
Speaker: Kim Mullins, Clerk’s Office, Division Manager, Riverside Superior Court (MCLE)

### Public Service Law Corporation

Board meeting – RCBA Boardroom – Noon

### RCBA Board Meeting

RCBA Boardroom – 5:00 p.m.

### Landlord Tenant Section Meeting

Napoli Italian Restaurant – 6:00 – 8:00 p.m.

Speaker: Kim Greve

“Form Changes for San Bernardino Court – Civil Division”  
(MCLE)

**11 CLE Brown Bag**

RCBA John Gabbert Gallery – Noon

“Current Issues in Foreclosures”

Speakers: Commissioner Paulette Barkley, Erin Orzell, Judicial Staff Attorney, Michael Cappelli, General Counsel, Riverside Superior Court  
(MCLE)

**13 General Membership Meeting**

RCBA John Gabbert Gallery – Noon

“Changes in the District Attorney’s Office”

Speaker: District Attorney Paul Zellerbach  
(MCLE)

**17 Federal Bar Association – I.E. Chapter**

Mission Inn – Music Room – Noon

Constitutional Law Update by Dean Erwin Chemerinsky

RSVP: Kim Connelly @ (951) 686-4800  
(MCLE)

**18 Estate Planning, Probate & Elder Law Section Meeting**

“Safe Aging 101: A Primer in Disability Planning”

Speaker: J. Terrance Moynihan  
(MCLE)

**21 (Saturday) RCBA Law Day at the Plaza**

Riverside Plaza – 10:00 a.m. to 6:00 p.m.

(To volunteer for 2-hour time slot, contact RCBA office)

**26 Solo & Small Firm Section Meeting**

RCBA John Gabbert Gallery – Noon

Speakers: Jonathan & Robyn Lewis  
(MCLE)

**30 Holiday – Memorial Day**

RCBA Offices closed

## June

**2 Swearing In Ceremony**

for US District Court, Central District of California

George E. Brown Jr. Courthouse – 8:00 a.m.  
RSVP: Kim Connelly @ (951) 686-4800

**Swearing In Ceremony for New Admittees**

Riverside Historic Courthouse  
Dept. 1 – 10:00 a.m.



*by Harlan Kistler*

I would call upon all RCBA members to support Michael Scaffiddi's run for the District Nine seat on the Board of Governors of the State Bar of California. Michael is a past president of the San Bernardino County Bar Association and a current member of the RCBA. He has been very active in the Inland Empire legal community and would give local bar members a voice at the state level. He will advocate our local concerns to the State Bar and help us obtain additional local bench officers and funding to improve our court facilities, allowing better access to justice for all of our clients.

We have not had a representative from our area since Jim Heiting was elected. The San Diego Bar Association has more active members than the Riverside and San Bernardino County Bar Associations combined; however, their vote is split between two candidates, and further diminished due to low voter participation. Therefore, Michael Scaffiddi can succeed, if a majority of our members vote. You can vote between May 2 and June 30 by accessing the State Bar website ([www.calbar.org](http://www.calbar.org)).

The RCBA monthly membership meetings are a good way to meet your colleagues, interact with judges and earn MCLE credit. During the April membership meeting, the Honorable Mac Fisher and the Honorable Roger Luebs shared their experiences and insights as judges with our members. To promote justice through effective and ethical advocacy, they addressed mistakes commonly made by attorneys in both civil and criminal courts.

Judge Luebs said that too many attorneys are losing credibility with jurors by failing to respect their time. He said it is a big mistake not to be punctual or to argue with the judge in front of the jury. He urged lawyers to frame

arguments clearly and to get to the point without being repetitive. Questioning a witness on the stand as if in a deposition is another big mistake; it is not only ineffective, but it will put the jurors to sleep.

Additionally, Judge Luebs said it was very important for counsel to prepare well in advance before any hearing or trial. Counsel should frame closing argument and witness examination around the jury instructions. If counsel is requesting the court to rule on a specific matter, then counsel needs proper citations and a declaration with a factual foundation and facts based on the personal knowledge of the witness.

Judge Fisher reminded attorneys in attendance that we are officers of the court and that we have a high professional duty to never misrepresent facts or misstate the law to the court. Currently, Riverside Superior Court judges have twice as many cases as judges in other counties. He said to be ready during your Trial Readiness Conference in Department 1, as cases are going out without exception, unless good cause is shown. He stated that a trial date compels counsel to formulate a game plan to resolve the case.

Judge Fisher pointed out that it is a big mistake for attorneys to mispronounce a juror's name and to argue with opposing counsel in front of the jury. Counsel should also avoid speaking objections, and he urged attorneys to have exhibits marked and jury instructions prepared prior to commencement of trial. Counsel should read the code before trial and be familiar with specific rules that can be important during trial, such as those that require that you serve a subpoena on a witness in advance of trial to protect your position if that witness becomes unavailable. Finally, he said the biggest mistake that attorneys make during trial is that they fail to listen to the witness. He warned attorneys about using prepared questions, rather than listening to the testimony and following up on what the witness just testified about.

Mike Farrell spoke at our March monthly membership meeting about some of the problems with the current death penalty process. He said that there are currently 700 inmates on death row in California, and 3,000 inmates across the country. He indicated that the cost of pursuing a death penalty conviction is prohibitively expensive. For example, he stated that it costs the taxpayers approximately \$250 million per execution. He said the State of California could save \$1 billion over the next five years if it gave convicted killers life in prison without the possibility of parole. He stated that the repetitive appeals and retrials drag the victim's family members through the court system, offering no closure to them.

In April, six King High School wrestlers competed against 3,000 wrestlers at the National Wrestling Tournament in Reno, Nevada. Harlan Kistler II, a sophomore, at 160 pounds, earned All-American status by placing fifth. A proud moment for a busy dad!

Our next general membership meeting will be on Friday, May 13, 2011, and our speaker will be our esteemed Riverside County District Attorney Paul Zellerbach. His topic will be "Changes in the DA's Office." The first 50 attendees will get a "get out of jail free" card. I look forward to seeing many of you there.

*Harlan B. Kistler, President of the Riverside County Bar Association, is a personal injury attorney for the Law Offices of Harlan B. Kistler.*





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# BARRISTERS PRESIDENT'S MESSAGE

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*by Jean-Simon Serrano*



The Barristers had an amazing all-star panel for their April meeting, "Business Development and Law Firm Management." This forum-style meeting featured Bruce Varner, Senior Partner at Varner & Brandt (introduced by Barrister Derek Early); Dave Moore, Senior Partner at Reid & Hellyer (introduced by Barrister Scott Talkov); Paul Grech, Partner at Grech & Firetag (introduced by Chad Firetag); Mark A. Ostoich, President and CEO of Gresham Savage Nolan & Tilden (introduced by Barrister Amanda Schneider); and Eric Garner, Managing Partner of Best Best & Krieger (introduced by Barrister Curtis Wright). This was an extremely popular event, with a broad cross-section of the legal community in attendance, as well as the local media. Once again, the Barristers left many impressed with their ability to line up such great speakers and flawlessly execute such an ambitious event. The evening's success was aided, in part, by a generous donation by LexisNexis. The event was held at the Salted Pig – a relatively new restaurant in town, and a likely venue for future Barristers events.

As of the time of this writing, details of the May meeting have not been determined. Please go to [riversidecountybar.com/barristers](http://riversidecountybar.com/barristers) and add yourself to our mailing list if you wish to be immediately notified of future events.

As mentioned last month, my term is coming to an end, and we will soon be holding elections. With the exception of President, members may run for any board position this year. Nominations must be received by the end of the May meeting so that voting can be conducted in June. We encourage any interested persons to run for election.

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*Jean-Simon Serrano, president of Barristers, is an associate attorney with the law firm of Heiting and Irwin. He is also a member of the Bar Publications Committee.*

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## 2011 Red Mass

Tuesday, October 11, 2011

@ 6 p.m.

Our Lady of the Rosary  
Cathedral

2525 N. Arrowhead Avenue  
San Bernardino, CA 92405

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# PRESS-ENTERPRISE CASES

by Justice James Ward, Ret.

In 1980, a Riverside Superior Court department closed the courtroom to public access during the voir dire in a criminal case – a capital case. Norm Cherniss, the editor of the Riverside Press-Enterprise, called me and said, “They can’t do that, can they?” This was the beginning of a multi-year, multi-case battle between the Press-Enterprise and the Superior Court. Riverside trial judges believed a California Supreme Court case, *Hovey v. Superior Court* (1980) 28 Cal.3d 1, mandated the exclusion of the public during voir dire. *Hovey* held that prospective jurors had to be death-qualified in sequestration, so they would not be influenced by the answers given by other venire members. The newspaper regularly sent me and members of my firm, Thompson & Colegate, to gain access to the court whenever this happened, and consistently the courtroom door was slammed in our face.

My colleagues, Sharon Waters (now a superior court judge), John Boyd, and I petitioned for access through the superior court, the court of appeal and the California Supreme Court. Our petitions were consistently rejected. We had no recourse except to petition the United States Supreme Court for certiorari. Initially, we were unsuccessful there, as well, but when we tried with the celebrated Norco bank robbery case, we got three justices to vote for granting cert. This gave us encouragement, and when a Riverside court was closed in 1981, we went through the process again. Again we were rebuffed all the way up to the Big Court in Washington, D.C.

This time, however, the United States Supreme Court granted our petition for a writ of certiorari. I learned this at 7:30 a.m. at the breakfast table. Norm Cherniss phoned and said, “Remember all those people who laughed at you when you petitioned – they will not laugh now!” People who had heard about our case, including high-profile attorneys involved in the field, had not gotten excited about our chances. Once cert was granted, things changed dramatically. People began to call from all over the country. It reminded me of the famous statement, “Victory has a hundred fathers, but defeat is an orphan.”

Our friends, as well as experts across the country, had differences as to what we should try to accomplish. However, we all wanted the court to say that jury selection should remain open. An issue of juror privacy arose, because this was a rationale of the trial court for sealing the voir dire transcript. While the issue dominated our

conversations on the case, the court eventually brushed it aside in deciding the major issue. In addition to our briefs on the merits, we coordinated an extensive amicus effort. Our efforts paid off, as we convinced the court and, in a 9-0 decision, the justices held that the voir dire was a part of the criminal trial and must be kept open to the public.

The United States Supreme Court announced its decision in *Press Enterprise I* in January 1984. At that time, a similar and ultimately more significant case was moving through the appellate system. No one imagined lightning would strike twice in the same place and a single newspaper would have two significant First Amendment cases before the United States Supreme Court. During the oral argument on the first case, Justice O’Connor asked me if I planned on coming back to assert the right of access to pretrial proceedings. I boldly told her I would be back, and, incredibly, I was.

*Press-Enterprise II* arose because the preliminary hearing in the celebrated murder trial of a hospital nurse, Robert Diaz, was closed to the public. Rejected in the Riverside Superior Court and the court of appeal, we petitioned to the California Supreme Court. It said we should have a hearing, but told the court of appeal to hold it. The court of appeal decision was unsatisfactory to us, in that it gave no constitutional right of access and set a standard for closure which was, in our opinion, far too lax. We went back to the California Supreme Court, and after giving us a hearing, it supported the position of the court of appeal. Once again we petitioned for certiorari in the United States Supreme Court. Again we mounted a substantial amicus effort. Again we were granted cert. We secured a 7-2 victory from the court. The court’s opinion supported a constitutional right of access to the preliminary hearing.

Thus, a locally owned newspaper in Riverside won two significant cases in the United States Supreme Court and established the First Amendment right of the public and the press to access to court proceedings. The two *Press-Enterprise* cases have been cited thousands of times in support of the openness of court proceedings. It is difficult to overestimate the impact of these two cases.

*Justice James Ward retired from the Court of Appeal, Fourth District, Division 2, in 2005.*



# STRINGFELLOW MEMORIES

*by Douglas F. Welebir*

In the early 1980s, a group of citizens led by Penny Newman organized to seek compensation for a myriad of injuries that they related to the presence of what became known as the Stringfellow Acid Pits. This dump site was established by the State of California as a repository for industrial waste from the manufacturing firms of Southern California. Eventually, 32 million gallons (plus or minus) of volatile organic compounds, heavy metals, pesticides, DDT, herbicides, and other byproducts of manufacturing were trucked and dumped into open ponds north of Highway 60 above the community of Glen Avon. The waste leaked into the groundwater through the permeable unsealed bottoms of the pits, evaporated naturally into the air, and was force-evaporated through a spray system that misted the liquid contents into the air, to be borne away on the prevailing winds from the northeast. In heavy rain years, the ponds were inundated with water, to the point that once, the “dam” was intentionally breached by the operator and the contents allowed to flow down through the community.

Tom Duggan and Tony Klein of Klein, Wegis & Duggan in Bakersfield were retained to represent a group of potential plaintiffs that eventually swelled to 4,400. All of the claims were individualized, from wrongful death to diminution in property value, and the task was immense. The New York/San Diego firm of Milberg, Weiss, Bershad & Lerach was associated in because of its experience in mass torts.

In 1990, after more than five years of pleading and discovery wars between the plaintiffs and scores of defendants, during which I had made a few appearances as “local counsel,” I was retained as lead trial counsel for the plaintiffs. During the two years leading up to the commencement of trial, I worked full-time, with a team of 10 to 12 lawyers provided by my co-counsel, organizing the evidence, witnesses, and experts covering the spectrum of scientific knowledge. One of the most memorable experts was Cesare Maltoni, M.D., from the Italian Institute of Oncology in Bologna, who had first established the link between exposure to industrial chemicals and cancer. Psychologists, hydrologists, geologists, organic chemists, industrial chemists, chemical engineers, meteorologists, dermatologists, neurologists, and almost as many other “ists” as can be imagined were involved on both sides of the case.

The defense teams were led by Barry Goode for the large dumpers, Stanley Orrock for the County of Riverside, and Howard Halm and Dan Buckley for the State of California. Barry Goode once told me that during the pendency of the litigation, more than 1,000 lawyers had worked on the case for the defense.

Judge Victor Miceli assigned the case to newly appointed Judge E. Michael Kaiser, who embraced the challenge, using some of the most innovative and advanced case-management techniques ever enforced. Through a simultaneous ADR track with Judge Miceli, Jack Trotter of JAMS, retired federal District Judge Lawrence Irving and others, some individual defendants and small groups of defendants began settling. During Kelly-Frye hearings and multiple deposition tracks, the plaintiffs were forced to refine their theories and claims.

As trial approached, Judge Kaiser established a process through which 14 representative plaintiffs were selected as the first “test plaintiffs,” so that with a finding of liability, the value of representative damage claims could be established, with the goal of additional settlements.

In August 1992, jury selection began with time qualification and hardship screening. For two and a half months, at an unremitting pace, a pool of time-qualified jurors was winnowed from 1,854 prospective venire members. Concurrently, the parties engaged Tilden-Coil to design and build a custom courtroom in an old beauty school facing Ninth Street. It featured all the amenities, including a jury box for 24 jurors and a fully interactive courtroom, with state-of-the-art electronics (long before the O.J. trial): monitors for the judge, clerk, court reporter, witness, and every counsel table (for 32 lawyers), telestrators, laser disc players, bar code readers, duplicators, a sound system, and more. Judge Kaiser appointed an Evidence Master, retired Judge Richard Garner, who held admissibility hearings every day for weeks, during which the trial lawyers reviewed all proposed exhibits and either agreed or objected. The objection was noted and an advisory ruling made, the aim being to streamline the trial. A trial time limit, to be enforced by the use of a chess clock, was established, with defense and plaintiffs receiving equal hours.

In early January 1993, a jury including 12 alternates was sworn, with no juror knowing his or her status. Within a few days of the first witness, all of the defendants, except the State of California and one small dumper, made a

collective settlement offer, leading to additional negotiations and settlement.

Judge Kaiser continued his creativity: the trial schedule would alternate, five days one week followed by four days the next; a trial day was 8:15 a.m. to 1:30 p.m., with two 10-minute breaks; and lawyers were ordered back at 2:30 p.m. to resolve all evidentiary issues for the next day (usually these sessions did not end until well after 5:00 p.m.). Witness preparation for the next day then began, over dinner eaten at your desk. This schedule made for extremely smooth and efficient trial days – so much so that when the jury received the case, all 24 jurors were still sitting in the box. It was not easy on the lawyers or the judge.

During the five months of jury selection, contested evidentiary offerings, motions in limine, and eight months of actual trial, there were dramatic, boring, serious and humorous moments. One of the most memorable occurred when a troubled “future plaintiff” appeared in the courtroom while Howard Halm was cross-examining a witness. The young man proceeded to drop his pants and “moon” everyone in the courtroom, while incoherently yelling something about, “Look what the state has done to me.” As he was manhandled by the bailiff out of the gallery into the vestibule, the sounds of a “take-down” and arrest could be heard in the courtroom. The situation was quickly defused by one of Judge Kaiser’s infamous quips, and the case went on.

As the last juror filed from the courtroom to begin deliberations, Dan Buckley and I turned and looked at each other: with a handshake seeming insufficient, the only imaginable reaction spontaneously occurred – every lawyer in the courtroom embraced one another. It was over!

In late September 1993, after one month of deliberation, the jury returned a unanimous verdict for the plaintiffs against the State of California and a defense verdict for the other remaining defendant, represented by Rob Kelly. Within a few months of the verdict, a final settlement of the entire case for a total of \$110 million was reached. The 13 months of continuous trial activity and the eight to ten hours of daily “together-

ness” were characterized by a profoundly respectful, professional, and sometimes contentious collegiality.

I have been asked repeatedly what it was like to try a case of such complexity and length. I can only observe that while you are engaged, it is what you do – after the fact, reality hits you. From the time records that were kept, I learned that in three and a half years of full-time involvement with the Stringfellow case, my average work week was 82 hours. My longest week (obviously during trial) was 104 hours. However, I remain thankful for the opportunity afforded me to try this case. Would I do it again knowing what was ahead? Probably not. But then again: It all depends.

*(See Mr. Welebir’s profile on page 24.)*





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# LOG CABIN REPUBLICANS V. UNITED STATES: THE END OF DADT BEGINS IN RIVERSIDE

by Christopher J. Buechler

Last summer, Riverside played host to one of the seminal trials in the lesbian, gay, bisexual and transgender community's ongoing struggle for equal protection under the law when the Honorable Virginia A. Phillips presided over the case of *Log Cabin Republicans v. United States*.<sup>1</sup> At issue was whether the military's "Don't Ask, Don't Tell" policy (or DADT)<sup>2</sup> was an unconstitutional violation of the rights of gay and lesbian servicemembers.

After holding a trial in July, Judge Phillips issued a ruling on September 9, 2010 holding that DADT violates the First Amendment and the due process rights of gay and lesbian servicemembers and ordered a permanent injunction against enforcement of the statute. On November 1, 2010, the Ninth Circuit issued a stay of Judge Phillips' injunction pending appeal, and that stay was later upheld by the U.S. Supreme Court. Meanwhile, Congress passed the Don't Ask, Don't Tell Repeal Act, which was signed into law on December 22, 2010. The Repeal Act states that DADT will still be in effect until the President, the Secretary of Defense and the Joint Chiefs of Staff review and recommend policies consistent with "standards of military readiness, military effectiveness, unit cohesion, and recruiting and retention of the Armed Forces."<sup>3</sup> As of our publication deadline, there have been no such policies forthcoming.

In order to make sense of Judge Phillips' ruling, its impact and its influence as a possible driver of the Repeal Act, I interviewed two preeminent scholars of constitutional law, Professor David Cruz<sup>4</sup> and Dean Erwin Chemerinsky<sup>5, 6</sup>

## Lead-Up to Repeal

When asked about courts intervening in matters seen as military policy, Dean Chemerinsky pointed out, "This is not about the federal courts intervening in policy set by the military. DADT was a law adopted by Congress. The issue is whether this [law] violates the Constitution. This is exactly the type of issue that is for the courts to resolve." And on the political front, Professor Cruz thinks Judge Phillips' ruling could be seen as having an impact in influencing the Repeal Act because it generated some concern in the Capitol that it would be inappropriate or undesirable to make changes to military policy by court decree. The Pentagon is also concerned about the precedent this will set for its internal policymaking. Thus, we could expect to see major action on the Department of Defense's implementation plans for repeal as soon as this summer.

However, Professor Cruz points out that this does not mean the case is likely to be dismissed by the Ninth Circuit as moot at this point. So far, he has not seen the government make a strong commitment to suspending enforcement of DADT. Absent that, he does not predict that the judicial branch will take the Department of Defense's word on any imminent possibility of repeal. Dean Chemerinsky commented on the issue saying, "My hope is that this will be deemed moot very quickly and DADT will be ended. Judge Phillips did a superb job of explaining why it is unconstitutional."

## Military Cultural Impacts

Of course, before we can expect to see any repeal, we are expecting a top-down review of military culture and how DADT repeal and integration of gay and lesbian servicemembers will impact it. As Professor Cruz is a prolific scholar of issues surrounding sexual orientation, gender and the law,<sup>7</sup> I asked him about potential cultural impacts that DADT repeal could have on the military itself, especially in light of the VMI gender discrimination ruling<sup>8</sup> and its aftermath. Professor Cruz expects that any policy implementation will examine closely the training and socialization of servicemembers. This could lead to

1 716 F. Supp. 2d 884 (C.D. Cal. 2010).

2 Found at 10 U.S.C. § 654.

3 S. 4023 – 111th Congress: Don't Ask, Don't Tell Repeal Act of 2010 (2010). Retrieved April 18, 2011, from <http://www.govtrack.us/congress/bill.xpd?bill=s111-4023>.

4 Professor of Law, University of Southern California Gould School of Law. Prof. Cruz also maintains a blog about issues of sex, gender, and sexual orientation and the law at <http://www.cruzlines.org>.

5 Founding Dean, University of California, Irvine School of Law.

6 Author's note: Both men were interviewed separately and so neither of their comments should be seen as providing context or influence on the other.

7 See Professor Cruz's curriculum vitae at <http://weblaw.usc.edu/who/faculty/directory/contactInfo.cfm?detailID=209>.

8 *United States v. Virginia*, 518 U.S. 515 (1996).

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more effective inclusion and integration and may not only eliminate exclusions based on sexual orientation, but also have an effect on glass ceilings based on gender. However, he notes that the military had seen a decline in female servicemembers in combat positions after the first Gulf War, but there has not been the same kind of societal impetus to act urgently on that issue. It remains to be seen whether integration regarding gay and lesbian servicemembers will generate benefits for female servicemembers generally.

### **The Ruling Itself and the Pending Appeal**

I asked Dean Chemerinsky about two of the more controversial aspects of the ruling. First, as to the separation of powers issue mentioned above, Dean Chemerinsky also added, “I do not agree that this case presents a separation of powers issue. The case is a classic instance in which a federal law is being challenged for violating the Constitution. It does not matter whether it comes from the executive or from a statute. Neither the President nor Congress can violate the Constitution.” And second, on whether the ruling is limited only to the group of plaintiffs, much as was argued about limiting the sweep of Judge Vaughn Walker’s ruling in *Perry v. Schwarzenegger* to the named county defendants, he said, “I think this is very different than the Prop. 8 litigation. That was an initiative for just California. Judge Walker declared it unconstitutional, with the Governor and the Attorney General as the defendants.

DADT is a national law. To what extent can a judge in one district issue a nationwide injunction and thus preclude judges in other circuits from being able to rule on the question? There is remarkably little law on the ability of a district court judge to issue a nationwide injunction.”

Detractors of the decision notwithstanding, Professor Cruz and Dean Chemerinsky are two of many constitutional law scholars who thought Judge Phillips wrote an opinion well-supported by constitutional law after conducting a thorough trial on the merits, complete with witnesses and evidence. The government’s case was rather weak – it basically submitted the legislative record for DADT and asked the court to defer to the government’s military policy. However, as Judge Phillips wrote in the conclusion to her opinion, “deference does not mean abdication.”<sup>9</sup> It remains to be seen how much deference an appellate court would give to DADT, but based on legislative action, possibly motivated by Judge Phillips’ injunction, this case may not even reach that point.

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*Christopher J. Buechler, a member of the RCBA Publications Committee, is a paralegal for Riverside County Department of Child Support Services and a private attorney. He can be reached at [chris.buechler@gmail.com](mailto:chris.buechler@gmail.com).*



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<sup>9</sup> Citing *Rostker v. Goldberg*, 453 U.S. 57 at 67, 70 (1981).

# THE RIGHT TO BARE LIBEL

by Mel Opotowsky

## The Background

Except in egregious cases, the use of libel law has all but disappeared in California political battles, but in years past, it was often the weapon of choice, not unlike dueling pistols. Nowhere was this more apparent than in Riverside at the end of the 1920s. The most high-powered weapon at the time was criminal libel, the heavy artillery that those in control of law enforcement unholstered when they felt threatened.

In Riverside, during this period, criminal libel charges were used at least four times in a matter of months, centered on one major political battle. The opening salvo was aimed at the city's mayor after he attacked "the Mission Inn crowd" that he felt ran the town. Then it was used by the establishment against a small newspaper, a propaganda sheet, actually, whose editor was thrown in jail. The third occasion involved the embattled mayor suing an established city daily. And finally, serious threats of a libel suit put the city's other daily newspaper into a defensive crouch.

Criminal libel, using the prosecutorial power of the state and the potential for jail, no longer exists in California. U.S. Supreme Court decisions in the middle of the 20th century have also made it virtually impossible for a politician to sue successfully for civil libel, unless serious errors are published and the aggrieved can show a deliberate, malicious attempt to use the erroneous information to cut him down.<sup>1</sup> But those restraints were not in place in the 1920s.

Not long after grocer Edward Dighton, age 54, was elected mayor of Riverside in an upset in November 1927, political temperatures started rising. The heat built up to the point of a mini-volcanic eruption that led to his being tried on charges of criminal libel and willful misconduct in office, and which resulted in a successful attempt to recall him.

Dighton was a stern-faced fellow with a large nose, wire-rimmed glasses, and a fast-receding hairline.<sup>2</sup> With a law-and-order posture, he had a penchant for flights of fancy, which appeared to have a part in his undoing. During the mayoral campaign, for instance, he warned Riversiders that confectionery-makers from Los Angeles were lacing candy with "dope," putting their children at risk.<sup>3</sup>

Dighton, a native of Ohio, was foremost an outsider, fighting the upper and middle class establishment. He rep-

resented a socio-political phenomenon dubbed "paranoid politics" by historian Richard Hofstadter.<sup>4</sup> This condition, and especially how Dighton fit the mold, was described in excellent detail by Alan Curl in his (unfortunately unpublished) 1977 UCR thesis, *Dighton: A Study of Recall in Riverside, California*.

Dighton had been living in Riverside for seven years when he ran against a bevy of "establishment" types: the incumbent mayor, a former mayor, a former Chamber of Commerce official, and a couple of businessmen. In the modus operandi of paranoid politicians in tough economic times, Dighton went after the real and perceived practices of the upper middle class, which had long managed city affairs. For starters, he railed against the hiring of a Redondo consultant for more than \$10,000 to come up with a newfangled city development plan that made the Mission Inn the hub of a civic center – the Inn being owned by the most influential upper-class elitist in the city, Frank Augustus Miller.<sup>5</sup>

Dighton was elected in a race that required only a plurality. He immediately signaled his rebellion against the establishment by announcing, on January 1, 1928, a purge, appointing a wide range of new officials as well as board members to commissions. His legal authority to use such a street-sweeper approach was challenged by the Common Council and members of the commissions. But Dighton prevailed amid turmoil.

Headbutting continued. A major issue was Dighton's unheeded call for more money for police, especially to enforce Prohibition, in a city whose population had been booming. Councilmen attacked Dighton's police chief, John Franklin, for not seeking their approval for much of what he was doing; they even wanted him to leave attacks on the Demon Rum to Sheriff Clem Sweeters.<sup>6</sup>

But it was Dighton's belief that there were fiscal irregularities that led more directly to his criminal libel indictment. Before the election, he had vaguely alluded to suspicions of mishandling of city funds. In August 1928, Dighton again implied that huge sums of money were missing from city coffers. With what he called "the crowd across the street at the Mission Inn" nipping at his heels ("Here is one man that the Mission Inn crowd is not going to run"), he had

1 Libel Defense Resource Center, 50-State Survey, 1996-97; see also *Garrison v. Louisiana* (1966) 379 U.S. 64; *New York Times Co. v. Sullivan* (1964) 376 U.S. 254.

2 *Press-Enterprise*, July 19, 1964, Section B, p. 1.

3 *Enterprise*, Oct. 4, 1927.

4 Richard Hofstadter, *The Paranoid Style in American Politics and Other Essays* (New York, Alfred A. Knopf, 1965).

5 Alan Curl, *Dighton: A Study of Recall in Riverside, California*, p. 5.

6 *Enterprise*, Apr. 4, 1928. The chief was fired about a month later when he was found drunk and asleep in the early morning hours in Colton, his car damaged. *Enterprise*, May 13, 1928.

hired an auditor, George Robertson, to go over city books for 1927-28, under authority of the city charter.<sup>7</sup>

In early October 1928, the Riverside Common Council balked at paying Robertson's bill for the audit. Still, the auditor gave a preliminary report to Dighton, who went to the Los Angeles Express newspaper alleging "grafters . . . sacked the city exchequer." He claimed there was a serious shortage of funds and said the financial books were in a deplorable condition. He also said he would ask the state attorney general to investigate, instead of leaving it to Riverside County District Attorney Albert Ford, because of an "alleged political situation" in Riverside. He told the paper's reporter, Charles Dawson, that Ford was "in league with the crowd down there" and could not be trusted.<sup>8</sup>

After giving the story to the *Express*, he went to the *Enterprise*, extending his railing by further alleging criminal negligence on the part of City Auditor Herbert Pierson. But editor and publisher John R. Gabbert said he had checked with Robertson, who denied that his report came to any such conclusion. Gabbert refused to print the story, saying it was libelous.<sup>9</sup>

Here was high drama. The *Express* story hit the streets in Riverside on Tuesday, October 16, 1928, the day the Common Council was holding its weekly session. It caused a furor at the meeting. Council members immediately convened a formal hearing and made the mayor testify under oath, while launching strong personal attacks against him, noting that they had not seen Robertson's audit report and had not been told of any irregularities. The mayor unpersuasively said the *Express* story was an exaggerated account of what he told the paper.

But in a remarkable turn, he said the reason he brought his charges to the two newspapers was to "beat them to it," opening the door publicly to a bizarre development, in which days earlier he had promised to resign as mayor over a contretemps that had nothing to do with city business and then reneged on the promise. It turns out that earlier in the year, he had signed paperwork for membership in the United Spanish War Veterans chapter, but a check with the adjutant general's office in Ohio where he said he had served turned up no evidence of a "Captain Dighton" doing military service.

Major J.A. Cummings of the veterans group told the Common Council that the mayor had promised to resign at that very same meeting, apparently in return for keeping the incident quiet. Cummings faced the mayor and demanded that he read the resignation letter. The mayor said he had changed his mind.<sup>10</sup>

7 *Daily Press*, Aug. 29, 1928, p. 1.

8 Grand Jury transcript, p. 27, on file in Riverside County Superior Court case no. 18794, *People v. Dighton*.

9 *Ibid.*

10 *Enterprise*, Oct. 17, 1928, p. 1.

## The First Case of Criminal Libel: *People v. Dighton*

What followed was a classic use of the swift power of authority to retaliate against an outsider. The city's two established newspapers, the *Daily Press* and the *Enterprise*, railed against him. The grand jury met exactly a month later, under the guidance of District Attorney Ford. It heard from 12 witnesses, including Robertson, who told them nothing in his audit led to any conclusion that there was "defalcation," just a relatively minor series of inaccurate entries in the books. Editors and the reporter at the *Express* testified that the story was accurate and that the mayor had reviewed the material.<sup>11</sup>

On the next day, November 17, 1928, the grand jury issued two indictments. The first alleged criminal libel. Said the indictment, "[The] publication was intended to and did tend to impeach the honesty, integrity, virtue and reputation of said Herbert W. Pierson, as said Auditor, and in his private capacity, and thereby expose him . . . to public hatred, contempt and ridicule." The maximum penalty was \$1,000 fine and one year in jail.

The second action was labeled an "accusation" of misconduct in office. This was a civil charge but was to be handled like a criminal case. A conviction would result in dismissal from office. The accusation said Dighton failed to present to the Common Council and to the Board of Public Utilities the audit charges that he had made to the newspaper. The accusation said further that the charges in the newspaper were made in bad faith to forestall public accusations about the United Spanish War Veterans caper. The penalty on this charge would be removal from office.

Bail was set at \$1,500. The mayor hired well-known attorney Miguel Estudillo of Estudillo & Schwinn, who had once defended the city in a discrimination case filed by blacks wanting to use the city swimming pool.<sup>12</sup>

Dighton responded to the charges in typical fashion. Right after the indictment, his hand-picked Board of Public Utilities hired the Los Angeles accounting firm of MacLeod, McFarland & Co. for another audit. On December 6, 1928, citing audits by Robertson and MacLeod, Dighton suspended Pierson.<sup>13</sup> The council quickly and unanimously reinstated him.<sup>14</sup>

But the "Mission Inn crowd" moved quickly, too. It started a recall against the mayor. Soon Dighton's supporters started a recall against five city council members.<sup>15</sup> The nasty libel wars that followed were one of the results of posturing for the recall vote, set for February 8, 1929.

Riverside County judges were recused from Dighton's libel case after he pleaded not guilty. Estudillo asked for a

11 Grand jury transcript, file in case no. 18974, *supra*.

12 File in case no. 18974, *supra*.

13 *Daily Press*, Dec. 8, 1928, p. 1.

14 *Enterprise*, Dec. 20, 1928, p. 3.

15 *Daily Press*, Dec. 15, 1928, p. 2.

change of venue, which was denied by Orange County Judge James L. Allen, so Estudillo insisted on jurors who were not residents of the city, which was accommodated. Petitions were signed by 77 persons asking for the trial to be held in larger quarters. At that time, the courthouse was already busy with the sensational multiple child murder trial of Gordon Stewart Northcott, so the trial was moved to the Elks Club, which could seat 250 persons. Some 32 of the signatories were women, possibly a reflection of the support the mayor enjoyed from the Women's Christian Temperance Union, which had backed his efforts for strong Prohibition enforcement.<sup>16</sup>

Los Angeles Superior Court Judge Leon Yankwich, considered an expert on libel, was named by the California Judicial Council to hear the case. Two venire panels of 75 persons were picked for the two trials, with the libel case starting first on January 7, 1929. By the end of the morning session, after 34 prospective jurors had been questioned, nine men and three women jurors were seated. The *Enterprise* noted that a large crowd, including "many women," heard the proceedings.<sup>17</sup>

Dighton was questioned extensively, as were accountant Robertson and four members of the MacLeod firm. John Albright, one of the mayor's allies, said he helped in the hiring of Robertson, adding that the accountant had told him the books were badly out of balance, which he relayed to the mayor. Pierson also testified, claiming the errors found in the books were minor and were corrected – that there was no loss of funds to the city. W.H. McColly, a member of the United Spanish War Veterans, told of the private meeting in which the mayor was confronted with his application for membership claiming war service, which he said the mayor acknowledged was false.

As the trial started, Yankwich cited a seminal 1921 California Supreme case holding that if a statement against an official was made in good faith and believed to be true, it could not be considered libelous.<sup>18</sup> Then with the testimony and summations over, Yankwich gave a series of 31 instructions to guide the jurors. Some were basic – explain-

<sup>16</sup> *Enterprise*, Jan. 8, 1929, p. 1.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Snively v. Los Angeles Record* (1921) 185 Cal. 565. In that case, Yankwich was plaintiff's attorney.

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ing the concept of reasonable doubt, for instance. Others perhaps foreshadowed today's libel law, protecting the First Amendment right to criticize public officials. One called for acquittal if the mayor's comments had a good intent and justifiable ends. And if he believed they were true.

The jury elected D.W. Glenn of Corona as its foreman and returned an hour later with its verdict: Not guilty.<sup>19</sup>

While the libel jury was deliberating, Judge Yankwich started proceedings to pick the panel for the second trial, on the accusation of willful misconduct in office. That had to be suspended for a while when the libel jury returned with its verdict.

The second trial jury of five women and seven men heard much of the same evidence that the prosecution had presented at the libel trial, but the defense called no witnesses. Judge Yankwich then advised the jury to acquit, because the prosecution had failed to prove there was any misconduct in office. He said the accountants had testified there were no shortages in city funds; therefore Dighton did not fail to report any shortages, as would have been required by the city charter.<sup>20</sup> "The fact that the mayor thought there was shortage is immaterial if, in fact, there was none. That the mayor may have been guilty of disloyalty to the city in shouting 'graft' or that he may have hurt it, is not grounds for removing him from office under these proceedings," said the judge. Then he added: "The city can take care of its own political situation in due time." Jury foreman Philip Truby of Beaumont announced its not guilty verdict 35 minutes later.<sup>21</sup>

## The Second Libel Case: *People v. C.C. Pitts*

But while the city's major papers attacked the mayor and supported recall even before the libel trial, another paper that Dighton helped launch took his side, going after "the Mission Inn crowd." Called the *Riverside News*, it had been launched by C.C. Pitts, a Dighton supporter who spoke at rallies backing the mayor and who had been in town only a few months – indeed, in the state only six months. After starting the paper, he took on a business manager, D.B. Barnhart, and on December 14, 1928, published a thinly veiled parody about a place called "Graftin, the City Beautiful."

The parody talked about the city's famous establishment, the Tiddle-Dee-Winks Inn, and its owner Frank Buller, "who was also the big Boss and political advisor of the Old Gang." Buller "was continually having [the Inn] repaired and building new additions, which never showed when he got his tax bill each year." "It was rumored by some of the Suckers (townspeople) that you could get anything you wanted at the Tiddle-Dee-Winks Inn: wine, women or song. Of course, you understand, for a price."

<sup>19</sup> *Enterprise*, Jan. 10, 1929, p. 1; file in case no. 18974, *supra*.

<sup>20</sup> Accusation, file in case no. 18974, *supra*.

<sup>21</sup> *Enterprise*, Jan. 12, 1929, p. 1.

It wasn't a stretch to conclude the tale was talking about the Mission Inn and its owner Frank Miller. It implied that Buller (or Miller) had been questioned by federal agents about an alleged bootlegging connection.

The article, credited to "Walt the office boy," went on to describe four Common Council members whose names and mannerisms could be linked to the real-life fellows: Clarence Backstrand, John Taylor, J.T. Redman, and Jesse Wells. Backstrand was a particularly vocal opponent of the mayor in council meetings.

But the establishment apparently was not amused, and the authorities flexed their muscles again. Immediately after the story was published, criminal libel charges were filed by District Attorney Ford against Pitts, Barnhart, and "Walt the office boy." Arrest warrants were signed on a Saturday, the day after publication. The charges were based on a complaint by Irwin Hayden, who was later to become a city councilman, and who had been one of the losers in the mayoral race that Dighton won. The charges said the articles contained "false, defamatory and libelous words" and emphasized the impact on the council members "in their private capacity and their official capacity as members of the Common Council."<sup>22</sup>

Officials appeared to treat the two accused roughly. Pitts and Barnhart were picked up by a sheriff's deputy on Monday outside of the newspaper office. Bail was first set by Justice of the Peace Leonard J. Difani at \$5,000, as recommended by the district attorney (that seemed high, because it would have been the maximum fine under the law if they had been convicted). Pitts produced a bond. However, Difani insisted on questioning the bondsman and then raised the bail to \$10,000. Pitts was held in jail for six hours while the bond was arranged.<sup>23</sup> C.W. Benshoof, attorney for the defendants, sought to disqualify Difani at the preliminary hearing, citing his bail actions as well as his "strong feelings" in the city's heated political atmosphere. Difani rejected the motion, immediately held the hearing and found there was enough evidence for a trial.

The bitter taste of what can happen when authority is challenged apparently was enough for Pitts. Before his trial was scheduled to start, he issued a public recantation of his support for the mayor in a statement to the *Enterprise* and the *Daily Press*, which carried it on the front page.<sup>24</sup> He said that when he arrived in Riverside, he was "unfortunate enough to become connected with the faction that had the wrong kind of men for leaders." He said he gave up his interest in the now defunct *Riverside News* and had no connection to its successor, the *Riverside Facts*, another Dighton propaganda sheet. "I am not in favor or in sympathy with the tactics or policies used by Mayor Dighton," he added.

<sup>22</sup> File in Riverside Superior Court case no. 18952, *People v. Pitts*.

<sup>23</sup> *Daily Press*, Dec. 17, 1928, p. 2.

<sup>24</sup> *Enterprise*, Jan. 25, 1929, p. 1.

Pitts' retreat came a few days before a major rally against Dighton, who faced a recall election, with Joe Long named as the man to succeed him if the recall was successful.<sup>25</sup> Long had strong backing from the establishment and the two newspapers. But even though the Dighton faction had launched its own recall action against five of the Common Council members, the Pitts break isolated the mayor even more.

When it was time for the Pitts trial, Frank Miller was among those subpoenaed to testify, but Dr. A.W. Roblee notified the court on February 6, 1929 that Miller was seriously ill and would be unable to make any court appearances for at least a month. The doctor said that, in fact, he would not allow the process server to see Miller.

When the libel trial started at the end of February, Pitts filed an affidavit asserting that he did not write the article; in fact, he said, it was written by Walter H. Miller, apparently no relation to Frank,<sup>26</sup> but who, according to the *Enterprise*, was listed in the city directory as a mail carrier. Indeed, Pitts said, he rejected the article at first, because he was concerned about libel and required some changes. Walter Miller then confirmed that the charges implied in the edited article were true, and so, Pitts said, he published the story.

But he added that after the furor over the article surfaced, he tried to confirm the allegations about the Inn and Frank Miller and could not. Pitts said he was "very sorry that he published that article," and that he extended his "sincere apology."

District Attorney Ford immediately withdrew the charges against Pitts and Barnhart and said he would talk to Walter H. Miller before deciding whether to proceed with the case. Nothing in the court record indicates any further action took place in the criminal libel case.

Still, more official pressure was turned on. The state Labor Commission held a hearing at the end of January accusing the *Riverside News* management of failing to pay for work performed. Dighton testified that he gave \$50 start-up money for the paper, and his superintendent of parks added that he put up \$500 for equipment. But the mayor denied he guaranteed any work payment, although Barnhart's testimony contradicted him.<sup>27</sup> Dighton lost the recall election on February 8, 1929, and thereafter the labor case appears to have been dropped.<sup>28</sup>

## The Third Libel Case: *Dighton v. The Daily Press*

Ironically, the libel case that appeared to have had the most merit never got anywhere. In that case, Dighton sued the *Daily Press* for \$65,000 over a November 27 editorial

that linked the mayor to the stench of the Ku Klux Klan. Apparently giving credence to whispers that Dighton was backed by the Klan, the editorial cited "an anonymous letter but one that was sent by the Dighton organization" to the city's pastors. According to the *Daily Press*, it was sent by a secret organization, a covert allusion to the KKK, and had information about deplorable conditions in city affairs.

The editorial said the letter was headed, "THE ONE HUNDRED PERCENT AMERICAN LEAGUE" and included another line, "ONE HUNDRED PER CENT CHRISTIAN." The editorial added that "[t]his latest move [is] to bolster up the fading political fortunes of Mayor Dighton." Except for some legal motions, that suit went nowhere, and Dighton dropped it in April, but not before forcing the paper to hire two prominent attorneys from Los Angeles to conduct its defense.<sup>29</sup>

## The Libel Threat Against the *Enterprise*

The criminal libel case against Dighton spurred even more legal maneuvers. The day after, the mayor hired MacLeod to examine the books of the Electric Light and Water Departments again, this time undoubtedly expecting a more critical report than the one provided by Robertson, who had testified he did not find any malfeasance, just a few bookkeeping errors.

MacLeod's report indeed did lay out some serious findings of improper bookkeeping by City Treasurer Harry Dunbar, but at the same time, the council hired its own accountant, John Jahn, who said the books were clean. The *Enterprise* was critical of MacLeod, pointing out just what he was costing taxpayers and attacking the report in an editorial and front-page commentary.<sup>30</sup>

MacLeod sent a long letter to the paper and demanded that it be published on a specific date, on page one, along with a retraction. MacLeod labeled the paper's attack as a "most serious accusation," implying deliberate falsification. The paper meekly put MacLeod's letter on its front page on the day he demanded, and in an editorial in the same issue, it said it did not mean to "misrepresent" the MacLeod organization or to imply that it had falsified a report. So that potential libel case never materialized.

Dighton was recalled as mayor, and the council members that he had attacked won their recall elections. The now ex-mayor left town, couldn't get work, and died in tough financial straits.<sup>31</sup> No one was ever found guilty of libel. That is not to say, however, the suits had no impact on how the city was run and who ran it. No outsiders prevailed for a long time. But that's another story.

*Mel Opatowsky, retired managing editor of the Press-Enterprise, teaches journalism at Cal State University, Fullerton.*



25 *Enterprise*, Feb. 1, 1929, p. 1.

26 File in case no. 18952, *supra*.

27 *Enterprise*, Feb. 1, 1929, p. 1.

28 *Enterprise*, Feb. 9, 1929, p. 1.

29 File in Riverside Superior Court case no. 18872, *Dighton v. Riverside Daily Press*.

30 *Enterprise*, Jan. 21, 1929, p. 1.

31 *Daily Press*, Jul. 20, 1964, Section B, p. 1.

# NOMINEES FOR RCBA BOARD OF DIRECTORS, 2011-2012

The Riverside County Bar Association's Nominating Committee has nominated the following members to run for the RCBA offices indicated, for a term beginning September 1, 2011. (See below for their biographies.) Watch your mail for ballots. Election results will be announced at the RCBA General Membership meeting in June.



**Robyn A. Lewis**  
*President*

As President-Elect 2010-2011, Ms. Lewis will automatically assume the office of President for 2011-2012.



**Christopher B. Harmon**  
*President-Elect*

Chris Harmon is a partner in the Riverside firm of Harmon & Harmon, where he practices exclusively in the area of criminal trial defense, representing both private and indigent clients. He received his undergraduate degree from USC and his J.D. from the University of San Diego School of Law.

Since his admission to the bar, Chris has practiced exclusively in Riverside and has always been an active member of the Riverside County Bar Association. As a leader in the RCBA, he has been active in many bar activities and programs. He currently serves as Vice President on the RCBA Board. He has served as the Co-Chairman of the bar association's Criminal Law Section, as well as on several other bar committees. He is a current member and past board member of the Leo A. Deegan Inn of Court. He has coached and assisted various Riverside schools in the Mock Trial program, and he is a past Executive Committee member of the Riverside chapter of Volunteers in Parole.



**Jacqueline Carey-Wilson**  
*Vice President*

I am a Deputy County Counsel for the County of San Bernardino and represent the Department of Aging

and Adult Services, which includes the Public Guardian-Conservator, and the Department of Child Support Services. After graduating from California State University, Fullerton with a Political Science degree, I was a field representative for Congressman George Brown in Colton. I then attended Southwestern University School of Law and was admitted to the bar in 1995. I initially practiced criminal law and worked as a Deputy Public Defender for the County of Riverside. I then specialized in appellate work and was a research attorney at the California Court of Appeal in Riverside.

I have been an active member of the Riverside County Bar Association (RCBA) since 1996. In 1997, I joined the Publications Committee of the RCBA as a writer and photographer for the Riverside Lawyer, and I am now the editor. As editor, I coordinate each month's publication, recruit writers, and review the content of the magazine. In addition, I was elected to serve as the Chief Financial Officer for the RCBA in 2010.

In March 2001, I became a Director of the Volunteer Center of Riverside County, and I served as President of the Board of Directors from September 2004 through September 2006. The Volunteer Center is a nonprofit agency that provides services to seniors, youth, people in crisis, court-referred clients, and welfare-to-work clients.

In October 2005, I was appointed to the State Bar's Public Law Section Executive Committee. As a member of the Executive Committee, I assist the Public Law Section in educating attorneys who represent cities, counties, school boards, and special districts.

Since November 2005, I have been a Director of the Federal Bar Association, Inland Empire Chapter (FBA), and I served as President in 2009. I assist in coordinating events for the FBA and have written for the Federal Lawyer.

I reside in the City of Riverside with my husband, Douglas Wilson, and our three daughters, Katie (18), Julia (14), and Grace (10). I would be honored to continue to serve the Riverside legal community as Vice President of the RCBA.



**Chad W. Firetag**  
*Chief Financial Officer*

Mr. Firetag is a partner in the law firm of Grech & Firetag. During his time with the office, he has rep-

resented numerous clients in a wide range of criminal matters.

Mr. Firetag graduated Phi Beta Kappa from the University of California at Riverside, with a B.A. in Political Science and a minor in History. He received his law degree from the University of California at Davis.

Mr. Firetag has been an active member of the Riverside County Bar Association and the Leo A. Deegan Inn of Court. He currently serves as the Secretary for the RCBA and has served as the Co-Chairman of the RCBA Criminal Law Section.

Mr. Firetag lives in Riverside with his wife, Victoria, and their two sons, William, age 5, and Nathaniel, age 1.



**Richard D. Ackerman**  
*Secretary*

Rich Ackerman grew up in Santa Ana, graduated from Western State University School of Law in 1994, and has been in active practice since then. He has spent most of his legal career in Riverside County. He is a sole practitioner; his practice emphasizes the areas of business law, civil litigation, and trial work. He is married to Stefanie and has four children.

Rich's law practice involves civil and constitutional law appeals, public interest litigation, and complex civil litigation. He served as a judge pro tem for the civil, juvenile, and traffic courts from 2005-2010, where he helped to bring about final dispositions in hundreds of cases.

For the last two years, he has served as the Chair of the RCBA MCLE Committee. He serves as a scoring attorney for the Mock Trial Program and regularly volunteers his time for the Public Service Law Corporation.

Rich is the immediate Past President/CEO of the Mt. San Jacinto College Foundation, where over \$300,000 in annual scholarship opportunities are provided to students in Riverside County. He previously served as the Vice-Chairman of the Murrieta Valley USD Measure K Bond Oversight Committee, which supervised \$54 million of spending on a new high school, district-wide improvements, and sports facilities. Rich considers himself to be a stalwart advocate for legal aid programs, youth programs, and causes that promote the public's understanding of our profession.

He wants to retain a board position because he wants to further the RCBA's interest in addressing the legal needs of the indigent, maintaining the quality and variety of MCLE programs, increasing public awareness of

the need for judicial infrastructure and personnel, and increasing the diversity of the bar as a marketplace of ideas.

More on Rich can be found at: [www.attorneyackerman.com](http://www.attorneyackerman.com).



**Kira L. Klatchko**  
*Secretary*

Kira L. Klatchko is the only Certified Appellate Specialist in Riverside County and is an appellate practitioner at Best Best & Krieger LLP. Ms. Klatchko currently sits on the RCBA Board as a Director-at-Large. She was Chair of the RCBA's Appellate Law Section from 2006 thru 2009, and she currently serves as the Section's Co-Chair. Ms. Klatchko has served several terms as a contributing member of the RCBA's Continuing Legal Education Committee and has chaired and organized numerous events for the RCBA, including programs on family law appeals, stays and supersedeas, oral argument, writs, and limited civil appeals. She also presents an annual program on appellate law for new admittees attending Bridging the Gap. Ms. Klatchko is active in the Mock Trial Program; she served five seasons as an attorney coach for Palm Springs High School, and she continues to support numerous teams in the county.

Ms. Klatchko is an appointed Member of the California State Bar Standing Committee on Appellate Courts. For four years, she was a member of the Warren E. Slaughter and Richard I. Roemer Chapter of the American Inns of Court. She is a volunteer mediator at the Fourth Appellate District, Division Two, and she conducts private mediations as part of the Riverside County Superior Court's Civil Mediation Panel. Recently, she co-authored a book chapter on California appeals for the ABA's Council of Appellate Lawyers. In 2009 and 2010, Ms. Klatchko was named to the list of Super Lawyers Rising Stars for Southern California. In 2010, the City of Palm Springs, along with Athena International and the Palm Springs Chamber of Commerce, named her Young Professional of the Year.

Ms. Klatchko was born and raised in Palm Springs and returned home to practice law after graduating from UC Davis School of Law. She received her B.A. in Political Science, with distinction, from UC Berkeley. She sits on the boards of several community-based nonprofits, including the Angel View Crippled Children's Foundation.



**Jack Clarke, Jr.**  
*Director-at-Large*

Jack Clarke, Jr. is a partner in the Litigation and Schools Departments of the Riverside office of Best Best & Krieger LLP. Jack is involved in several types of litigation concerning education law, special education, public agencies, and other substantial litigation matters.

Jack has successfully defended school districts and other clients in matters involving general litigation, student discipline, civil rights, constitutional claims and special education due process hearings in administrative and courtroom hearings and trials. Jack received his Juris Doctorate degree, with distinction, from the University of the Pacific, McGeorge School of Law, in 1985 and his B.S. degree in Business Administrative Studies from the University of California, Riverside in 1980.

Jack has several notable accomplishments within the legal community and within the greater community. Here are some of them:

He is a frequent speaker on education law matters at regional and statewide venues.

He has twice been acknowledged as one of the 100 most influential lawyers in California by California Law Business Magazine.

He is a past Chairman of the Board of the Greater Riverside Chambers of Commerce.

He is a past recipient of the Riverside Citizen of the Year Award.

He is a charter member of the UCR Athletic Hall of Fame.

He was a commencement speaker at the graduation ceremonies at UCR in June 2010.

He is Past President of the UCR Alumni Association.

Last September, he received the Riverside County Bar Association's James H. Krieger Meritorious Service Award.

In February 2011, he served on a panel discussion on Diversity in the Law sponsored by the Riverside County Bar Association.

In January 2011, he spoke on the issue of civility in the legal profession at an annual symposium sponsored by McGeorge School of Law.

He is currently a member of the Leo A. Deegan Inn of Court.

Speaking on my own behalf, I would note that it is an honor to be considered for a possible position on the Riverside County Bar Association Board of Directors. Thank you for your consideration.



**L. Alexandra Fong**  
*Director-at-Large*

I am honored to be nominated for a position as Director-at-Large. I am a Deputy County Counsel for the County of Riverside, where I practice exclusively in the area of public entity defense. I also regularly appear before the Board of Supervisors on behalf of the Code Enforcement Department. I received my undergraduate degree and J.D. locally.

After graduating from law school and passing the bar exam in 2000, I began practicing law at the San Bernardino offices of Lewis D'Amato Brisbois & Bisgaard LLP (now Lewis Brisbois Bisgaard & Smith LLP), one of the largest law firms in California. While at Lewis Brisbois, I was mentored by many local attorneys, including Joseph Arias, Arthur K. Cunningham, Kenneth T. Kreeble, Christopher D. Lockwood, John S. Lowenthal, James C. Packer, and John M. Porter. I practiced primarily in public entity defense before moving to the Riverside County Counsel's office.

Since 2005, I have been an active member of the Riverside County Bar Association ("RCBA"). I am currently the Chairwoman of the Mentoring Program Committee. I am a member and a contributing writer of the Bar Publications Committee. I am also a member of the Continuing Legal Education Committee of the RCBA. I am a member of the Leo A. Deegan Chapter of the American Inns of Court and a Member-at-Large for the Riverside County Barristers Association, the young attorneys' division of the RCBA. For the past three years, I have participated in the Mock Trial Program as a scoring attorney.

I believe it is important to have public entity representation within the local bar association, and I welcome the opportunity and privilege to serve the Riverside County Bar Association, and the legal community, as a member of the Board of Directors.



**Richard Roth**  
*Director-at-Large*

Richard D. Roth is President of Roth Carney APC, where he practices labor and employment law (management). He received his undergraduate degree from Miami University and his J.D. from Emory University; he is admitted to practice in both Georgia and California.

Since graduating from law school, Richard served as a Judge Advocate in the United States Air Force and as an attorney with the National Labor Relations Board before joining the Riverside law firm of Reid, Babbage & Coil in 1981. Richard has been a member of the Riverside County Bar Association since 1981 and active in the Riverside legal community. Among his professional and civic activities, he is Past Chairman of the Board of the Greater Riverside Chamber of Commerce, past Vice-Chair of the Parkview Community Hospital Board, and past member of the Leo A. Deegan Inn of Court, and he currently serves on the La Sierra Community Foundation Board and the Riverside Community Hospital Advisory Board, among others. In addition to his private practice, Richard continued to serve in the Air Force Reserve in various capacities in the United States and overseas for over 32 years, retiring in the grade of Major General. As a hobby, he is an instrument-rated private pilot who loves to fly his 1964 Bonanza. Richard lives in Riverside with his wife Cindy and their dog Akona.



**Jean-Simon Serrano**  
*Director-at-Large*

Jean Serrano is an associate with the Riverside law firm, Heiting & Irwin, where he has practiced plaintiff's personal injury law since shortly after his admission to the bar in 2006. Jean is the current President of the Riverside County Barristers Association, having previously held positions as Treasurer, Secretary, and Vice-President. Jean has also been a member of the Leo A. Deegan Inn of Court for the past three years and is a member and contributing writer of the RCBA Publications Committee.

Throughout his presidency, Jean has increased the visibility of the Barristers Association within the community, forming a bond between the Barristers and the newly formed legal clinic of the Associated Students of the University of California. Jean would love the opportunity to serve on the Riverside County Bar Association Board so that he can continue to be involved in, and give back to, the legal community and the community at large.



**Ted Stream**  
*Director-at-Large*

As a Shareholder and Chair of the Litigation Department at Gresham Savage, PC, Ted Stream works in a

wide range of practice areas, including real estate, health care, environmental, business, bankruptcy and public law. Mr. Stream's experience extends to complex claims and disputes involving land use, construction, intellectual property, trade secrets, unfair business practices, employment and real property. As he has a distinguished list of published cases to his credit, his advocacy expertise is sought by national and international clients, including Dell, GE Capital, Walmart, Lamar Advertising, CEMEX and Teva Pharmaceuticals.

Mr. Stream has been a member of the Riverside County Bar Association since 1989 and is also a member of the California State Bar and the Federal Bar Association. He graduated with honors from Willamette University College of Law in 1988 and has been a practicing attorney in Riverside since then. He is a frequently published author and is actively involved with numerous community organizations and charities. Mr. Stream is proud to be a nominee for Director-at-Large for the Riverside County Bar Association and looks forward to further contributing to the legal community.



**Jeff Van Wagenen**  
*Director-at-Large*

Jeff Van Wagenen, a specialist in criminal law, certified by the Board of Legal Specialization of the State Bar of California, is the Assistant District Attorney for the Riverside County District Attorney's office.

Mr. Van Wagenen, a graduate of the University of Southern California and Hastings College of Law, has been actively involved in the legal community of Riverside since 1996. He is the immediate Past President of the Leo A. Deegan Inn of Court; he has served as Chair of the RCBA Criminal Law Section and is a past member of the Advisory Committee of VIP Mentors.

Mr. Van Wagenen lives in Riverside with his wife Dawn, who has previously served on the board of the Junior League of Riverside and is a Past President of the Riverside County Law Alliance, and their two children.

Mr. Van Wagenen looks forward to the opportunity to serve the membership of the Riverside County Bar Association as a member of the Board of Directors for 2011-2012.



# STATE MOCK TRIAL

by the Honorable Joe Hernandez

The State Mock Trial Competition was held in Riverside on March 25-27. There were 32 teams from all over the state. On Friday night and all day Saturday, the Hall of Justice was packed with students, parents, and volunteers.

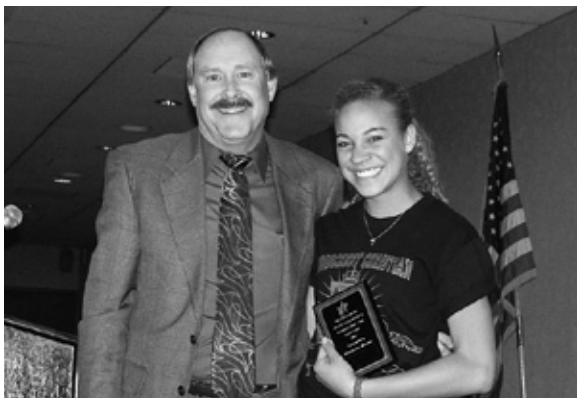
As usual, many Riverside judges and attorneys volunteered.

The finals were between Elk Grove (Sacramento) and La Reina (Ventura). La Reina was victorious. The highest finishing local team was Redlands East Valley (San Bernardino), which finished in seventh place.

The awards ceremony at Raincross Square was packed with almost 1,000 people. Bar President Harlan Kistler, District Attorney Paul Zellerbach, Mock Trial Steering Committee Chair John Wahlin, Judge Joe Hernandez, and Presiding Judge Sherrill Ellsworth presented awards.



Mock Trial Steering Committee Chair, John Wahlin, RCBA president Harlan Kistler, Riverside Superior Court Presiding Judge Sherrill Ellsworth, Judge Joe Hernandez all presented awards at the State competition ceremony.



Woodcrest Christian High School's Taylor Wells with the award for Outstanding Witness in the State competition.

# BENCH TO BAR

## PUBLIC NOTICE

### NEW CIVIL LAW AND MOTION HEARING DATE ON-LINE RESERVATION SYSTEM

Effective Monday, April 11, 2011, a new automated on-line system for reserving civil law and motion hearing dates will become operational in the western and mid-county regions, to be followed in the near future in the desert region.

With the exception of unlawful detainer and small claims cases, a civil law and motion hearing date can now be reserved on-line through the court's website. Attorneys and litigants will enter the case number and type of motion with a short title or description and then reserve a hearing date.

The only fee charged is the motion filing fee in accordance with statute. There are no additional fees to use this reservation system. The court accepts Visa, MasterCard, Discover, and American Express as forms of payment. A receipt with a confirmation number is available for printing.

Once a motion hearing date is reserved through the system, parties must serve and file the motion papers with the court pursuant to statute. Upon the filing of the motion and any related documents with the court, the reserved motion hearing date will be confirmed.

The convenient new service is available 24 hours a day, seven days a week. For further information, please visit the court's website at [www.riverside.courts.ca.gov](http://www.riverside.courts.ca.gov) and go to on-line services.

*Sherri Carter, Court Executive Officer and Clerk of the Court*

### NOTICE FROM THE SAN BERNARDINO SUPERIOR COURT PROPER VENUE AND ZIP-CODE plus FOUR REQUIRED

Documents filed and/or mailed to the following Superior Court of California, San Bernardino County divisions MUST reflect the proper address and zip-code + four to ensure timely filing and avoid return for correction and/or clarification of correct venue. Please indicate which clerk's office you are submitting your documents to from the choices below, i.e. Criminal Clerks Office; Small Claims Clerks Office; Family Law Clerks office, etc.

Superior Court of California

San Bernardino Division – Attn: **Criminal; Traffic; Family Law; or Probate**

**351 N. Arrowhead Avenue**

San Bernardino, CA 92415-zip code + four

**Criminal/Traffic: 92415-0220**

**Family Law: 92415-0245, Probate: 92415-0212**

Superior Court of California

San Bernardino **Civil Division – Attn: Civil; Landlord Tenant; or Small Claims**

**303 W Third Street**

San Bernardino, CA 92415-zip code + four

**Civil: 92415-0210**

**Landlord Tenant/Small Claims: 92415-0205**

**New phone numbers for the San Bernardino Civil Division:**

Civil (909)-707-8678;

Civil Calendar (909)708-8671;

Civil Fax Filings (909)708-8586;

Document Control (909)708-8608

Small Claims/Landlord Tenant: (909)708-8652;

Small Claims/Landlord Tenant Fax filings (909)708-8585

# JUDICIAL PROFILE: JUSTICE CAROL CODRINGTON

by Sophia Choi

## “Peacemaker.”

Justice Carol Codrington is known by people as a peacemaker, and it is very clear why. I had the opportunity to know Justice Codrington through the Leo A. Deegan Inn of Court, as her first year in the Inn of Court was also my first year in the Inn of Court in 2009. However, I had the honor of really getting to know Justice Codrington recently when I visited her at the Fourth District Court of Appeal, Division Two, in downtown Riverside.

Justice Codrington’s family came to the United States, specifically California, from Belize, in Central America, in order to obtain medical treatment for her oldest brother, who had polio. Justice Codrington was born and raised in South Central Los Angeles. She has never forgotten her humble beginnings and especially enjoys mentoring high school, college and law students with similar backgrounds and experiences as a way of “paying it forward” for those who have mentored her.

Justice Codrington attended Loyola Marymount University for her undergraduate studies and then attended Loyola Law School. While a law student, she externed for Bet Tzedek Legal Services and for the California Court of Appeal, Second Appellate District, with now-retired Presiding Justice Arleigh M. Woods. She began her legal career as an associate at Burke, Robinson & Pearman, a law firm in Century City, doing civil litigation. Justice Codrington did her first trial unexpectedly. On the Monday immediately after the Friday she was sworn in to the State Bar, she went to court solely to argue a motion for a continuance. However, the case was not continued, and Justice Codrington had to begin her first trial that same day!

After several years as an associate at Mallory, Brown-Curtis & Mallory (now the Law Offices of Mallory & Associates, APLC), a civil litigation firm, Justice Codrington became partner. She then became Director of Litigation and Adjunct Professor of Law at what was then the Western Law Center for Disability Rights at Loyola Law School. Justice Codrington indicated that her interest in disability law was stimulated by her oldest brother’s medical condition. Later, Justice Codrington became a deputy city attorney for the Los Angeles City Attorney’s office and then associate general counsel for the Los Angeles Unified School District. Next, she became a sole practitioner, first in Los Angeles, and then in Riverside County, where she relocated in 2005. Justice Codrington believes in hard work and long hours, and she



Justice Thomas Hollenhorst swearing in Justice Carol Codrington

always practiced with the belief that it is important to be not just a lawyer, but to be a highly skilled lawyer. In fact, when Justice Codrington met the iconic attorney Johnnie L. Cochran, Jr., he confirmed that “preparation, preparation and more preparation” is the key to being an effective trial lawyer.

Justice Codrington started out as a generalist who practiced in many areas of law, in state and federal courts across the state, and for both sides (plaintiff and defense), long before developing a specialty. She has litigated complex class action suits, as well as civil rights cases dealing with the Americans with Disabilities

Act. Justice Codrington believes that it is very beneficial to work on both sides and to practice a wide range of areas of law, both criminal and civil. She recommends doing so to anyone hoping to become a judge because it can help you become a neutral and objective judicial officer and assist you in handling a variety of assignments. She further stressed the importance of striving for excellence in all one does and of not being afraid to try new things.

When I inquired as to when Justice Codrington first wanted to become an attorney, she stated that she always wanted to become a *judge*, and has always wanted to be involved in public service. She informed me that she actually made it her goal to become a judge after her sixth-grade field trip to Los Angeles Superior Court. After well over 20 years as a litigator practicing in both state and federal courts, Justice Codrington became a court commissioner for the Superior Court of Riverside County in 2006. Then, in 2007, she was sworn in as a judge for the Superior Court of Riverside County, where she worked in various departments, including criminal, civil, family court, domestic violence



The Justices of the Court of Appeal, 4th District, Division 2: Douglas Miller, Betty Richli, Thomas Hollenhorst, Presiding Justice Manuel Ramirez, Art McKinster, Jeffrey King, Carol Codrington





Justice Codrington and Mary Anne Forrest



Presiding Justice Manuel Ramirez and Presiding Justice Sherrill Ellsworth



Jean-Simon Serrano, Justice Carol Codrington, and Jim Heiting



Justice Douglas Miller, Eric Isaac, and Judge Rick Fields

Photos courtesy of Jacqueline Carey-Wilson

court, and drug court. She particularly enjoyed drug court because she was able to encourage people by telling them that it is never too late to turn your life around and to achieve your dreams. In 2010, then-Governor Arnold Schwarzenegger nominated Justice Codrington to the Fourth District Court of Appeal, Division Two; the nomination was confirmed shortly thereafter, and she took the oath of office on December 21, 2010. On January 7, 2011, Justice Codrington was formally enrobed.

Justice Codrington said that she has learned so much from all the judges in Riverside County. She credits them with being stellar colleagues and some of the hardest-working judges in the state. Justice Codrington also articulated that she enjoys working with the justices of the Fourth District Court of Appeal and that she feels it is an honor and a privilege to work with them. She further expressed gratitude for always having had amazing staff. She indicated that she has a wonderful staff at the court of appeal and has received a warm welcome to the court.

As she has such an impressive résumé, one may wonder if Justice Codrington has time apart from work to enjoy hobbies. From shopping to exercising, she has a wide range of pastimes. She loves shopping, and shoes are her weakness. She enjoys intensive workouts, such as indoor cycling and weightlifting. Justice Codrington also enjoys all kinds of music, including classical, pop, country, hip-hop, swing, jazz, British new wave, R&B, reggae, and gospel music. Some of her favorite artists include Stevie Wonder, the Beatles, Benny Goodman, Dolly Parton, Donnie McClurkin, Sarah McLachlan, Common, Sarah Vaughan, and Tupac Shakur. She loves spending time with her family, especially her husband and grandchildren.

Just as she stays current with all types of music, Justice Codrington also stays up to date with the latest gadgets and modern technology. She also enjoys watching Turner Classic Movies (TCM) and has a passion for *I Love Lucy*. Looking around her chambers, I observed a wide range of *I Love Lucy*

memorabilia. Justice Codrington said that it is always important to have a good sense of humor, which elucidates her love of *I Love Lucy*. Among all these hobbies and interests, however, her favorite thing to do is to mentor students and encourage people to reach their goals. For instance, since 1995, she has been a private tutor for the California Bar Examination for disabled candidates and repeat examinees. She has presided over Youth Court and Mock Trials in Riverside County. She has also spoken on various topics for bar associations, colleges, law schools, and even elementary schools.

Justice Codrington's favorite type of food is Thai food, and she has eaten at almost every Thai restaurant that has been recommended to her. She also likes Korean barbecue chicken and sushi. Justice Codrington cheerfully said that she loves spicy foods from all cultures, the spicier the better!

I was very inspired when Justice Codrington told me one of her favorite quotes: "Everyone and everything is your teacher."<sup>1</sup> Justice Codrington emphasized that one should always be open-minded and stated that she is constantly learning from everyone, as no one occupation is more important than another and there is something to learn from people of all ages. Justice Codrington's favorite quote is consistent with her humility. Although she has achieved so much, Justice Codrington is humble and treats everyone around her with civility. Justice Codrington said that civility is the cornerstone of an excellent lawyer and that it takes so much more energy to be mean and disrespectful than to be kind and respectful. There is no question why Justice Codrington is known as a peacemaker.

I would like to sincerely thank Justice Codrington for giving me a very engaging interview, even though she was sick with a cold.

*Sophia Choi, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.*



<sup>1</sup> This quote is by Ken Keyes, Jr.

# OPPOSING COUNSEL: DOUGLAS F. WELEBIR

by Jeffrey Boyd

## The *Stringfellow* Dalmatian

“My wife once referred to me as a Dalmatian. I get up in the morning, I smell the smoke, and I have to go to the fire,” said Douglas Welebir on an early Monday morning interview in his office in Redlands. “If I get up at 4, I go to the office, if I get up at 5:30, I go to the office.” Reflecting back on his time forty-five years practicing law, Doug realizes he made the right call in becoming a trial attorney. Having tried over a hundred civil cases to a jury verdict with many successful results, Doug’s clients probably believe the same thing as well. “I wouldn’t make a good judge,” an admission Mr. Welebir candidly puts forward, “I wouldn’t be good at calling balls and strikes. I want to swing the bat.”

Doug Welebir is an attorney known for his work in *Newman v. Stringfellow* (see his thoughts on this case in his article in this issue) which is, to Mr. Welebir’s knowledge, the longest civil case ever in Riverside County. The case involved one of the most complex lawsuits in state history at the time and involved construction of one of the most advanced state of the art courtrooms specifically for the trial (which lasted thirteen months). The case eventually settled for \$110,000,000.00 for the plaintiffs.

Born in Washington D.C., Mr. Welebir made his way to the Inland Empire and graduated from La Sierra College (now University) with a major in History. Doug’s father was a physician, and in college he took all requirements to attend medical school or law school. “I knew then, I either wanted to be a physician or a lawyer,” he recalls with a grin. That is actually what allows him to be comfortable taking a case in electrical or mechanical engineering, chemistry, or irrigation. “I enjoy the cross-referencing with every discipline in life.”

He then went directly to law school at the University of Southern California. After graduating, Mr. Welebir took a position as a research attorney with the Court of Appeals and then was hired on at the Public Defender’s Office. He recalls “starting at January 2 at 8:00 in the morning and being in court by 8:15.” He tried his first misdemeanor jury trial two weeks later, and his first



Douglas F. Welebir

felony six weeks later. Having begun practicing law at twenty-two, he was a young attorney. “That was the first question every juror asked me after a trial,” Mr. Welebir recalls fondly referencing his age. He even remembered one instance where jurors had pooled together their money and the juror who guessed closest would win the pot.

After which, he was hired at a private firm and has been handling trial work ever since. He has tried over one hundred cases to verdicts, and not just in California. He has been admitted

pro hac vice in thirty-five states. He has tried cases in Washington, North Carolina, Illinois (Chicago). His cases extend over a wide breadth: medical device cases (failed hips, knees, and shoulders), machine tools, automotive, and railroad cases. His favorite cases will challenge him to relate the specific ailment the plaintiff is suffering from to the jury. The creativity not only helps the jury understand what a Plaintiff is suffering from but also helps in achieving a settlement short of trial. “Find a way to tell a story that a jury can understand in concepts that are not too simple but can provide the jury an ‘ahha’ moment...that’s what makes it fun.”

One of his favorite war stories involved a case against the state of California. Liability was based on a texture problem for the highway. In the case, Doug’s client came along on the freeway and his car slid off and went over the embankment. The ambulance that came to rescue his client slid off and went over the embankment as well. So finally, the second ambulance came and took everyone injured away. The judge had ruled that the incident involving the ambulance was a subsequent accident, rather than concurrent, which meant the jury would not hear any information regarding the ambulance sliding off the freeway.

In cross examination of the California Highway Patrol Officer, defense counsel was attempting to elicit information about the plaintiff’s tires having tread that was less than accurate. As defense counsel was reading the officer’s conclusion and read into the record “and the ambulance that arrived immediately after slid off the freeway and rolled over next to the plaintiff’s car.”

Despite the expert testimony that had been prepared and all the work that had gone into the liability portion, Doug's closing argument was simply to read that page from the transcript. It was one of his most memorable cases, especially after losing every prior motion in an attempt to evidence of the ambulance of the accident.

Mr. Welebir's trials are complemented by his accomplishments outside the courtroom. To begin, Mr. Welebir was involved in the incorporation efforts of Loma Linda, culminating with him learning that he had been elected mayor at the wise old age of twenty-seven (even though he was on vacation during election day). Currently, Mr. Welebir serves on the governing body of the Union Internationale des Avocats (International Association of Lawyers) as the President of the Torts Commission. His position has taken him all of the world (Morocco, Brazil, Spain, Romania). As a result, Europe tends to be a frequent destination. In addition to his work on the Commission, Mr. Welebir is a frequent lecturer at Loma Linda University Medical School on topics involving medicine and the law.

When he's not in the courtroom, Doug enjoys scuba diving, fly fishing, reading (theology, history, and the humanities), traveling (favorite destinations include Jacksonhole, Wyoming and New York City), and playing the occasional round of golf.

Mr. Welebir currently resides in Redlands with his wife of forty-three years (as of April). They have three children, a daughter (who practices with Mr. Welebir), and two sons (a dentist in Las Vegas, Nevada and another son in medical school at Case Western in Cleveland, Ohio).

Looking back over his four plus decades of practice, Doug's biggest success is the respect he receives from his peers, "My word is my bond." California needs more lawyers like Doug Welebir.

*Jeffrey A. Boyd is a member of the Bar Publications Committee.*



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or [rcba@riversidecountybar.com](mailto:rcba@riversidecountybar.com)***

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**YOU ARE INVITED TO SPA FOR A CAUSE!**

The Riverside County Bar Association is having a Day Spa fundraiser for its giving-back programs, such as Mock Trial, the Elves Program, Good Citizenship Awards for high school students, Adopt-a-School Reading Day, and other RCBA community projects.

**We have made it easy for you to shop online and support us!  
Enjoy \$300 of Spa Services for only \$59.  
(\$15-\$20 of every \$59 purchase goes back to our cause)**

- 1.) Each Spa Card entitles the recipient to 4 visits at a spa near them.
- 2.) Go to the website [www.spasforacause.com](http://www.spasforacause.com) and select/click on "pick a fundraiser." Type in Riverside County Bar Association.
- 3.) Select/click on "pick a spa" and type in your address or city for the spa nearest you or your recipient. The spa cards will be sent via email within 48 hours, Monday through Friday.

**Thank you for continuing to support the RCBA and its giving-back programs.**

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# CANDIDATE STATEMENT: MICHAEL SCAFIDDI



The Board of the Riverside County Bar Association is proud to endorse Michael Scafiddi for the Board of Governors for District Nine. Mike has been practicing criminal law and personal injury since 1997. He started his practice as a solo practitioner, and it has grown into a firm with five attorneys and six staff members. Five percent of Mike's practice is dedicated to pro bono work. He was the recipient of the Kearney-

Nydam award for providing pro bono services in 2010. Mike's office is located in San Bernardino; however, he serves clients in San Bernardino, Riverside, San Diego and Imperial Counties.

Mike has been very active in the Inland Empire legal community. For 14 years, he served on the Board of Directors for the Legal Aid Society of San Bernardino, the past six years as the vice president. Mike was president of the San Bernardino County Bar Association in 2008 and served as an officer on the board from 2004-2010. During his presidency of the SBCBA, he initiated the "We Care Program" to encourage local lawyers to give back to the community through pro bono services and monetary donations. This very successful program continues to advance our profession. Mike is currently a member of the San Bernardino, Riverside, San Diego and Western San Bernardino County Bar Associations. He is also a member of the National Conference of Bar Presidents (Sustaining Fellow Bar

Leader). Meanwhile, Mike has served in leadership roles for several local not-for-profit agencies.

Mike has shared with the board of the RCBA the following general concerns that he would address:

Additional local bench officers.

Improved court facilities allowing better access to justice for all our clients.

Increased interaction between veteran attorneys and new attorneys, utilizing standardized mentoring programs (we have seen success with this locally through our bar association and the Inns of Court).

Mike possesses the vision, strength, passion, integrity, and energy to provide the attorneys of District Nine with a voice at the State Bar level. For additional information, please visit [www.scafiddilaw.com](http://www.scafiddilaw.com).





## CLASSIFIED ADS

### Offices Available

Historic Monterrey Law Building on Brockton/Mission Inn has the ground floor offices available. Includes separate offices, conference room, kitchen in 1500+ sq. ft. Offices all newly painted. Appropriate antique furniture available if interested. Building is convenient to downtown/courts and invites inspection. Call 951-271-3636 for information or appointment.

### Office Space – RCBA Building

4129 Main Street, Riverside. Next to Family Law Court, across the street from Hall of Justice and Historic Courthouse. Office suites available. Contact Sue Burns at the RCBA, (951) 682-1015.

### Conference Rooms available

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



## VOLUNTEERS NEEDED

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

**If you are a member of the RCBA  
and can help, or for more info,  
please contact Lisa  
at (951) 682-1015  
or [feearb@riversidecountybar.com](mailto:feearb@riversidecountybar.com).**

## MEMBERSHIP

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective May 30, 2011.

**Kevin A. Bevins** – Bevins Hellesen & Glauser, San Bernardino

**Kasey A. Castillo** – Lackie Dammeier & McGill APC, Upland

**Brian G. Cosgrove** – Office of the Public Defender, Riverside

**Michael D. Davis** – Gresham Savage Nolan & Tilden APC, Riverside

**Matthew B. Duarte** – Davis & Wojcik, Hemet

**Aaron C. Gettis** – Gresham Savage Nolan & Tilden APC, San Bernardino

**Uwe Nicholas Goebelsmann** – Law Office of Nick Goebelsmann, Glendale

**Helios J. Hernandez, III** – Sole Practitioner, Riverside

**Haresh (Harry) Mirchandaney** – HMA Law Group, Riverside

**Gordon J. Schmidt (A)** – Palomar Investigative Group Inc., Carlsbad

(A) – Designates Affiliate Member



## ATTENTION RCBA MEMBERS

If you are not getting email updates/notices from the RCBA and would like to be on our mailing list, visit our website at [www.riversidecountybar.com](http://www.riversidecountybar.com) to submit your email address.

The website includes bar events calendar, legal research, office tools, and law links. You can register for events, make payments and donations, and much more.



Riverside  
County

# LAWYER

## Riverside County Bar Association

4129 Main St., Ste. 100, Riverside, CA 92501

RCBA 951-682-1015

LRS 951-682-7520

www.riversidecountybar.com

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# Why DRS?



Riverside County Bar Association  
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- Reasonable fee of \$200/hour; no set-up fee or hidden costs
- Minimal waiting time facilitates quicker resolution of issues
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### DRS benefits attorneys:

- Saving clients' money creates satisfied clients
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- Innovative solutions can restore faith in lawyers

### DRS benefits the courts:

- Prevents nuisance cases from getting to court
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- Helps alleviate congested court calendars

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