

# RIVERSIDE LAWYER

April 2005 • Volume 55 Number 4

MAGAZINE

## 2005 Mock Trial Winners



**POLY HIGH SCHOOL  
1ST PLACE**



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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.

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*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

## APRIL

### 5 RCBA/SBCBA Landlord/Tenant Law Section

Nena's Restaurant, San Bdn

6:00 p.m.-8:30 p.m.

MCLE

### 6 Bar Publications Committee

RCBA – Noon

### 7 CLE Brown Bag

“Computer Evidence for the Litigators – When is it Really Deleted?”

Speaker: Richard L. Albee, DataChasers, Inc.

RCBA Bldg, 3rd Floor – Noon

MCLE

### 12 PSLC Board

RCBA – Noon

### 13 Barristers

Cask 'n Cleaver – 6:00 p.m.

1333 University Ave., Riverside

MCLE

### 14 CLE Brown Bag

“False Advertising: You and Your Client Are Probably Doing It”

Speaker: Michael Geller, Esq.

RCBA Bldg, 3rd Floor – Noon

MCLE

### 15 Judge Pro Tem Training

SW Justice Center – Noon

MCLE

### 18 LRS Committee

RCBA – Noon

### RCBA Board

RCBA – 5:00 pm

### 19 Family Law Section

RCBA Bldg, 3rd Floor – Noon

MCLE

### 20 EPPTL Section

RCBA Bldg, 3rd Floor – Noon

MCLE

### RCBA DRS Training

“The Many Faces of Mediation”

Speakers: Judge Charles Field (Ret.) and Judge Victor Miceli (Ret.)

RCBA Bldg, 3rd Floor

6:00 pm – 8:30 pm

MCLE

(continued on page 27)

# PM

## President's Message



by Michelle Ouellette

**T**his edition of the *Riverside Lawyer*, although coming out around April Fool's Day, is devoted to the Riverside County Mock Trial Competition participants and volunteers. Congratulations to the first-place winners, Riverside Polytechnic High School, as well as to all of the other teams. The amount of time, energy and dedication from all of the participants was outstanding. I had the honor of attending the final round on March 5th, and I was greatly impressed by the caliber of the students. They were extremely bright, well prepared and well spoken.

I remember when I participated in Moot Court in law school – standing in front of just a handful of people remains one of the most frightening moments of my life. I was terrified, awkward and marginally articulate. Needless to say, my Moot Court experiences came to a quick and merciful end early in the process. In contrast, if any of the Mock Trial participants felt any stage fright, you certainly would not have known it. As I told them, in seven or eight years, when they are out of law school and looking for jobs, I hope they call me. What I did not tell them is that I want them to be working with me, not arguing against me!

After a long and soggy winter, spring is finally in the air. Wildflowers are blooming early and in great profusion, even in the desert. It is time to do some spring cleaning of our houses and lives. Spring cleaning is a custom left over from pre-electricity times, when surfaces were covered with soot from candles, fireplaces, kerosene, and lamp oils used for heat and light during the winter. By spring, every inch of the home had to be cleaned to rid it of the layer of soot. Given that we now use relatively clean

methods of heating and lighting, it seems the practice of spring cleaning has persisted long after such a cleaning overhaul was needed.

We should all consider making spring cleaning resolutions. Hopefully less onerous and fraught with symbolism than New Year's resolutions, spring cleaning resolutions focus on eliminating the clutter in our lives – throwing off our winter coats and starting anew. As lawyers, we tend to be creatures of habit and to repeat those things that have worked in the past. Perhaps this is a good time to reassess how we approach our careers and our lives to see if we can do things better. Do we have the same poor relationships with our colleagues? Do we neglect our family and friends to work? Is it time to refocus on what truly matters in our lives, not just the expectations of our clients and partners? Spring cleaning can help us consider these questions and clear both our minds and our workplaces of unnecessary clutter, helping us to live more efficient lives and enjoy more effective careers.

As part of my spring cleaning, I will try to eliminate some of the clutter in my office and at home. (I can hear my BB&K associates laughing at this statement.) For a world-class packrat, this will be hard, but do I really need articles on environmental law from 2001? Am I really ever going to get around to reading them, and if so, won't they be hopelessly outdated? I am also going to procrastinate less. Rather than have that dreaded project hanging over my head for weeks, I will just sit down and do it. It never takes as long as you think it will.

Speaking of resolutions, thank you to all of you who have incessantly reminded me about my pledge in a prior President's message to go to the gym, stop eating so much and generally take better care of myself. I am pleased to report that I am still going to the gym constantly, where I often see Gerry Shoaf. Trying to get into shape at 46 can be demoralizing and painful, and some days I am just happy that I can still walk. John Brown has suggested that we have monthly pictures of my progress, similar to a Glamour magazine layout, but somehow I don't think my dignity can handle this concept.

In closing, the RCBA, the San Bernardino County Bar Association and the Riverside Legal Professionals Association would like to cordially invite you to a special general membership meeting on April 29, 2005. The Honorable Ronald M. George, Chief Justice of the Supreme Court of California, will be speaking on "Current Issues Facing the Judicial Bench." This is a very special occasion, and I urge you all to attend.

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*Michelle Ouellette, President of the Riverside County Bar Association, is a Partner and currently chair of the Natural Resources Practice Group of Best Best & Krieger LLP. Ms. Ouellette represents municipal, district and private clients in environmental issues arising under the California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA"), the state and federal Endangered Species Acts, and wetlands regulations.*





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# Barristers

*by Robyn A. Beilin*

Barristers has been so fortunate to have fantastic speakers this year, and this past month was no exception. On March 9, 2005, Terry Bridges of Reid & Hellyer joined us to lead a discussion on "Expert Witness Depositions." As always, Terry was exceptional, and we all appreciate his insightful comments and suggestions on what can typically be an intimidating area of practice. Special thanks to Terry again for taking time out of his busy schedule to join us for our March meeting!

Barristers is pleased to announce that the Honorable Roger Luebs and the Honorable Tom Cahraman will be joining us for our April 13, 2005, meeting. Judge Luebs and Judge Cahraman will give their perspectives as judicial officers on "Courtroom Etiquette and Procedure." We are looking forward to welcoming them both to our April meeting.

The Barristers Board would again urge all RCBA members, particularly newer admittees, to join us for our monthly meetings. Barristers provides a unique opportunity for attorneys to network and to get to know other attorneys in the area. Our meetings are held at the Cask 'n Cleaver on University Avenue in downtown Riverside on the second Wednesday of each month at 6:00 p.m.

As always, please feel free to contact me at (951) 686-8848 should you have any questions or need additional information. We look forward to seeing you!

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*Robyn Beilin, Vice President of Barristers and a member of the Bar Publications Committee, is with the Law Offices of Harlan B. Kistler.*



*by Richard Brent Reed, Esq.*

## DON'T ASK, DON'T SMELL

San Luis Obispo County has outlawed stench. If you have body odor, you won't be allowed to patronize the public libraries. If you stink, you can't stay. Musty people cannot browse musty books. The law, on its face, is subject to constitutional challenge as a de jure limitation of First Amendment rights. Body odor is speech and the target groups form a definable class. This law discriminates against the most disenfranchised tiers of our society: the poor, the homeless, and the French.

Ten years ago, Beverly Hills merchants along Rodeo Drive began posting signs: "No smoking and no Giorgio." When San Luis Obispoans caught wind of this, they were, no doubt, encouraged to engage in their own brand of olfactory intolerance. The ordinance, however, does not pass the constitutional smell test. Eventually, body odor will be recognized as protected speech – especially for those who use no protection.

## I'M READY FOR MY RULING, MR. DEMILLE

In 1956, Cecil B. DeMille produced his Biblical epic: The Ten Commandments. To promote his film, DeMille donated a stone monument, engraved with the Decalogue, to the Lone Star State and planted it next to the capitol in Austin. A homeless man, who is also an attorney, sued to have the monolith removed, deciding that it offended his non-religious sensibilities.

Constitutional law professor Erwin Chemerinsky stepped in to take the case to the U.S. Supreme Court, claiming that Texas has violated the First Amendment's establishment clause by endorsing a religion. Justice Scalia argued that the monument merely stands for God's direction of human affairs and is no more an endorsement than Congress' 200-year-old Thanksgiving Proclamation.

Chemerinsky rejoined: "... I think the Thanksgiving Proclamations would be constitutional. I think it's analogous to the legislative prayer that this Court upheld in *Chambers v. March*. I think it's very different than this Ten Commandments monument." What eludes Prof. Chemerinsky is that the Thanksgiving Proclamations were acts of Congress. The First Amendment states: "Congress shall make no law respecting an establishment of religion..." The monument is an act of DeMille sitting on Texas state property. It does not require observance, is not statutory, and has nothing to do with Congress.

But the most problematic portion of Chemerinsky's statement was that the monument "is very different than this Ten Commandments." Something can be different from, but cannot

be different than. Such grammar is offensive to any strict constructionist.

## LIGHTS, CAMERA, JACKSON

Coverage of the Michael Jackson case has introduced a new concept to legal journalism: the courtroom simulation. Because the judge in that case has disallowed cameras in the courtroom during proceedings, one television news outlet, not to be denied visuals, has hired actors to reenact the trial, day by day. Not the real thing, but an incredible simulation. Not an artist's sketch; more like a comedy sketch. David E. Kelley, move over.

## BELIEVE IT OR NOT

Attorney services, in the historic Riverside County Courthouse, will no longer be performed in the department labeled "ATTORNEY SERVICES." Attorney services is now located in "PROBATE." Non-attorneys will no longer be served in PROBATE. Pro per probate papers are no longer proper in PROBATE. Probate papers must file across the hall in – you guessed it –CIVIL.

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*Richard Reed, a member of the Bar Publications Committee, is a sole practitioner in Riverside.*





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# HE WAS NO BUTCH CASSIDY

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by Vicki Broach

**I**n the movie, “Out of Sight,” George Clooney plays a handsome and engaging bank robber who woos and wins the heart of Jennifer Lopez, the U.S. Marshall who has been pursuing him. In his memoir, The Man Who Outgrew His Prison Cell, Confessions of a Bank Robber (HarperCollins, \$24.95), Joe Loya, once dubbed the “Beirut Bandit” for his crime spree throughout southern California, introduces the reader to a real bank robber. And even though he looks appealing in the dust jacket photograph, Loya is candid about how, in early adulthood, he wasn’t a nice guy at all. Loya was dishonest, manipulative, and often violent. He seemed on the road to lifetime criminality until he was placed in solitary confinement. There he experienced a Blakeian vision of lost innocence that finally set him on a different path toward personal redemption.

Loya’s childhood began in the 1960s in the housing projects of East Los Angeles where he was the first child of teenage parents. His mother died of kidney disease when he was nine years old. His father, who studied Greek, Latin, and philosophy at UCLA, and ministered to various Hispanic evangelical congregations, became increasingly abusive toward Loya, his younger brother, and his white stepmother. Growing up, Loya struggles with the dissonance between the religious training and intellectualism his father instills in him and the terrible reality of his home life. Finally, in one episode, after his father nearly drowns his brother and then beats Loya severely, fracturing his rib and elbow and causing a concussion, the sixteen-year-old Loya grabs a steak knife and stabs his father viciously. Loya’s subsequent encounter with unsympathetic police causes him to realize “my dad wasn’t my only enemy. It was authority – men with church collars, men with badges and guns, men in coaches’ uniforms...All these men were complicit in my father’s beating of me.”

In spite of his troubles at home, Loya continued to be a good student and to participate in church. He worked hard. He enrolled in college. But he adopted the preppy style of the early 1980s, voted for Reagan, and tried to ally himself with the conservative elite. He joined Amway and similar marketing companies. From friends and family, he borrowed money he never repaid. He finally crossed over into overtly criminal behavior when he stole a boss’s car and then attempted a carjacking. In Santa Barbara, he

worked various frauds and accomplished the major rip-off of an exclusive men’s clothing store where he masqueraded as the only honest employee.

When the police were about to nab Loya in Santa Barbara, he fled to San Diego in a stolen car, screwed up his nerve to rob his first bank, and crossed the border to take refuge in Mexico. He was apprehended for a different offense and served time in state prison from which he emerged determined to flourish at more crime, including one bank job in downtown Riverside. The FBI finally cornered him on the campus of UCLA in a comical scene where surprised students helped subdue and arrest him.

Up to this point, the book intersperses the narrative of Loya’s past life with vignettes about prison. “Heavy D,” an enormously obese fellow prisoner, too big for a prison cell, is introduced as a frightening symbol of Loya’s life. After the UCLA capture, the story continues unbroken with Loya’s account of his federal prison years, which are nasty, brutal, and not short. Anyone who subscribes to the myth of the country-club prison should read this part to understand just how dehumanizing and terrible incarceration can be. One almost feels sorry for Charles Keating, with whom Loya was briefly imprisoned.

What finally happens for Loya is a kind of “born-again” experience, not as the phrase is typically used by religious fundamentalists, but he does experience a vision of the child he once was and what he potentially still could become. He realizes he must change or die, both literally and metaphorically. He begins to write and he finds a mentor and pen pal in the essayist, Richard Rodriguez. After seven agonizing years, Loya is finally freed (and free) to attempt a better life. That effort will be the subject of his next memoir.

The book has many strengths. The writing is vigorous and authentic. Its greatest virtue is Loya’s unflinching willingness to describe his regrettable history and to confess honestly his struggle to change. As a reader, I never felt conned. As a fellow human being, I rejoiced in the resiliency of the human soul and its capacity for rejuvenation.

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*Vicki Broach is a Riverside attorney and the chair of Volunteers in Parole. Joe Loya will read at UCR at 2 p.m., Thursday April 21, and will speak at the annual VIP awards lunch at the Mission Inn on Friday, April 22.*



# OPPOSING COUNSEL: JOHN WAHLIN

by Queenie K. Ng

As the theme of this month's *Riverside Lawyer* is Mock Trial, I thought it was only appropriate to feature someone who has a long-time involvement in the program and the community. John Wahlin moved to Riverside at the age of 11, when his father took a ministry in a local church. He left Riverside briefly to attend Augustana College in Illinois and University of Wisconsin Law School, graduating in 1971. He returned to Riverside in 1971 and joined Best Best & Krieger LLP, a law firm which had only 18 attorneys in two offices at the time, though it has since grown to over 160 attorneys in seven offices throughout California. John became a partner of BB&K in 1978.



John Wahlin

Michael J. Ebermann

Currently, John serves as BB&K's managing partner and chairs the firm's five-member Executive Committee, responsible for setting and implementing firm policies and strategic direction. Under John's leadership, BB&K has opened new offices in Irvine, Sacramento, and Walnut Creek in 2000, 2001, and 2004, respectively. The firm has also been featured as one of California's top 50 law firms by both the *California Lawyer* and the *Los Angeles Daily Journal*.

As a member of BB&K's Employee Benefits Practice Group, John takes a lot of pride in his practice specialization. He represents employers on matters such as qualified retirement plans, non-qualified plans of deferred compensation and welfare benefit plans. He also has extensive experience in business and tax planning, including distribution and asset protection planning for pension and personal assets.

In spite of his busy schedule, John still finds time to give back to the community. For instance, he was a soccer coach for the American Youth Soccer Association for eight years. John has taught courses on deferred compensation and employee benefits for the University of California at Riverside Extension. He is also a frequent speaker at seminars for employers' groups and the Riverside County Bar Association. John began his involvement in Mock Trial as a coach when his two children were involved in the program during high school. After coaching Mock Trial for seven years, John became a member of the Steering Committee in 1997. He has served as the Committee's Chair for the

past six years, working closely with the Bar Association and the County Department of Education to ensure the success of the program.

"I can't imagine doing anything else," remarked John on his career. After practicing law for over thirty years, John is still in love with the profession and is dedicated to serving his community more than ever. John lives in the Riverside area and enjoys spending his free time with his family.

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Queenie K. Ng, a member of the Bar Publications Committee, is with the law firm of Best Best & Krieger, LLP.



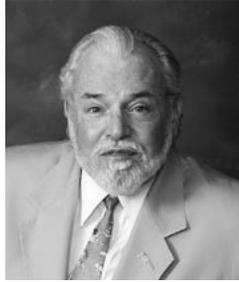
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# IN MEMORIAM: R. MICHAEL HARDING

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*by Michael H. Clepper*

**M**ike Harding passed away on February 12, 2005. He died way too young, but he died the way any of us would want to go – on the 14th hole at the Victoria Club, after a good score on the first nine. There were two physicians in his foursome, so he received immediate medical attention, but nothing could have saved him. He had turned 66 on December 23, 2004.



*R. Michael Harding*

Michael was raised on the East Coast, and after high school he was drafted into the United States Army. He gradually worked his way up to the grade of sergeant, but he did not have it so bad – most of his term of duty was served in the south of France. I assume that it was during this time he developed the “love of the grape.” While in the service, one of his buddies told him that he could get a cheap education in California, so he came out west. He worked during the day and went to school at night. He eventually graduated from Pepperdine Law School in 1973. He came to Riverside and rented offices from the late Harmon Brown. At first he had a general practice and did civil law, criminal law, and even family law. For a while he was in a partnership with Thomas Miller. Eventually he devoted 100% of his practice to family law.

It was not long before he became a leader in his field. He was more than willing to settle a case, but if you forced him, he could become a bear. Naturally, I never intentionally did it, but once in while I would push his button and watch him go “ballistic.” Within a couple of minutes he would be back to his old self.

Michael received many honors in his specialty. He was a Certified Family Law Specialist, a fellow of the American Academy of Matrimonial Lawyers and listed in the publication, “The Best Lawyers in America.”

He was active in his community and had been a member of the Lions Club and the Lincoln Club. He was a long-time member and former President of the Victoria

Club. At the time of his death, he was serving as co-chairman of the RCBA’s Family Law Section.

Mike loved to play golf, travel and enjoy the good life. He had a good sense of humor and could take as well as he gave. He leaves his daughter, Elizabeth, and his long-time companion, Donna Rose Daino.

Mike and I both turned gray at a young age because we had to appear in court against Sandra Leer.

I will personally miss him very much. He was a strong advocate in court, a good drinking companion, and easy to beat on the golf course.

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*Michael H. Clepper, President of the Riverside County Bar Association in 1983, is chairman of the Family Law Section.*

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# TAX TIPS FOR ATTORNEYS: SUPREME COURT RULES ON TAXATION OF ATTORNEY FEES

by Dennis M. Sandoval, J.D., LL.M. (Tax), CELA

On January 24, 2005, in *Commissioner v. Banks*, \_\_\_ U.S. \_\_\_ [125 S.Ct. 826], the United States Supreme Court resolved a conflict among the federal appellate courts by holding that contingent fees paid to an attorney out of a taxable damage award or settlement are not excludible from the taxpayer's gross income, but rather are includible in the taxpayer's gross income and deductible only as miscellaneous itemized deductions. The decision reverses two pro-taxpayer decisions, *Banks v. Commissioner*, 345 F.3d 373 (6th Cir. 2003) and *Banaitis v. Commissioner*, 340 F.3d 1074 (9th Cir. 2003). As a result, the portions of the taxpayers' wrongful discharge and employment termination settlements paid to their respective attorneys as contingent fees were includible in their gross income.

In *Banks*, the Sixth Circuit Court of Appeals, reversing the United States Tax Court, held that an individual who settled an employment termination lawsuit did not have to include in his income the contingent fees paid from the settlement directly to his attorneys. It reached this result even though the settlement was governed by California law, which did not give attorneys entitled to a contingent fee any special lien in the settlement or judgment, but rather treated them the same as other creditors.

In *Banaitis*, the Ninth Circuit, also reversing the United States Tax Court, held similarly that a taxpayer who reached a settlement with two banks after he successfully sued them for wrongful discharge did not have to include in his income the contingent fees paid directly from the settlement to his attorneys. It reached this result because Oregon law, which governed the case, gave the attorneys a property interest in the settlement.

Excluding the attorney fees from gross income involves no tax cost to the taxpayer on the portion of the award or settlement that is paid to the attorneys. Having to include the entire award or settlement in gross income and deduct the fees as miscellaneous itemized deductions can result in some or even a large amount of tax being

payable on the portion of the award or settlement that is paid to the attorneys. This is because of: (1) the 2% floor on miscellaneous itemized deductions under Internal Revenue Code § 67, (2) the overall limitation on itemized deductions under Internal Revenue Code § 68, and (3) Internal Revenue Code § 56(b)(1)(A)(i), which disallows miscellaneous itemized deductions for alternative minimum tax (AMT) purposes.

Supreme Court's Decision Not Applicable to Claims of Unlawful Discrimination Resolved After October 22, 2004. The American Jobs Creation Act of 2004 (Pub. L. No. 108-357, 118 Stat. 1418) added § 62(a)(19) to the Internal Revenue Code. This subsection provides that in computing adjusted gross income, a taxpayer may deduct attorney fees and court costs paid in connection with any actions involving a claim of "unlawful discrimination." Claims of unlawful discrimination would include violations of a number of specified federal statutes, as well as violations of any federal, state, or local law regulating any aspect of the employment relationship or prohibiting the discharge of an employee. (I.R.C. § 62(e).) This provision is effective for fees and costs paid after October 22, 2004 with respect to any judgment or settlement occurring after that date. Of particular importance is that this new provision allows an above-the-line deduction, as opposed to an itemized deduction, making it effective for AMT purposes as well.

*Dennis M. Sandoval is one of only two Certified Taxation Law Specialists practicing in Riverside County. He is the only attorney who is certified as a Certified Taxation Law Specialist and a Certified Estate Planning, Trust & Probate Law Specialist by the California Bar Board of Legal Specialization and as a Certified Elder Law Attorney by the National Elder Law Foundation. His tax controversy, estate planning and elder law practice is located in Riverside. He can be reached at (951) 787-7711.*



# RIVERSIDE COUNTY MOCK TRIAL COMPETITION 2005

by John Wahlin

**R**iverside Poly High School made Mock Trial history as it captured its fourth consecutive Riverside County Championship in this year's competition. Poly's title was the culmination of seven victories over teams representing high schools throughout the county. Poly went on to represent the county in the State Competition, which was held in Riverside under the direction of the Constitutional Rights Foundation.



Justice Tom Hollenhorst

Twenty-two high schools from all parts of Riverside County, including Palo Verde High School from Blythe, competed in this year's competition. All of the schools competed in the first four rounds, held in the Hall of Justice in Riverside, the Southwest Justice Center in Murrieta and the Indio Courthouse.



Dr. Jock Fisher

Following the fourth round of competition, individual performance awards were presented to students representing several of the competing teams. The outstanding prosecution attorney, Emily Webb (Poly High School, Riverside), is the winner of the District Attorney's summer internship. Cary Crall (Chaparral High School, Temecula), the outstanding defense attorney, is the winner of the Public Defender's internship. Congratulations to all the individual award recipients.



Gary Windom



Judges Sharon Waters and Gloria Trask

Eight of the twenty-two teams then went on to a single elimination tournament under the format established in 2004. The first round pairings included Poly v. Murrieta Valley, Temecula Valley v. Palm Springs, John W. North v. Woodcrest Christian and Hemet v. Santiago.

The semi-final round with the final four teams was held on the morning of Saturday, March 5, in the Historic Courthouse. Federal District Judge Virginia Phillips presided over the round, which matched Temecula Valley's prosecution against Poly's defense. Superior Court Judge Michelle Levine presided over the round involv-



Michael J. Elderman

*Steve Harmon and Rod Pacheco*

ing Woodcrest Christian and Santiago. In highly competitive rounds, Poly and Santiago emerged as the finalists, to compete in the championship round on Saturday afternoon.

Santiago High School from Corona reached the final round for the first time in the school's history and its defense team proved to be a worthy adversary for the returning county champion. Justice Thomas Hollenhorst once again presided over the championship round, with Superior Court Judges Gloria Trask and Sharon Waters, Public Defender Gary Windom, Assistant District Attorney Rod Pacheco, and private defense attorney Steve Harmon serving as the panel of scoring judges.



Michael J. Elderman

*Attorney coach Carlos Monagas, Michelle Ouellette and teacher coaches Matt Schiller and Nick Prelesnik.*

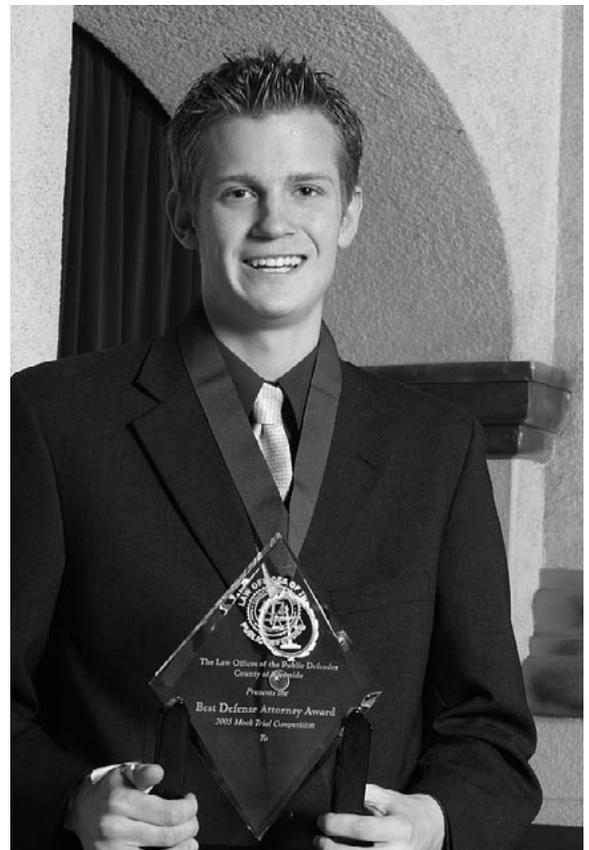
The case, *People v. Kendall*, involved vehicular manslaughter arising from illegal street racing. It included a pretrial motion that presented First Amendment issues of freedom of symbolic speech and right of association; Santiago, in its role as defense counsel, challenged the constitutionality of a local ordinance relating to street racing. Justice Hollenhorst denied the motion and the trial proceeded on counts of vehicular manslaughter,

*(continued on page 25)*



Michael J. Elderman

*Emily Webb, Poly High School (Riverside), winner of the District Attorney's internship.*



Michael J. Elderman

*Cary Crall, Chaparral High School (Temecula), winner of the Public Defender's internship.*

## SPEEDING TICKET

John bought a brand new 2005 convertible Jaguar XKR. He took off down the road, pushed it up to 100 m.p.h., and was enjoying the wind blowing through his

(thinning) hair.

"This is great," he thought, and he accelerated to an even higher speed. Then he looked in his rear-view mirror and there was a police car. "Problem," thought John, and he floored it some more and flew down the road at over 120 m.p.h. to escape being stopped. He then thought, "What am I doing? I'm too old for this kind of thing," and pulled over to the side of the road and waited for the police officer to catch up with him.

The police officer pulled in behind the Jaguar and walked up on the driver's side. He said, "Sir, my shift ends in five minutes and today is April Fool's Day. If you can give me a good reason why you were speeding, one that I've never heard before, I'll let you go."

John looked back at the policeman and said, "Last week my wife ran off with a policeman and I thought you were bringing her back." The policeman responded, "Have a nice day."

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## PEOPLE v. CLAUS

CLERK: All rise. Court of Appeal, Fourth Appellate District, North Pole Division, is now in session.

PRESIDING JUSTICE: Good morning, please be seated. We'll hear the case of People v. Claus.

ATTORNEY: Good morning, your Honors. Jack Frost for the appellant. We have been advised the People submit on the tentative and will not appear for argument.

PRESIDING JUSTICE: Very well, you may proceed.

ATTORNEY: As the court knows, my client was

convicted of 3.5 billion counts of illegally entering a resi-

dence. We do not challenge the conviction, but we submit

that the sentence of the upper term on every count is

excessive. The record shows there were substantial miti-

gating factors that were not taken into account by Judge

Scrooge. In fact, when we tried to raise these factors,

Judge Scrooge replied, "Bah! Humbug!"

JUSTICE NO. 2: We're familiar with the record, coun-

sel. Please proceed to your first point.

ATTORNEY: Yes, your Honor. First, I would point

out that my client committed these crimes in such a way

that none of the victims was endangered. In fact, the

record shows that in each case in which my client illegally

entered a house, all through that house, not a creature

was stirring.

JUSTICE NO. 3: Not even a mouse?

ATTORNEY: No, your Honor.

JUSTICE NO. 2: But counsel, wasn't there at least one

case in which a boy saw his mommy kissing your client

underneath the mistletoe that night?

ATTORNEY: Your Honor, that was a case of mistaken

identity. The man was the boy's father, impersonating my

client.

JUSTICE NO. 3: And what about the allegation that

he had the victims under constant surveillance in the

weeks before he entered their houses, even boasting that

he could see them when they were sleeping, and would

know when they were awake?

ATTORNEY: Your Honor, that was to find out if they'd

been bad or good, and to encourage them to be good, for

goodness' sake.

JUSTICE NO. 2: Didn't your client show great sophis-

tication, planning his crimes in advance? The probation

report indicates that when he selected his victims, he not

only made a list, but he checked it twice.

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**JUDICIAL CANDIDATE INTERVIEWS**

In anticipation of the upcoming Superior Court elections, the Riverside Lawyer presents these interviews of the candidates for Judicial Office No. 7. The challenger is Riverside attorney Amicus Fitch, and the incumbent is the Honorable Alfred Jardyce. Both interviews were conducted by RL staff member Barbara Walzter.

**RL:** Why are you running to become a judge?  
**FITCH:** Because the incumbent is soft on crime.  
**RL:** But Judge Jardyce is known as the hardest sender on the court. Where did you get the information that he was soft on crime?  
**FITCH:** From my political consultant.  
**RL:** Your political consultant thinks Judge Jardyce is soft on crime?  
**FITCH:** I don't know, but he said I should say that.  
**RL:** How much campaign money have you accumulated so far?  
**FITCH:** I'd rather not say.  
**RL:** Why not?  
 (continued on next page)

**PRESIDING JUSTICE:** Well! Next matter on calendar is the class action entitled Citizens of Whoville v. Grinch. Anyone here on that matter? Anyone here a Who?  
**CLERK:** The parties just notified the clerk's office they will not be appearing, your Honor. Apparently they were not willing to comply with the court's dress and grooming code.  
**PRESIDING JUSTICE:** All right, the matter will stand submitted. Court is adjourned.

**ATTORNEY:** That was for record-keeping purposes, to find out who was naughty and nice. And I would point out that my client made no secret of his intent to enter the victims' houses. Well before he committed these crimes, he announced to the victims that he was comin' to town, and advised them not to cry or pout.  
**PRESIDING JUSTICE:** The record also indicates that in the weeks leading up to the crimes, your client was seen in numerous public places trying to induce small children to sit on his lap.  
**ATTORNEY:** All of those encounters were voluntary and consented to by the parents.  
**JUSTICE NO. 3:** What about the evidence that he employed physically challenged individuals in a frigid environment 364 days a year and paid them nothing?  
**ATTORNEY:** All of the work was done on a volunteer basis. And the workers were not physically challenged, they were merely of diminutive stature.  
**JUSTICE NO. 2:** Didn't your client also routinely abuse his pack animals, making them pull overloaded vehicles, so much so that one animal's nose became completely red from the exertion, so that you would even say it glows?  
**ATTORNEY:** Your Honor, I would point out that when that occurred, the other animals shouted out with glee, and told the animal in question that he would go down in history.  
**CLERK:** Time is up, counsel.  
**PRESIDING JUSTICE:** All right, the matter will stand submitted. Thank you for your argument, counsel, and sled safely.  
**ATTORNEY:** But your Honor, I have lots more argument to present.  
**PRESIDING JUSTICE:** I understand that, counsel, but your time is up. Please sit down now.  
**ATTORNEY:** This is outrageous! My client is being railroaded. What is this, the Polar Express?  
**PRESIDING JUSTICE:** Mr. Frost, you're flirting with contempt of court. Now sit down, or this courtroom is going to get de-Frosted in a hurry, if you know what I mean.  
**ATTORNEY:** Yeah, well, Jack Frost just might come nippin' at your nose, too, lady.  
**PRESIDING JUSTICE:** That's enough. Bailiff! (CLERK escorts ATTORNEY from courtroom)



(continued on next page)

Q: Doctor, how many autopsies have you performed on dead people?  
 A: All my autopsies are performed on dead people.  
 Q: ALL your responses MUST be oral, OK? What school did you go to?  
 A: Oral.  
 Q: Do you recall the time that you examined the body?  
 A: The autopsy started around 8:30 p.m.  
 Q: And Mr. Dennington was dead at the time?  
 A: No, he was sitting on the table wondering why I was doing an autopsy.  
 Q: Doctor, before you performed the autopsy, did you check for a pulse?  
 A: No.  
 Q: Did you check for blood pressure?  
 A: No.  
 Q: Did you check for breathing?  
 A: No.  
 Q: So, then it is possible that the patient was alive when you began the autopsy?  
 A: No.  
 Q: How can you be so sure, Doctor?  
 A: Because his brain was sitting on my desk in a jar.  
 Q: But could the patient have still been alive, nevertheless?  
 A: Yes, it is possible that he could have been alive and practicing law.

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These are from a book called Disorder in the American Courts, and are things people actually said in court, word for word, taken down and now published by court reporters who had to suffer the torment of remaining calm and keeping a straight face while these exchanges were actually taking place.

Q: What gear were you in at the moment of the impact?  
 A: Gucci sweats and Reeboks.  
 Q: This myasthenia gravis, does it affect your memory at all?  
 A: Yes.  
 Q: And in what ways does it affect your memory?  
 A: I forget.  
 Q: You forget? Can you give us an example of something that you've forgotten?  
 Q: How old is your son, the one living with you?  
 A: Thirty-eight or thirty-five, I can't remember which.  
 Q: How long has he lived with you?  
 A: Forty-five years.  
 Q: What was the first thing your husband said to you when he woke up that morning?  
 A: He said, "Where am I, Doris?"  
 Q: And why did that upset you?  
 A: My name is Susan.  
 Q: Do you know if your daughter has ever been involved in voodoo or the occult?  
 A: We both do.  
 Q: Voodoo?  
 A: We do.  
 Q: You do?  
 A: Yes, voodoo.  
 Q: Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?  
 A: Did you actually pass the bar exam?  
 Q: How was your first marriage terminated?  
 A: By death.  
 Q: And by whose death was it terminated?  
 Q: Can you describe the individual?  
 A: He was about medium height and had a beard.  
 Q: Was this a male or a female?  
 Q: Is your appearance here this morning pursuant to a deposition notice which I sent to your attorney?  
 A: No, this is how I dress when I go to work.

of lawyer brains for the princely sum of \$800 an ounce. The outraged lawyer says, "This is a rip-off – how come the lawyer brains are so darn expensive?" The doctor replies, "Do you know how many lawyers it takes to get an ounce of brains?"

The crusty old managing partner finally passed away, but his firm kept receiving calls asking to speak with him. "I'm sorry, he's dead," was the standard answer. Finally, the receptionist who fielded the calls began to realize it was always the same voice, so she asked who it was and why he kept calling. The reply: "I used to be one of his junior associates, and I just like to hear you say it."

A newly established lawyer, wanting to impress the first client coming into his office, picked up the phone and said, "I'm sorry, but I have a tremendous case load and won't be able to look into this for at least a month." He then hung up, turned to the young man in his office and asked, "What can I do for you, sir?" "Nothing," replied the young man. "I'm just here to hook up your phone."

A blind bunny and a blind snake were born at the same time, and grew up together, becoming the best of friends. Neither one knew what kind of creature the other one was, but one day they decided to touch each other and describe the sensations. The snake went first – "You're all furry, have two ears and a fluffy little tail." The bunny was overjoyed, shouting, "I'm a bunny, I'm a bunny!" Then the bunny felt the snake – "You've got slimy skin, beady eyes and a forked tongue." The snake moaned, "Oh, no, I must be a lawyer . . ."

An experienced editor tried to explain the newspaper business to a cub reporter: "You can't sell any papers with a 'Dog Bites Man' story, but 'Client Runs Off With Attorney's Funds' – why, that would sell out a special edition."

A new female associate was romantically ambushed in a darkened room at her new firm, to her surprise and delight. When asked by her best friend to identify the new lover, she was puzzled: "All I know for sure is that it was a partner – he made me do all the work."

The defendant asked for a new lawyer, claiming the public defender wasn't interested in his case. The judge addressed the P.D.: "What do you have to say to that?" The P.D. replied, "Could you repeat that, your honor? I wasn't listening."

The plumber presented his customer, a lawyer, with a bill charging rates of \$500 an hour. The lawyer was outraged, saying "I don't even make that kind of money – doesn't that seem a bit steep?" The plumber replied, "That's what I thought, when I was a lawyer."

Then there's the old story involving the theft of some chickens:

Judge: Are you the defendant?  
 Defendant: Nope, I'm the guy who stole the chickens.

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The following are attorney jokes taken from the website of Snifter, Flute & Stein, Barristers (www.apc.net):

The beloved mohel is getting older, and his hands are not as steady as they once were. For a man who performs the bris (religious circumcision ceremony), this is pretty serious, and he's having trouble getting insurance. Finally, his lawyer contacts him with the good news: "We've gotten you a great policy, with only one rider!" "What's that?" asks the mohel. The lawyer replies, "A one-inch deductible!"

A lawyer finds out he has a brain tumor, and it's inoperable – in fact, it's so large, they have to do a brain transplant. His doctor gives him a choice of available brains – there's a jar of rocket scientist brains for \$10 an ounce, and a jar of regular scientist brains for \$15 an ounce, and a jar

ended to shorten articles to save space or even to cut Association over the new format. The printer has threatened to shorten articles to save space or even to cut between PIP Printing and the Riverside County Bar Association over the new format. The printer has threatened to shorten articles to save space or even to cut

## RCBA SUES PIP FOR PRINTING MAGAZINE UPSIDE DOWN

RIVERSIDE—A Riverside man, who broke into the mausoleum at Olivewood Cemetery, was prosecuted and convicted of stealing a corpse. The identity of the victim is being withheld, pending notification of next of kin. The man received a stiff sentence.

## COLD COMFORT

RIVERSIDE—The civil and probate divisions of the Superior Court in Riverside were shut down for an entire week when a hacker spread a virus throughout the court's computers system. It seems that a clerk with a cold coughed all over the keyboards and made everyone sick.

## COURTHOUSE CRASHES

Some of the complainants have to sit longer than that. bad. The Food Court sits for six months out of the year. gastric torts ranging from limp shrimp to crawdad gone Food Courts. There, citizens may sue restaurants for the wake of the cholera that Louisiana has set up special So indigestion, litigation, and diarrhea follows in swallowed, cholera and all.

BATON ROUGE—Every six years, a cholera epidemic breaks out in Louisiana. Due to periodic flooding of the Gulf of Mexico where filter feeding shell fish absorb the sewage and become saturated with microbes and toxins. As a result, health officials shut down oyster bars, but only after the raw oysters full of raw sewage have been swallowed, cholera and all.

## FOOD COURT

PUBLIC HEALTH: Epidemic spawns outbreak of litigation

# HEADLINES

**Key**  
True: Benjamin Cardozo, Ramsey Clark, Henry Clay, Grover Cleveland, Bill Clinton, Calvin Coolidge, Gerald Ford, Johann Wolfgang Goethe, Alexander Hamilton, Patrick Henry, Oliver Wendell Holmes, Andrew Jackson, Franz Kafka, Moliere, Vladimir Lenin, William Cullen Bryant

F	T	Benjamin Cardozo
F	T	Ramsey Clark
F	T	Ramsey Lewis
F	T	Hang On Ramsey
F	T	Henry Clay
F	T	Cassius Clay
F	T	Grover Cleveland
F	T	Bill Clinton
F	T	Calvin Coolidge
F	T	Rita Coolidge
F	T	Gerald Ford
F	T	Henry Ford
F	T	Johann Wolfgang Goethe
F	T	Wolfgang Puck
F	T	Alexander Hamilton
F	T	Linda Hamilton
F	T	Patrick Henry
F	T	Oliver Wendell Holmes
F	T	John Holmes
F	T	Andrew Jackson
F	T	Michael Jackson
F	T	Reggie Jackson
F	T	Franz Kafka
F	T	Vladimir Lenin
F	T	Moliere
F	T	William Cullen Bryant
F	T	Kobe Bryant

Famous people who are lawyers (True or False):

## POWER OF ATTORNEY

The U.S. Supreme Court has ruled in Van Orden v. Perry on the display of the Ten Commandments on a stone monument on the lawn of the Texas State Capitol in Austin. The controlling case is Lynch v. Donnelly, in which the court ruled that a Christmas nativity scene could be placed in a city park, as long as secular holiday symbols were displayed along with it. In the current Texas case, the court held that the Ten Commandments could be displayed on public property, as long as they were surrounded by elves, reindeer, or a Santa Claus.

## TEN COMMANDMENTS RULING

# MOCK TRIAL—INNS OF COURT

by Robyn A. Beilin

What an exciting season! For the second year in a row, I had the privilege of coaching the Mock Trial team of Santiago High School in Corona. And although we didn't meet our goal of unseating Riverside Polytechnic High School in the Riverside County championship round, taking second place amongst 22 high schools was certainly an accomplishment of which we can all be proud.



*Commissioner Prevost and Eddie Diaz join the Santiago Mock Trial team as they await the results of the last semi-final round.*

The Mock Trial program, which is organized by the Constitutional Rights Foundation, is designed to provide students across both the state and the nation with the opportunity to engage in a mock criminal trial. Student attorneys are required to learn rules of evidence, constitutional law, the art of conducting examinations, and the skills necessary to present a comprehensive opening statement and a compelling closing argument. Other students participate as witnesses, courtroom bailiffs, and courtroom clerks to round out a presentation based on a fact pattern provided by the Constitutional Rights Foundation.

In Riverside County, the Mock Trial program begins in late September each year, when the season's case is released to all participating high schools. From that moment on, each team spends countless hours preparing both a case-in-chief for the People and a defense for the fictitious defendant. Witnesses spend months

learning their witness statements and creating believable characters, whom they will ultimately portray while on the stand in competition. All of this preparation is done under the watchful eye of teacher coaches from the respective high schools and under the direction of volunteer attorney coaches, who generously donate their time and expertise to these talented and hard-working students.

Particularly here in Riverside County, the competition amongst the high schools is extremely fierce. Virginia Blumenthal, who assisted in bringing the Mock Trial program to Riverside back in the early 1980's, noted recently that the program in Riverside County is one of the best, if not the best, in the nation. All participating students in this county realize that their performances have to be polished, if not flawless, for them to stand a chance of winning the county competition.

This year, Jonathan Lewis of J. Lewis & Associates, my co-coach, and I prepared our team for the case of *People v. Kendall*, a criminal case involving a vehicular manslaughter charge arising out of an alleged drag racing incident.

This season was unique, in that we were able to incorporate the benefits of being members of another organization to enhance the learning experience that our team enjoyed this year during its preparation process. Both Jonathan and I are members of the Leo E. Deegan Inn of the American Inns of Court. That organization, which is made up of judges and

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lawyers of all areas and levels of practice, is designed to improve the skills, professionalism and ethics of the bench and bar. Members are divided into individual teams, each of which is led by a judicial officer. Each month, the Inn meets at the Mission Inn for dinner, during which a program is presented by one of the Inn's teams. Those programs involve topics on ethics, skills, and professionalism.

I am fortunate to be on "Team Prevost" this year, a team led by Commissioner Jeff Prevost, who currently presides over the Riverside Family Law Court. Along with Commissioner Prevost and my fellow team members, Steve Geeting, Jim Manning, Chris Harmon, Eddie Diaz, Stephanie Fields, and Rob McCarty, we struggled to come up with a topic for our team presentation, which we learned was to be in May of 2005. Commissioner Prevost came up with the brilliant idea of somehow incorporating Mock Trial into a program that could be presented to our fellow Inn members. Being a Mock Trial coach already, I immediately realized the benefits that additional coaching resources would have for our team, and I persuaded my Inn's team to "adopt" the Santiago Mock Trial team as its pet project.

During our months of preparation, Santiago students were privileged to have visiting attorneys from my Inns of Court team attend some of their practices.

Michael J. Edelman



*Santiago team members on their way to Final Competition.*

My fellow Inns members also shared their time by offering their email addresses as another outlet for students to ask questions or obtain further critiques of their performances. Commissioner Prevost was particularly generous with his time in judging some of our scrimmages and making as many practices as he could during the training portion of our season.

After months of hard work and dedication, our team prepared to enter competition, which began in February. There  
*(continued next page)*



are four initial rounds of competition, after which losing teams are eliminated to form a quarter-final group of eight teams that is more commonly known as the “Elite Eight.” They then compete to narrow the field down even more to the “Final Four.” The winners of the competitions during that semi-final round move on to the final round of competition, which ultimately reveals the champion team of Riverside County.

After Santiago made it into the Final Four, our defense team competed against Woodcrest Christian High School’s prosecution and ultimately won that round. This was impressive, in that we had entered into the Elite Eight with a 2-2 record and had triumphed over an undefeated team in order to gain entry into the Final Four. What was even more impressive was that we were matched against Riverside Polytechnic High School, a powerhouse in Mock Trial circles, for the final round. Our defense team again competed and was narrowly defeated during that round, which was presided over by the Honorable Thomas E. Hollenhorst of the Court of Appeals. Although disappointed at their loss, our team was extremely proud of their hard work and accomplishments and are even more motivated to come back next year and claim the title of county champions.

Just when we thought our season was over, however, we received an unexpected invitation to participate in the state championship – an invitation that was extended because there is an uneven number of high schools in that round of competition. Although Santiago will not be eligible to compete in any of the final rounds, it is certainly an honor to also represent Riverside County in the state competition and our team is so excited to have a further opportunity to compete.

Several of the members of my Inn of Court were on hand for some of our competitions, and they maintained their support of our team

as we battled through competition. To them, Jonathan and I would like to offer our sincere thanks for their assistance. Commissioner Prevost commented: “I think that all of our [Inns] team members should be congratulated for [their] assistance with the program. While I think that only Robyn and Jon can take credit for getting the team into finals, I believe that our participation helped, at least to a small degree, these kids gain the confidence they needed. Hopefully, this enthusiasm will spill over into our program.”

The program to which Commissioner Prevost referred is the Inns of Court program that our Inns team will be presenting on May 25, 2005. During that program, all Inns members will get to see clips of Santiago High School competing. Members of the Santiago High School Mock Trial team will be in attendance to perform vignettes of some of their performances. And most importantly, members of the Inns will hear, directly from Santiago students, their parents, their teacher coaches, and their attorney coaches, how important the Mock Trial program is for these potential future attorneys.

Hopefully, Inns members from my team will share how rewarding their experiences with Santiago High School and the Mock Trial program were during their involvement in our 2004-2005 season. I am also hoping that Inns members who may have not been involved in Mock Trial before will be encouraged to volunteer either as attorney coaches or scoring attorneys for future competitions. Believe me, I know how much work and time such a commitment entails. However, I would emphasize again that it has been my privilege to coach these talented, amazing students and, on behalf of my Inns of Court team, it is to them that I offer my most sincere thanks and congratulations.

*Robyn Beilin is an attorney with the Law Offices of Harlan B. Kistler in Riverside.*



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## Riverside County Mock Trial Competition 2005

(continued from page 13)



John Wahlin and Tom Willman

illegal exhibition of speed and violation of an illegal racing club ordinance of the City of Caneville. While the verdict rendered by the judge in mock trial competition in no way relates to the scoring of the round, Poly achieved convictions on all counts, in addition to ultimately winning on the score sheets of the distinguished panel of judges.

The final awards ceremony immediately followed the championship round. Dr. Jock Fisher, the Riverside County Assistant Superintendent of Schools, presented the second-place award to Santiago High School and third-place awards to Woodcrest Christian and Temecula Valley. Riverside County Bar Association President Michelle Ouellette presented the Championship Award to the Poly team, along with a stipend of \$500 to defray its expenses in the State Competition.

The Constitutional Rights Foundation had once again selected Riverside as the venue for the State Competition based on the extremely successful programs in Riverside in previous years. Judge Helios Hernandez was once again selected by the CRF to preside over the State Championship, which was to be held on March 20, 2005.

Members of the judiciary, the bar, legal secretaries and the staff of the Riverside County Office of Education once again contributed to a successful competition. Because the program has become increasingly regional, attorneys throughout the County are encouraged to participate; it is no longer a Riverside-based competition. The majority of the first three rounds involved trials conducted in the Southwest Justice Center and Indio. Many thanks to those who volunteered, and it is hoped those who have not volunteered will consider doing so in 2006.

*John Wahlin, an attorney with Best Best & Krieger, is the Chairman of the Mock Trial Steering Committee.*



Santiago High School, 2nd Place



Temecula Valley High School, Tied 3rd Place



Woodcrest Christian High School, Tied 3rd Place



by Rick Lantz

**D**o you remember the very first time you appeared in law and motion, legs shaking, stomach churning, trying desperately to memorize every single case you cited and every statute you proffered and to anticipate every argument thrown your way by that hard-nosed judge, not to mention feeling every pair of eyes in the audience boring a hole between your shoulder blades, as the onlookers waited like a pack of wild dogs to jump you with their snickers when you failed miserably to come up with the right answers? Well, that's chump change compared to the high school boys and girls who put on a mock trial in an honest-to-goodness courtroom, with an honest-to-goodness judge, some 50 people in the audience following their every move, and honest-to-goodness lawyers in the jury box all the while, actually scoring their performance. Now that's a real leg-shaking, stomach-churning, heart-pounding, dry-mouth-like-the-Sahara-Desert experience. But the kids did it! High school youngsters participated in the annual Statewide Mock Trial Competition. I was one of those real lawyers who did the scoring, and I had nothing but admiration and respect for all of them – those who shone and the few who just got by. To me, they all showed a fistful of courage.

I arrived a half an hour before show time at Larson Justice Center, Indio. The second floor hallway contained the participants, coaches, teachers, and well-wishers, all quiet, aside from nervous whispers, sort of as in a library. Almost all of the high schoolers were well dressed in suits and dresses. Black predominated; for a second, I thought I had stumbled into a funeral. Two courtrooms were to be used; I drew the one presided over by Commissioner Gregory Olsen, who showed kindness and understanding throughout.

One hypothetical case was used, not only by the participating schools that night, but throughout the state, for every round. The case of *People v. Kendall* dealt with a homicide; an alleged two-car drag race on a city street led to the death of one participant, with the other – the defendant – accused of manslaughter. The trial was divided into five parts: a pretrial motion challenging the constitutionality of a city ordinance; opening statements; the People's case, via four witnesses, calling for direct and cross; and closing arguments. Each school provided stu-

dents not only as attorneys, but as witnesses as well, to be cross-examined by the opposition.

The scoring was as follows:

One: Shows lack of preparation and poor understanding of task and rationale behind legal procedure;

Two, Three, Four: Inadequate preparation and understanding of task, stilted presentation, over-acting using racial or ethnic stereotyping;

Five: Fundamental understanding of task and adequate preparation, acceptable but uninspired performance;

Six, Seven, Eight: Demonstrates a more fully developed understanding of task and rationale behind legal procedure;

Nine, Ten: Demonstrates superior ability to think on her/his feet, resourceful, original and innovative approaches, extraordinary and realistic portrayal.

Probably the most difficult part was the very first – the pretrial motion – as both sides presented arguments directly to the court and then had to be prepared to answer the court's probing questions dealing with issues of constitutionality. The young man of 17 who presented the defendant's motion spoke slowly, distinctly, and effectively, pausing for a few seconds to collect his thoughts when questioned by the judge, then responding without fear. I gave him a nine. Unfortunately, the prosecution – a young lady – did not fare as well. After starting off, she froze in silence for at least 20 seconds (to her, seemingly 20 hours) while everyone in the courtroom held their collective breath. She then resumed in a daze, not really understanding the judge's questions. I gave her a two.

Thereafter the process went fairly smoothly. Some "attorneys" clearly had previous experience, as they spoke distinctly and had a modicum of evidentiary understanding. The less experienced rushed through their questions and comments with a death grip on their written material. "Hearsay" was definitely the objection du jour, with a few "nonresponsives" thrown in when the witnesses programmed themselves to make speeches. The key was the effectiveness of the witnesses, just as in a real trial. Some of the kids were darn good actors, especially the girl who portrayed the defendant. At an opportune moment, she started crying and bemoaning the fact that her drag-racing friend had died while wrapped around a telephone

*(continued next page)*

## The Kids Are OK *(continued)*

pole. Her emotions threw the prosecutor for a loop; he struggled with each dramatic tear. I gave her a ten, him a five. After closing arguments, quite dramatic and effective by both sides, Judge Olsen ruled: Not guilty. My scoring also gave the edge to the defense. Afterwards, I joined Commissioner Olsen in chambers, who had nothing but admiration for them all.

Clearly Commissioner Olsen enjoyed the mock trial: "I think they have a lot of passion, which I really appreciated. They really believe their cases, and that is such a key. I thought they were very well prepared. They knew what the witnesses were going to say, which is what you are supposed to do . . . you're not supposed to have any surprises," said Commissioner Olsen.

Any criticisms? "I think they stuck to their scripts a little bit. I know sometimes they didn't listen to the answers that were coming out – they didn't follow up – they would get a good answer and they didn't follow up on the answer. A lot of it has to do with the nervousness."

I asked, "If the youngsters were here in front of you and asking for advice, what would it be?"

"Just really enjoy the process, really get into it. I think they really did. I thought some of the witnesses were excellent, and the witnesses are what's going to make or break the case."

Much is written about what's wrong with our youth. If only the mock trial could have been televised, so that all of us could have experienced what's right with them: bright, dedicated, clever, prepared. As Aristotle once said, "What we have to learn to do, we learn by doing." The old sage must have had these young men and women firmly in mind.

*Rick Lantz, a member of the Bar Publications Committee, is an attorney in La Quinta.*



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*State Bar of California*  
*Certification # 0038*

# LAW DAY 2005

The American Jury  
**WE THE PEOPLE  
IN ACTION**



LAW DAY: MAY 1, 2005

**N**ational Law Day, May 1, is a special day focusing on our heritage of liberty under law, a national day of celebration officially designated by joint resolution of Congress in 1961.

Law Day is an annual opportunity for RCBA members to reach out in the community in an effort to expand awareness of our laws or justice system, and their combined impact on our lives. It is more than just a single day to reflect on our legal heritage, it is a means of sharing our daily way of life with the rest of our fellow citizens.

The official theme of Law Day 2005 is "The American Jury: We the People in Action." Law Day is an opportunity for all Americans to celebrate and enjoy our freedoms. The jury is the embodiment of democracy. We entrust juries—small bodies of ordinary men and women—with decisions that involve the liberties and property of defendants. In doing so, we confirm our faith in the ability of people to make just and wise decisions, and that is the very definition of democracy. We also see the jury system as an opportunity to educate Americans in law, legal processes, and decision-making in a democracy.

On this Law Day, we can help people understand the jury system, and appreciate their role in making it effective.

The Riverside County Bar Association will be sponsoring its annual Law Day at the Malls on Saturday, May 7, 2005. On that day, members of our bar association will be present at the Galleria at Tyler in Riverside and the Moreno Valley Mall at Towngate in Moreno Valley from 10 a.m. to 4 p.m. They will be providing free legal consultation to members of the public. If you would like to volunteer for a two-hour time slot at either mall, please contact the RCBA at (951) 682-1015 or [charlotte@riversidecountybar.com](mailto:charlotte@riversidecountybar.com).

In conjunction with Law Day, the RCBA will also be sponsoring the Good Citizenship Awards to Riverside County high school juniors on Friday, May 6, 2005. Presentations will be made at 1:00 p.m. in Department 1 of the Riverside Historic Courthouse.

by Gayle Webb

## National Library Week: April 10-16

Does this conjure up images of children's story readings, free bookmarks or posters with various celebrities looking as if they are actually reading their favorite books? National Library Week has been promoted in public libraries since 1958, when a survey found Americans were spending less on books and more on radio and television – gee, what a surprise!

While our books are not exactly something you want to run right out to buy or curl up with in front of the fireplace, be sure to stop in here during National Library Week and help us celebrate the contribution of libraries and librarians. I think you'll like using our new, free WestLaw service and looking over other databases, like HeinOnline and LegalTrac for journals and legal newspapers, LLMC Digital (Law Library Microform Consortium) for government documents, Kleinrocks TaxExpert, and Shepard's on LEXIS. One-on-one training sessions will be available, and lots of giveaways from legal publishers will go to anyone who participates (or who even breathes the words... *National Library Week*).

For fun, a giant, mind-bending legal crossword puzzle will make its return this year, along with other word games to sharpen your skills. We'll have the usual desk supplies and novelties to give away, but this year, our ever-so-ebullient Reference Librarian, Bret Christensen, has gone way over the top in gathering donations from major legal publishers, local eateries and even golf courses (!) to give away in daily drawings. All you need to do to participate is to drop off your business card; if you are interested in receiving a monthly newsletter about the Law Library, then make sure your email address is on the card.

Hopefully this partial list of fantastic gifts to be given away FREE will encourage you to come on down, sit a spell, and chew the fat

with our reference staff, or even better, try to stump them with your best research/reference question. Wouldn't you like one of the following for your very own – CEB's *Civil Procedure Before Trial and California Criminal Law: Procedure and Practice*; *Building Trial Notebooks and Trial Objections* by James Publishing; Parker's *California Evidence, Probate and Civil Codes*, with CD-ROM; *Black's Law Dictionary*; *Witkin on Evidence*; sweets from Mrs. T's Heavenly Desserts and the Outlaw Café; and the list goes on...

Gayle Webb is the Riverside County Law Library Director.





# 15TH ANNUAL RED MASS

Tuesday, May 3, 2005, at 6:30 p.m.



## OUR LADY OF THE ROSARY CATHEDRAL

2525 North Arrowhead Avenue, San Bernardino



The entire legal community and persons of all faiths are invited to attend the 15th Annual Red Mass on Tuesday, May 3, 2005, at 6:30 p.m., at Our Lady of the Rosary Cathedral, located at 2525 North Arrowhead Avenue in the City of San Bernardino. The chief celebrant and homilist will be the Most Reverend Gerald R. Barnes, Bishop of the Diocese of San Bernardino. A dinner reception in the parish hall hosted by the Steering Committee will follow the Mass.

The Red Mass is for members of the legal community and their families to invoke God's blessing and guidance in the administration of justice. All who are involved in the judicial system, including lawyers, judges, court personnel, court reporters, court security officers, and peace officers are encouraged to attend the Red Mass.

Judge Cynthia Ludvigsen Will Be Honored at the Reception

San Bernardino County Superior Court Judge Cynthia Ludvigsen will be the recipient of the Saint Thomas More Award for her extraordinary service and devotion to church, community, and justice. The Saint Thomas More Award is given to a lawyer in the community whose profession is an extension of his or her faith, who has filled the lives of the faithful with hope by being a legal advocate for those in need, who has shown kindness and generosity of spirit, and who is overall an exemplary human being. United States District Judge Robert J. Timlin will present the award to Judge Ludvigsen at the reception immediately following the mass.

The Tradition of the Red Mass

The Red Mass has a rich history. The name "Red Mass" is derived from the liturgical color used in the vestments worn at the Mass, symbolizing the gifts of the Holy Spirit bestowed through tongues of fire. The Red Mass is a Solemn Votive Mass of the Holy Spirit – the word "votive" indicating that the Mass is offered for the special intention of those present.

The first recorded Red Mass was celebrated in Paris in 1245. In the United States, the tradition of the Red Mass was inaugurated in 1928 in New York, where a Guild of Catholic Lawyers met with judges and members of law faculties in old Saint Andrew's Church in the courthouse district. The Red Mass is celebrated each year in Washington, D.C., where Supreme Court justices, members of Congress, and the President attend at the National Shrine of the Immaculate Conception. Since 1991, the Red Mass has been offered in the Diocese of San Bernardino, which covers both Riverside and San Bernardino Counties.

For further information about this event, please contact Jacqueline Carey-Wilson at (909) 387-4334 or Patricia Cisneros at (951) 248-0343.

## Calendar *(continued from page 2)*

- 22 RCBA/SBCBA Construction Defect Seminar**  
SB Hilton, Hospitality Lane  
Noon – 1:30 pm  
MCLE
- 22 Judge Pro Tem Training**  
Family Law Court – Noon  
MCLE
- 29 Special General Membership Luncheon Meeting**  
"Current Issues Facing the Judicial Branch"  
Speaker: Chief Justice Ronald M. George  
Mission Inn, Galleria Room – Noon  
MCLE

## MAY

- 3 RCBA/SBCBA Environmental Law Section**  
Speaker: Kassie Siegel Esq.  
Gresham Savage Nolan & Tilden  
550 Hospitality Lane, Suite 300  
San Bernardino  
MCLE
- 4 Bar Publications Committee**  
RCBA – Noon
- 6 Good Citizenship Awards**  
Historic Courthouse, Dept. 1 – 1:00 p.m.  
**Judge Pro Tem Training**  
Banning Court – Noon  
MCLE
- 7 Law Day at the Malls**  
10 a.m. – 4 p.m.
- 10 PSLC Board**  
RCBA – Noon
- 11 Barristers**  
Cask 'n Cleaver – 6:00 p.m.  
1333 University Ave., Riverside  
MCLE
- 12 CLE Brown Bag**  
"Juvenile Court Dependency Kids"  
Speaker: Judge Becky Dugan  
RCBA Bldg, 3rd Floor – Noon  
MCLE



# CLASSIFIED ADS

## Immediate Need for Attorney

Well-known Riverside general, civil, law firm has an immediate need for an additional attorney in Riverside office. Applicants should be a member in good standing of the California Bar Association and have 3-5 years experience, preferable with some knowledge of transactional matters. Salary is negotiable. Firm provides health insurance and has a 401(k) plan available. Those interested should submit resumes to Mr. Eagans or Mr. Matheson at 1950 Market Street, Riverside, CA 92501 or call (951) 684-2520.

## Associate Attorney – Temecula

Entry level attorney to consult on Trademark availability and possible confusion issues; prepare registrations and related motions/appeals; participate in Intellectual Property dispute resolution; research Chinese IP regulations/local procedures to consult U.S. clients on foreign registrations, and to consult Chinese clients on U.S. IP law; prepare legal briefs, memos, affidavits and daily correspondence in both English and Chinese languages; assist in IP litigation. Requires JD degree and CA bar admission and U.S. Dist. Court of Southern CA. Full time. Resume to: Stephen Anderson, Esq. at Anderson & Assoc., 27349 Jefferson Avenue, Suite 211, Temecula, CA 92590. No Call/EOE.

## Attorney Wanted

R.E. Commercial Leasing Lawyer. 2 years experience, Palm Desert. Fax resume to (760) 564-6783, Attn: Nancy King.

## Litigation Associates

Riverside office of growing firm seeks attorneys with 1-7 years' real estate, construction or business/commercial litigation experience. Strong writing skills and academic credentials. Competitive salary, bonus program and benefits. Fax resume listing experience and salary history to: Michael Smith (951) 275-9712.

## Litigation Associates - Inland Empire

2 to 7 year associates needed for small but growing litigation practice. Competitive salary and benefits. Ground floor opportunity. Fax resume to (951) 509-1378.

## For Sale – Professional Building

Riverside tri-level professional building with private offices and reception area on the main floor. Conference room, eating area, storage space. Good parking. Within walking distance to the Court House. Call for appointment: Realty Executives – Agents Michelle Larsen (951) 897-5790 or Jerry Rachman (951) 779-8444.

## Office for Rent – Full Service

Inns of Court Law Building, 3877 Twelfth Street, Riverside, CA 92501. One block from Court House. Call Lorena at (951) 788-1747.

## 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 Charlotte at the RCBA, (951) 682-1015 or charlotte@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 April 30, 2005.

**Kevin R. Dale** –  
Best Best & Krieger LLP, Riverside

**Don Christopher Johnson** –  
Lobb & Cliff, Riverside

**Manijha Kadir** –  
Marshack Shulman Hodges & Bastian LLP,  
Riverside

**James D. Madden** –  
Law Offices of Michael LaCilento, Corona

**Thomas R. Neumann** –  
Office of the City Attorney, Desert Hot Springs

**Nelson R. Wong** –  
Johnson & Associates, Riverside

