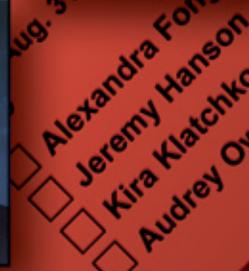
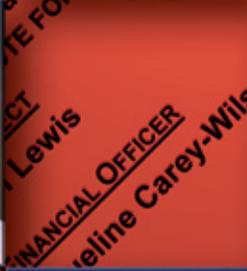
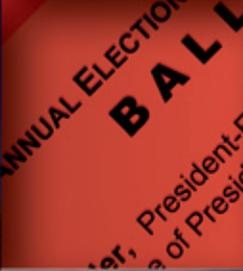


RIVERSIDE LAWYER

May 2010 • Volume 60 Number 5

MAGAZINE



The official publication of the Riverside County Bar Association



GREAT LAWYERS

**leave their mark
on history.**

This is Alan Blackman, Deputy City Attorney for
Los Angeles and Class of 2001 graduate.

Read Alan's story at
www.go2lavernelaw.com/alan



COLLEGE OF LAW

Publications Committee

Michael Bazzo
Jeffrey Boyd
Yoginee Braslaw
Derek Early
Joseph Fitzgerald
Alexandra Fong
Donna Hecht
Sanjit Kaur
Robyn Lewis

Charlene Nelson
Richard Reed
Jean-Simon Serrano
Kirsten Birkedal Shea
Donna Thierbach
Bruce Todd
Jamie Wrage
Lisa Yang

Editor Jacqueline Carey-Wilson
Design and Production PIP Printing Riverside
Cover Design PIP Printing Riverside

Officers of the Bar Association

President

Harry J. Histen
(951) 682-4121
harry@histenlaw.com

President-Elect

Harlan B. Kistler
(951) 686-8848
hbkistler@pacbell.net

Vice President

Robyn A. Lewis
(951) 686-682-0488
rlewislaw@yahoo.com

Chief Financial Officer

Christopher B. Harmon
(951) 787-6800
christopherbharmon@sbcglobal.net

Secretary

Jacqueline Carey-Wilson
(909) 387-4334
jcareywilson@cc.sbcounty.gov

Past President

E. Aurora Hughes
(909) 630-3643
eaurorahughes@aol.com

Directors-at-Large

Chad W. Firetag
(951) 682-9311
firetag@yahoo.com

James J. Manning, Jr.
(951) 682-1771
jmanning@rhlaw.com

Timothy J. Hollenhorst
(951) 955-5400
thollenhorst@rivcoda.org

Randall S. Stamen
(951) 787-9788
rss@stamenlaw.com

Executive Director

Charlene Nelson
(951) 682-1015
charlene@riversidecountybar.com

Officers of the Barristers Association

President

David M. Cantrell
(951) 300-2690
dcantrell@lc-law-llp.com

Secretary

Jean-Simon Serrano

Treasurer

David S. Lee, Jr.

Vice President

Kirsten Birkedal Shea

Members-at-Large

Jeffrey A. Boyd
Brian T. Pedigo

Riverside County Bar Association
4129 Main Street, Suite 100
Riverside, California 92501

Telephone
951-682-1015

Facsimile
951-682-0106

Internet
www.riversidecountybar.com

E-mail
rcba@riversidecountybar.com

RIVERSIDE LAWYER

MAGAZINE

C O N T E N T S

Columns:

3 **President's Message** by *Harry J. Histen*

COVER STORY:

7 **Nominees for RCBA Board of Directors, 2010-2011**

Features:

12.....**Juries and the Representative Cross-Section Rule**
by *Joseph O. Fitzgerald and David E. Cannon, Ph.D.*

15.....**Diversity**
by *Briane King*

18....**The Law Does Not Authorize Deputy Sheriffs in All Courtrooms**
by *Judge Woody Rich, Ret.*

20...**Making the Invitation to the Party Meaningful**
by *Allen K. Easley*

22.....**Opposing Counsel: Mark C. Schnitzer**
by *L. Alexandra Fong*

24.....**Judicial Profile: Hon. David A. Gunn**
by *Donna Thierbach*

26.....**Reverse Discrimination: Ricci v. DeStefano**
by *L. Alexandra Fong*

Departments:

Calendar 2

Membership 28

Classified Ads 28

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

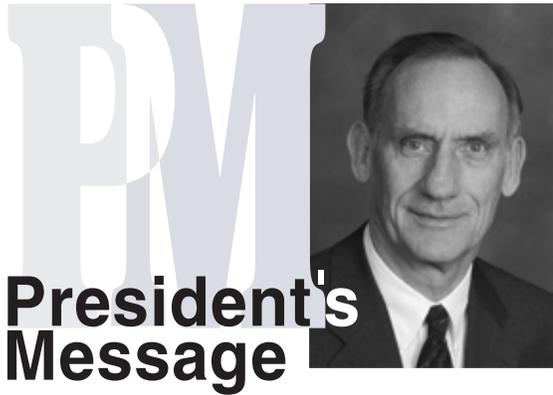
The material printed in Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.

CALENDAR

MAY

- 14 State Bar Fee Arbitrator Training**
RCBA, John Gabbert Gallery
2:00 p.m. to 5:00 p.m.
Free to All Attendees
(MCLE: 2.75 hrs total, includes 1 hr Ethics)
- 18 Family Law Section**
RCBA, John Gabbert Gallery – Noon
“Impact of Criminal Law Caseload on Family Law Court”
Speaker: Hon. Paul Zellerbach
(MCLE: 1 hr)
- 18 RCBA Board of Directors**
RCBA – 5:00 p.m.
- 19 Estate Planning, Probate & Elder Law Section**
RCBA, John Gabbert Gallery – Noon
“Ethical Issues for the Estate Planning Attorney”
Speaker: Roger Ridley, Esq.
(MCLE: 1 hr Ethics)
- 20 Immigration Law Section**
RCBA, John Gabbert Gallery – Noon
“LAX: The Inspection Process”
(MCLE: 1 hr)
- 20 IE Law**
San Bernardino Hilton
Mixer: 5:30 p.m. Dinner: 6:30 p.m.
Speaker: Judge Virginia Phillips
United States District Court
\$50 IE Law Member, \$55 Non Member
Info: IE.LAW09@gmail.com
- 22 (Saturday) RCBA Law Day at the Plaza**
10 a.m. to 6 p.m.
Riverside Plaza
(To volunteer for 2-hour time slot, contact RCBA office)
- 25 Federal Bar Association – IE Chapter**
San Bernardino Hilton – Noon
“11th Annual Constitutional Law Forum”
Speaker: Dean Erwin Chemerinsky
(MCLE: 1 hr)
- 27 Solo & Small Firm Section**
RCBA, John Gabbert Gallery – Noon
“Branding Your Law Firm: Standing Out from the Competition”
Speaker: Paul M. Ferro, Findlaw
(MCLE: 1 hr)
- 31 Holiday – Memorial Day**
RCBA Offices Closed





by Harry J. Histen

This month, we consider diversity: the inclusion of diverse people (read: people of a different race, sex, religion, or culture) in society.¹ From a societal perspective, the term diversity reflects a governmental effort to evaluate progress toward achieving equal opportunity to all by scoring it. But government statistics have little regard for individual differences, preferences or cultures in the scoring, and too much regard for sensitivity.

Society can help remove unfair obstacles that impede a person's achievement. Society cannot make a person successful. By and large, in order to achieve lasting, durable equality, a group must proceed in much the same way as women have in achieving theirs. Women, individually and collectively, have taken their liberty by and for themselves. They took it a step at a time, and continue to do so. Their mission was nothing less than to overturn what had been the customs of mankind for all of recorded history. Just to keep it interesting, women had to – ever so carefully – challenge precepts of all major religions, as well.

Last fall, I watched Ken Burns's PBS documentary *Not for Ourselves Alone: Elizabeth Cady Stanton and Susan B. Anthony* on DVD. It piqued my curiosity as it chronicled Stanton and Anthony's leadership of the women's suffrage movement and the movement itself. Stanton and Anthony believed that all people had the same inalienable rights, and that the right to vote was a critical element of that freedom.

Stanton and Anthony were two of a number of leaders for women's rights worldwide, and were generally regarded as the primary American combatants due to their strength, focus, and fervor, all exemplified by their 50 years of staying power. Along the way to getting the vote, they achieved several smaller successes that incrementally advanced women's rights. Their victories included the affirmation of a woman's right to: (1) own property; (2) control her wages; (3) divorce; and (4) have custody of her children.

In the late 1850s, as the Civil War drew near, they, like other leaders of the woman's suffrage movement, suspended their activities because the drive to abolish slavery had reached its pinnacle. Women joined forces with abolitionist leaders because the cause was right, and because women believed that they were siding with men who believed in freedom for all. Sadly, the victory over slavery was bittersweet and the expected quid pro quo for women did not materialize.

The women's suffrage movement was dealt a disheartening blow in the summer of 1868, when the states ratified the Fourteenth Amendment. The Fourteenth Amendment began by guaranteeing individual rights and due process to all. However, that was soon forgotten, and the second paragraph expressly protected the power of a state to deny a woman her right to vote.

Characteristically, Stanton and Anthony regrouped and focused their efforts on winning the right to vote – without male support. They drafted what would become the Nineteenth Amendment, and had it presented to Congress for the first time in 1875, and almost every year thereafter.

Though neither lived to see to see it, the Nineteenth Amendment was ratified in August 1920, and some 8 million American women voted that November. Women again learned that their success in winning the right to vote was only a new beginning. Winning the vote had proven to be a necessary, but not a sufficient, condition for true equality. Once again, they set out to be prepared, and were ready, for any opportunity. They became a force that will not be denied.

I got a glimpse of this inner strength several years ago from a movie scene that, to me, illustrates the simple, requisite mind set of self acceptance: The lives of life partners Alice B. Toklas and Gertrude Stein were featured in the movie *Waiting for the Moon* (1987). The scene placed them in their parlor going through the day's mail, which contained an issue of *Ladies Home Journal*. Because they were Americans living in an

¹ Shout out mega snaps to Best Best & Krieger LLP, this year's 17th most racially diverse firm out of America's 202 largest law firms, according to a survey in the March issue of the *American Lawyer* magazine. BB&K is number 1 in California.

American artist enclave in Paris in the late 1920s, they always welcomed the *Journal* as they would a long letter from home. On receiving an issue, they customarily took a break and shared topics that interested them. On this occasion, Stein began asking Toklas questions from a featured questionnaire. Stein (and the magazine) asked: "Should women be permitted to smoke in public?" Toklas instantly replied: "Permitted by whom?"

Women continue to make tremendous strides. The women's movement is our shining star, due to women's preparation, confidence, belief, and ultimately, pride and satisfaction. Arguably, government helped some, but it mainly got on the bandwagon with regard to women when the real work was done.

From the women's movement, we know that equality, self-confidence, and preparation cannot be given. Society can only facilitate. Women have never sought perfection or advantage. That has served them well.



NOMINEES FOR RCBA BOARD OF DIRECTORS, 2010-2011

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, 2010. (See below for their biographies.) Watch your mail for ballots. Election results will be announced at the RCBA General Membership meeting in June.



Harlan B. Kistler, President-Elect 2009-2010, will automatically assume the office of President for 2010-2011.



Robyn A. Lewis
President-Elect

Robyn A. Lewis is an attorney with the law firm of J. Lewis and Associates, APLC, which is located in Riverside. Since Ms. Lewis' admission to the bar in 1998, her practice has focused primarily on personal injury and elder law. She has been an active member of the RCBA since 1999.

Ms. Lewis is currently the Vice President of the Riverside County Bar Association, having previously served as its Chief Financial Officer, its Secretary and as a Director-at-Large. She is a Past President of Barristers, having served her term for that organization during 2005-2006. In that capacity, she has also served as a member of the RCBA Board. Ms. Lewis has chaired many Barristers and RCBA social events, such as the BMW Oldtimer's Event and the Holiday Socials, which have served to raise donations for the RCBA Elves Program. She is the chair for the special membership meeting on May 5, 2010, at which famed prosecutor and author Vincent Bugliosi will be the featured speaker.

In addition to her involvement with Barristers, Ms. Lewis is a contributing member of the Publications Committee and the Continuing Legal Education Committee of the RCBA. She has previously served as a member of the RCBA Golf Tournament Committee and is on the Governing Committee for the Lawyer Referral Service. She also serves as Chair of the Liaison Committee for the Attorney Volunteer Program with the Office of the Public Defender.

Ms. Lewis is on the Executive Board of the Leo A. Deegan Inn of Court. She was the first recipient of the Louise Biddle Award in 2006, which is given to an Inn of Court member for his or her professionalism and dedication to the legal com-

munity. Ms. Lewis is a former Mock Trial coach for Santiago High School.

A graduate of Seton Hall University School of Law, Ms. Lewis is originally from the state of New Jersey. She is married to Jonathan Lewis of J. Lewis & Associates, who is also an attorney and has a civil litigation practice in Riverside.



Christopher B. Harmon
Vice President

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 Chief Financial Officer on the RCBA Board, as the Co-Chairman of the bar association's Criminal Law Section, and 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 is a past Executive Committee member of the Riverside chapter of Volunteers in Parole.



Jacqueline Carey-Wilson
Chief Financial Officer

I am a Deputy County Counsel for the County of San Bernardino and represent the Department of Aging and Adult 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 secretary of the RCBA in 2009.

In March 2001, I became a Director of the Volunteer Center of Riverside County and 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 Inland Empire Chapter of the Federal Bar Association (FBA) and 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 (17), Julia (13), and Grace (9). I would be honored to continue to serve the Riverside legal community as the chief financial officer for the RCBA.



Chad W. Firetag
Secretary

Chad Firetag is a partner in the law firm of Grech & Firetag. During his time with the office, he has represented numerous clients involving 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 and currently sits on the Board of Directors for both institutions. He also currently serves as the Co-Chairman of the RCBA's Criminal Law Section.

Mr. Firetag lives in Riverside with his wife, Victoria, and their two sons, William, age 4, and Nathaniel, age 4 months.



Timothy J. Hollenhorst
Secretary

Timothy J. Hollenhorst is a Deputy District Attorney with the Riverside County District Attorney's Office. He currently works in the Domestic Violence Unit. He has been with the office for six years, working in various units, including grand theft auto, identity theft, Sexual Assault Child Abuse (SACA), and general felony prosecutions.

Mr. Hollenhorst graduated from the University of California at Santa Barbara with a B.A. in political science. He received his law degree from the University of Kansas.

A lifelong resident of Riverside, Mr. Hollenhorst has been active in both the legal community and his hometown. He has been a member of the Riverside County Bar Association

for four years and is a member of the Leo A. Deegan Inn of Court. Mr. Hollenhorst is a member of the Board of Directors of the Riverside Police Department's Youth Court. He currently serves as a mentor to students at the University of California at Riverside who are working towards a career in the law. Mr. Hollenhorst is a past coach for the La Sierra High School Mock Trial team and has also volunteered his time as a scoring attorney during competition. He has participated in Career Days at Rubidoux and Poly High Schools as well as Mock Trial at Magnolia Elementary School. He is the manager of the District Attorney's office softball team.

Mr. Hollenhorst lives in Riverside with his wife, Noreen, a former kindergarten teacher and now a stay-at-home mom, and with their one-year-old daughter, Madison.

Currently, he is a Director-at-Large on the RCBA Board.



Richard D. Ackerman
Director-at-Large

Rich Ackerman grew up in Santa Ana, graduated from Western State University School of Law in 1994, and has been practicing for more than 15 years. He has spent most of his legal career in Riverside County. He is the managing partner of Ackerman & Sands, a firm emphasizing practice in the areas of business law, civil litigation, and bankruptcy. 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.

For the last several years, he has been an active member of the RCBA MCLE Committee. He serves as a scoring attorney for the Mock Trial Program, and regularly volunteers his time at the Public Service Law Corporation as an attorney and board member.

Rich also serves as the President/CEO of the Mt. San Jacinto College Foundation, where over \$300,000 a year in scholarship opportunities are provided. He previously served as the Vice-Chairman of the Murrieta Valley USD Measure K Bond Oversight Committee and presently operates a faith-based nonprofit organization dedicated to the provision of free and reduced-fee civil rights litigation, debt solutions, and representation of governmental employees who cannot afford to fight for themselves.

He is seeking 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 to the marketplace of ideas.

More on Rich can be found at: www.AckermanSands.com or www.ProFamilyLegalCenter.com.



David M. Cantrell

Director-at-Large

David Cantrell is a partner in the law firm Lester & Cantrell, LLP, where he practices commercial litigation. A large portion of Mr. Cantrell's practice is devoted to the defense of professionals – primarily lawyers – who are the

subject of errors and omissions claims arising from their practices.

David has been actively involved in the Riverside County legal community for several years. David is currently serving as the President of the Riverside County Barristers Association ("Barristers"). Through his involvement with Barristers, David has also served as a member of the Riverside County Bar Association's Board of Directors for most of the last two years. In addition to his service to the RCBA, David has been a member of the Leo A. Deegan Inn of Court, and has spent time serving as a scoring attorney in the local high school Mock Trial competition.

Prior to relocating to start his practice in Riverside, David received a B.S. from San Diego State University and a J.D. from Pepperdine University School of Law. David lives in Riverside with his wife Tonia, who is a local pediatric dentist, and their son Jake (who will be a "big brother" in a couple of months).



Robert Deller

Director-at-Large

I am a sole practitioner who has been practicing in the Inland Empire for more than 20 years. My practice primarily focuses on the areas of Family Law, Criminal Law defense and Personal Injury matters.

I have previously served as a Co-Chair for the RCBA Family Law Section and currently serve on the panels for the Attorney/Client Fee Arbitration program and the Dispute Resolution Service.

I was an instructor at California Southern Law School, a guest lecturer at Alternatives for Domestic Violence, and a volunteer for the Inland Counties Legal Services, as well as the Orange County Welfare Coalition.

I have been married to Diana for 20 years. I enjoy spending time with my family and friends and am an avid Angel and Charger fan.



Stefanie G. Field

Director-at-Large

Stefanie Field is a Senior Counsel at Gresham, Savage, Nolan & Tilden, A.P.C., who specializes in litigation. She has been a member of the RCBA since 2000 and has also been active in the Leo A. Deegan Chapter of the

American Inns of Court and an attorney scorer for Mock

Trial for several years. Ms. Field is proud to practice law in the Inland Empire and welcomes the opportunity to further contribute to the legal community.

Ms. Field has represented corporate clients and public entities in both state and federal courts in matters relating to business disputes (contract and tort actions), product liability and toxic tort actions, tort claims, CEQA writ petitions, CERCLA contribution claims, and claims for unfair business practices under Business and Professions Code section 17200. Her practice focuses on business litigation, tort claims, and the defense of toxic tort, environmental, and products liability claims.

In the area of toxic tort and products liability defense, Ms. Field's experience includes representing clients in high-exposure cases involving wrongful death, devastating illnesses, and catastrophic injuries. Her clients' liability has allegedly arisen out of a diverse array of products, both industrial and retail, and has extended into the realm of premises liability. Ms. Field has represented Fortune 500 companies in environmental/toxic tort cases involving benzene, silica, mold, and asbestos exposure. Products Ms. Field has defended include chemicals, plastics, engines, generators, medical devices, and industrial and residential appliances. These actions were brought by consumers, by employees alleging injuries caused by malfunctioning/unsafe equipment and exposure to chemicals in connection with their employment, and by family members alleging illness from secondary exposure.

Ms. Field graduated from the Georgetown University Law Center in 1995 and was admitted to the California bar in February 1996.



L. Alexandra Fong

Director-at-Large

L. Alexandra Fong is a Deputy County Counsel for the County of Riverside, where she practices exclusively in the area of public entity defense. She received her undergraduate degree and J.D. locally.

After graduating from law school and passing the bar exam in 2000, Alexandra 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. She practiced primarily in public entity defense before moving to Riverside County Counsel.

Alexandra has been an active member of the Riverside County Bar Association since 2005 and is a current member of the Bar Publications Committee, as well as a contributing writer. She is also a member of the CLE Committee of the RCBA. She has participated in the Mock Trial program as a scoring attorney.

Alexandra welcomes the opportunity and privilege to serve the Riverside County Bar Association as a member of the Board of Directors.



Jeremy K. Hanson

Director-at-Large

I am pleased to be nominated for the position of Director-at-Large. I have proudly practiced plaintiff's personal injury law in Riverside, California for over 10 years and planned to do so for the next 30.

I have deep roots in the Riverside legal community. I was the Secretary, Treasurer, Vice-President and President of Barristers during the years from 2001 to 2005. I was also a Director-at-Large for the Riverside County Bar Association Board of Directors for the term of 2004-2005. Additionally, I am a member of the Leo A. Deegan Inn of Court. I believe that such experience would be beneficial to the Board.

As a side note, I was born in Olathe, Kansas, and I am an avid Kansas City Chiefs fan. (This magnificent Chiefs obsession invades every aspect of my life, even brief biographical sketches). I co-author my own Chiefs blog, aptly named arrowheadaddict.com, which receives over 100,000 hits per month during the NFL offseason alone. If at any time the RCBA should have questions regarding the Kansas City Chiefs, the Board would be sufficiently covered. I currently live in Riverside with my lovely fiancée Tara Durbin, who also likes the Chiefs because she has to.

In all seriousness, it is important to me to be a bigger part of the legal community I love, and that is why I am running.



Kira L. Klatchko

Director-at-Large

Kira L. Klatchko is an appellate practitioner and Vice-Chair of the Appellate Group at Best Best & Krieger LLP. Ms. Klatchko was Chair of the RCBA's Appellate Law Section from 2006 thru 2009 and has served several terms

as a contributing member of the RCBA's Continuing Legal Education Committee. Ms. Klatchko 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 this year as a scoring attorney.

Ms. Klatchko is an appointed Member of the California State Bar Standing Committee on Appellate Courts. She is active with the Warren E. Slaughter and Richard I. Roemer Chapter of the American Inns of Court, and is a volunteer mediator at the Fourth Appellate District, Division Two. She conducts private mediations as part of the Riverside County Court's Civil Mediation Panel, and is co-authoring a book chapter on California appeals for the ABA's Council of Appellate Lawyers. In 2009, Ms. Klatchko was named to the list of Super Lawyers Rising Stars for Southern California.

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 is a Rotarian and sits on the board of several community-based nonprofits, including the Angel View Crippled Children's Foundation.



Audrey G. Owens

Director-at-Large

First, it is an honor to be considered a nominee for Director-at-Large for RCBA. Should this nomination be successful, I will do everything in my power to further the objectives of the RCBA.

I am a Deputy Public Defender for the Law Offices of the Public Defender. In the capacity of a Deputy Public Defender, my primary areas of practice have been probate, guardianships, freedom from parental rights, misdemeanors, conservatorships, Murphy's, LPS, family law contempts, NGIs, MDOs and SVPs. Prior to joining the Law Offices of the Public Defender, I was an insurance claims adjuster for 20 years, after which I was a private practitioner for eight years. My practice included insurance defense, bad faith and personal injury cases. I also served as Judge Pro Tem for Pomona court and as an arbitrator. For five years, I was the Attorney Coach for Upland and Chino High Schools.

I am happily married to John Owens. We have three successful adult children – my first calling. I will leave the rest for others:

From husband Brother John Owens: "My wife has managed to be a great wife and mom to our children and to serve my ministry, Expanding Life, in a way I cannot describe. A wonderful mate hardly describes her! She is a cornerstone in our church. If any group is lucky enough to get her to join any endeavor, they could not have a more capable, competent teammate. She is a loyal team player and will do whatever it takes to get the job done. She is a welcome asset to any team. She is friendly, loyal, dependable, and a hard worker. She will see the job to completion."

From Gary Windom, Public Defender for the County of Riverside: "I have known Ms. Audrey Owens for over 30 years as a claims adjuster, private practitioner, and as a Deputy Public Defender for our law offices. I know her to be ethical, honest and hardworking. I have no doubt that if selected as a Director-at-Large for your concern, she will enhance the organization."

From Constance Waddell, President of Death Penalty Focus, Inland Valley Chapter: "The night we organized the Inland Valley Chapter of Death Penalty Focus (DPF), I met Audrey and instantly felt confident that with her, the group would be successful in reaching our goals. There was an assurance about her that I later learned came from both her former leadership in National DPF and her experience as a lawyer. I invited her to be on the steering committee. In that position, she has proved invaluable in our planning and decision-making, as well as in sending emails and writ-

ing letters to lawmakers and newspapers. Audrey worked to make our first large event a success when activist Mike Farrell spoke at Pitzer College. Her enthusiasm helped us promote sell-out crowds for ‘One Woman Drama: A Prison of the Mind.’ Audrey is a strong teammate.”

From Susan Brennecke: “I met Audrey Owens three years ago when I joined the Leo A. Deegan Inn of Court. I had been practicing law for only two years then, and I was still acquainting myself with other legal professionals in the community. Not only did Audrey make me feel welcome in my new surroundings, she seemed both professional and comfortable in all of her interactions with the other members of the Inn. I immediately admired these qualities, and I knew then that I wanted to emulate them in my practice. We would be extremely fortunate to have someone with her commitment to professionalism and her communication skills serve as a Director-at-Large.”



JURIES AND THE REPRESENTATIVE CROSS-SECTION RULE

by Joseph O. Fitzgerald and David E. Cannon, Ph.D.

Riverside County is not a place of the past; it is in constant motion, with an eye toward the future. The county has become increasingly diverse over the last decade, as it has been a magnet for transplants from other countries and from other populous counties throughout Southern California. Exactly how is this impacting our juries, and what we should expect to see in the venire? To address these questions, we need an understanding of how the state requires that jury pools resemble the diversity of a community's jury-eligible population.

Article 1, section 16 of the California Constitution provides the right to a jury trial. The California Supreme Court added to this right that the jury must be "drawn from a representative cross-section of the community." (*Williams v. Superior Court* (1989) 49 Cal.3d 736, 740.) Essentially, California law imposes a demographic requirement that guarantees that "the pools from which juries are drawn do not systematically exclude distinctive groups in the community." (*People v. Anderson* (2001) 25 Cal.4th 543, 566.) This is known as the "Representative Cross-Section Rule" and is aimed at having a jury pool mirror the community as closely as the process of random draw permits. (*People v. Harris* (1984) 36 Cal.3d 36, 48-49.) This article is brief overview of the rule and its application.

The Representative Cross-Section Rule is generally an issue that is raised in criminal court. However, it applies equally in civil cases and can be raised during any stage of the jury selection process, from as early as when the master list of potential jurors is compiled.

To establish a prima facie violation of the Representative Cross-Section Rule, the objecting party must show each of the following: (1) that the group that has been excluded is a "cognizable group" in the community; (2) that the representation of the cognizable group in the jury pool is not "fair and reasonable" in relation to the number of such persons in the community; and (3) that the underrepresentation is due to "systematic exclusion" in the process by which the jury pool is created. (*People v. Anderson* (2001) 25 Cal.4th 543, 566.)

For purposes of the first requirement, the California Supreme Court has held that groups defined by race, gender, religion, or sexuality are considered "cognizable." (See *People v. Fields* (1983) 35 Cal.3d 329, 347; *People v. Garcia* (2000) 77 Cal.App.4th 1269, 1277.) Compare this to age,

Riverside County v. California

	Riverside County	California
White	84% (42%NH)	77% (42%NH)
Black	7%	7%
American Indian	1%	1%
Asian	6%	12%
Hispanic	44%	37%
2+ Races	2%	3%

social status, and economic status, all of which have been determined by the California courts to be groups that do not qualify as "cognizable."

The second prong requires the objecting party to show that the representation of the cognizable group in the jury pool is not "fair and reasonable" in relation to the number of such persons in the community. The "community" that the rule focuses on is the judicial district in which the court is located. (See Code Civ. Proc., § 197(a); *Williams v. Superior*

Riverside Migration

Net Migration 2000 -2008:

Riverside grew by:	+ 500,000	
Los Angeles County declined by:	- 368,000	
Orange County declined by:	- 52,000	
San Diego County declined by:	- 10,000	

Sexual Minorities and Gender

- Palm Springs year round (jury eligible) population is estimated to be 35% gay/lesbian.
- Females comprise approximately 50% of the population in most Riverside Communities.
 - Palm Springs is the exception.
 - Females only comprise 48% due to a greater number of gay men in that community.

sion.” (*People v. Burgener* (2003) 29 Cal.4th 833, 857-858.)

Once the prima facie case is established, the burden shifts to the opposing party to provide either (1) a more precise statistical showing that no constitutionally significant disparity exists, or (2) a compelling justification for the procedure that has resulted in the disparity. (*People v. Burgener, supra*, 29 Cal.4th at p. 856.)

There are reasons other than “systematic exclusion” why any particular jury pool may not entirely reflect the breadth of diversity of a community. Juror demographics sometimes do not exactly mirror county demographics, particularly in fast-growing areas that are attracting residents from other areas of the world. Changes in the jury pool are often slower than changes in the community. People move, but they often do not immediately change their voter or DMV registrations to their new communities. It also takes time for new immigrants to become U.S. citizens. As a result, many of our newest residents are not jury-eligible. And sometimes, especially when selecting a small group of the entire population, a random selection may look nothing like the community, even though the selection was entirely random and appropriate.

Joseph Fitzgerald is an associate attorney at Bentler Mulder, LLP in their Riverside office and can be reached at joseph@bentlermulder.com. David Cannon is a Senior Trial Consultant at the Jury Research Institute and can be reached at dcannon@jri-inc.com.



Court, supra, 49 Cal.3d at p. 745.) There are two different approaches to calculating underrepresentation. The first is called “Absolute Disparity,” which is the difference between the underrepresented group’s percentage in the jury-eligible population and the group’s percentage in the jury venire. Absolute Disparity is calculated by subtracting the group’s percentage in the jury pool from its percentage in the overall jury-eligible population. (*People v. Ochoa* (2001) 26 Cal.4th 398, 427, fn. 4.) The second method is known as “Comparative Disparity,” which is the percentage by which the number of the particular group in the venire falls short of the number of that group in the overall jury-eligible population. The formula for Comparative Disparity is to take the Absolute Disparity and divide that number by the underrepresented group’s percentage in the overall jury-eligible population, then multiply this result by 100. (*Ibid.*) Regardless of what formula is used, the California Supreme Court has not clearly defined what degree of disparity is constitutionally impermissible. However, it has determined that an Absolute Disparity between 2.7 and 4.3 percent (or a Comparative Disparity between 23.5 and 37.4) is generally “within the tolerance accepted” by reviewing courts. (*People v. Ramos* (1997) 15 Cal.4th 1133, 1156.)

Recall from above that all three elements must be met to prove a violation of the Representative Cross-Section Rule. Therefore, after showing a statistical discrepancy in the representation of a cognizable group, the objecting party must identify some aspect of the jury selection process that is (1) the probable cause of the disparity and (2) constitutionally impermissible. (*People v. Bell* (1989) 49 Cal.3d 502, 524.) This particular element is known as “systematic exclusion” and is normally the death blow to any representative cross-section challenge due to the fact that an objecting party must show that the flaw is in the government’s procedure for selecting the jury. At this point in the analysis, any disparity in the particular panel assigned to the case is irrelevant. “Once the jury has been fairly selected, the law assumes that its members, whether Black, White, Hispanic, Catholic, . . . are equally capable of representing the community.” (*Williams v. Superior Court, supra*, 49 Cal.3d at p. 747.)

A number of cases demonstrate that, even when a cognizable group is underrepresented in the jury pool, the systematic exclusion requirement cannot be overcome due to the fact that most jury pools are selected at random from voter registration and DMV records. (E.g., *People v. Morales* (1989) 48 Cal.3d 527; *People v. Sanders* (1990) 51 Cal.3d 471.) So long as jury pools are drawn from such neutral sources, the failure to adopt corrective measures to improve a particular group’s representation does not constitute constitutionally impermissible “systematic exclu-

by Briane King

When I was approached to write an article dealing with diversity for this issue, I was somewhat reluctant to agree. Not because I felt that I couldn't write it, whether it be on personal issues or issues in general, but simply because I have seen tragic consequences for transgendered (gay, bisexual, lesbian or transsexual) people who made themselves spokespersons and, desired or not, gained the public eye. For the record, I don't crave attention, although one could argue that with my current transition, that is exactly what I am getting.

For those of you who don't know me, I am a Supervising Deputy Public Defender with the Riverside office. I have worked for two other Riverside County departments (the Sheriff and the DA), and in total worked for the County for over 20 years. I have been involved in law enforcement for over 25 years. In a nutshell, I am a transsexual. What is that, you ask? Well, again in a nutshell, and very simplistically, it is when a person is born feeling that they were born in the wrong body sexually, i.e., a boy feels he should have been born a girl or vice versa. Why that happens is not exactly known, and to discuss the possible causes would far exceed the word count I was given for this article, but suffice it to say that one is most likely born with this condition.

Personally, I spent many years fighting this feeling, and to the outside world appeared very normally male. I played all sports, had many girlfriends, got married (no kids, fortunately), and became a law enforcement officer and finally a lawyer, all the while dealing with and struggling with the feeling that I should have been born differently. I felt from my earliest childhood memories that this was the case. I also knew that to tell anyone would be wrong. Our society clearly defines what a boy should do and how a girl should be, even at a very young age, and differences, at least when I was growing up, were grounds for concern and unacceptance.

Fortunately, society is maturing (at least arguably), and more transgendered and transsexual people are coming forward; however, even now, tragic results occur to some –hate crimes, murders, harassment, and suicides are not all that uncommon for transsexual people. For the first time in our history, we have four different generations in the workplace (I heard that somewhere), and attitudes between the groups towards issues such as gays, lesbians, bisexuals, and the transgendered dif-

fer significantly. Attitudes vary not only generationally, but also culturally, and one could spend a great amount of time studying these differences and the dynamics involved. I have also recently discovered that, at least with respect to transsexuality, there are great difficulties in making the transition in certain professions; by that, I mean that I was surprised to find out from friends dealing with this issue that in certain very white-collar professions, other than the law, there is much prejudice, unacceptance and hostility. I personally know people who have transitioned as police officers, construction workers, etc. and have not had the problems that others have had transitioning in the medical field, for example, as doctors and nurses. That discovery surprised me, as I know that people in those professions should be well-educated and experienced with the issue; go figure.

As lawyers, in civil as well as criminal work, we are confronted daily with people of all groups, diverse races, different cultural practices and understandings, and nontraditional sexual preferences, and again, as lawyers, we have to be cognizant of how those differences may affect our dealings with their specific issues and how those specific issues may be critical in how we approach their specific cases. I mention this observation primarily because that is how I account for the relative ease with which I have been able to make my personal transition on the job. For all the bad-mouthing and rotten jokes we as attorneys have to put up with, I can honestly say that the attorneys whom I have had the honor of working with and the attorneys whom I know from my years with the county have been nothing short of amazing. The support and understanding that I have received during the early months of my transition have been, again, nothing short of overwhelming. This is an incredibly positive statement about our profession, regardless of our public perception.

More and more organizations are dealing with diversity issues as they relate to transsexuals and transgendered individuals. This is not something that can be dealt with on a group level, but something that must be dealt with individually. Most transsexuals opt not to transition on the job, and a great percentage of the ones who do are harassed to the point of leaving their job or getting fired for "unrelated reasons." I have been frequently asked if it would not have been easier to do

this and move to another city, state or whatever and start anew. Initially, I thought the answer was yes, but at least for now, and as time has gone by, I'm not so sure. My transition, as transitions go, has been very smooth and relatively painless, at least professionally. My coworkers at the Public Defender's office have been amazing, and I attribute that to how management has dealt with the issue from the top, meaning Gary Windom (the Public Defender) all the way down through the ranks of the trial attorneys and staff. Family and friends, for the most part, have also been phenomenal. Going through this process has been a very interesting and educational journey. I can honestly say that when making a drastic change like the one I have experienced, you truly learn who your friends really are, as opposed to the ones who pay lip service to friendship.

I don't know how many of you reading this article know anyone who has struggled or is struggling with this issue. The truth is that you most likely do know someone who is transsexual or transgendered (statistically, it's practically a certainty) and just are not aware of it. I kept my personal secret for a very long time and would venture to say that no one had any idea of the issue in my life. As all this relates to diversity in the workplace, being gay or lesbian is much more common and slowly

being even more accepted and understood and to some degree becoming a nonissue (again, more so, I think, in the legal field). Transsexuality is much more misunderstood. The public portrayal of the transsexual has traditionally been very negative and mostly dealt with on the "well-respected" afternoon talk shows and shock TV in general. Recently, there have been more respectful and accurate portrayals of this issue, namely by CNN and other respected news and documentary channels.

As I close this article, it is my hope that it has been at least marginally educational, and that if you, as the reader, are confronted with this issue, whether it be a transsexual client, co-worker, friend or family member, you will be sympathetic and at least know a little bit more of the problems a person faces as they proceed down this path. I can honestly say that based on my own personal experiences, I am very proud of the profession that I am a part of and commend all aspects of the Riverside County legal community for setting the example that I have experienced. I thank you very much for the way I have been treated, accepted and supported.

Briane King is a Supervising Deputy Public Defender with the Law Offices of the Riverside County Public Defender.



THE LAW DOES NOT AUTHORIZE DEPUTY SHERIFFS IN ALL COURTROOMS

by Judge Woody Rich, Ret.

Superior Court of California, County of Riverside – Cost to the court per year for deputy sheriffs: \$12,480,000.

When the amount of money available to operate the superior courts becomes so drastically reduced that it is *necessary to close the courts* a number of days in the year, all operations should be studied to determine where it is reasonably possible to reduce expenditures.

Government Code section 69922 states:

Except as otherwise provided by law, whenever required, the sheriff shall attend all superior court held within his or her county. A sheriff shall attend a noncriminal, nondelinquency action, however, only if the presiding judge or his or her designee makes a determination that the attendance of the sheriff at that action is necessary for reasons of public safety. The court may use court attendants in courtrooms hearing those noncriminal, nondelinquency actions. Notwithstanding any other provision of law, the presiding judge or his or her designee may provide that a court attendant take charge of a jury, as provided in Sections 613 and 614 of the Code of Civil Procedure. The sheriff shall obey all lawful orders and directions of all courts held within his or her county.

In Riverside County, a court attendant is a court employee whose mid-range pay, including benefits, is \$60,000 per year. A deputy sheriff is a Riverside County employee whose mid-range pay, including benefits, is \$104,000 per year, which *the court must pay* when the deputy is functioning in the courtroom. There are 58 judges, 18 commissioners and 20 assigned judges, for a total of 96 bench officers, in Riverside County.

Most of these bench officers primarily handle criminal cases. The charges by the sheriff's office to the court for deputy sheriffs per year is \$12,480,000.

In criminal trials where the defendant is in custody, there must be a deputy sheriff in the courtroom in charge of the defendant. There are a large number of misdemeanor and felony trials in which the defendant is not in cus-

tody, but is out on bail. In these cases, generally there is no substantial need for a deputy to be present in the courtroom. The courtroom clerk can signal the jurors to come back to the courtroom after a recess. When the case is scheduled to be submitted to the jury, the sheriff's office can be notified to have a deputy at the court to take charge of the jury.

The judges have emergency devices at the bench with which to signal immediately for deputies if a need arises. Also, courthouses now have metal detectors at their entries.

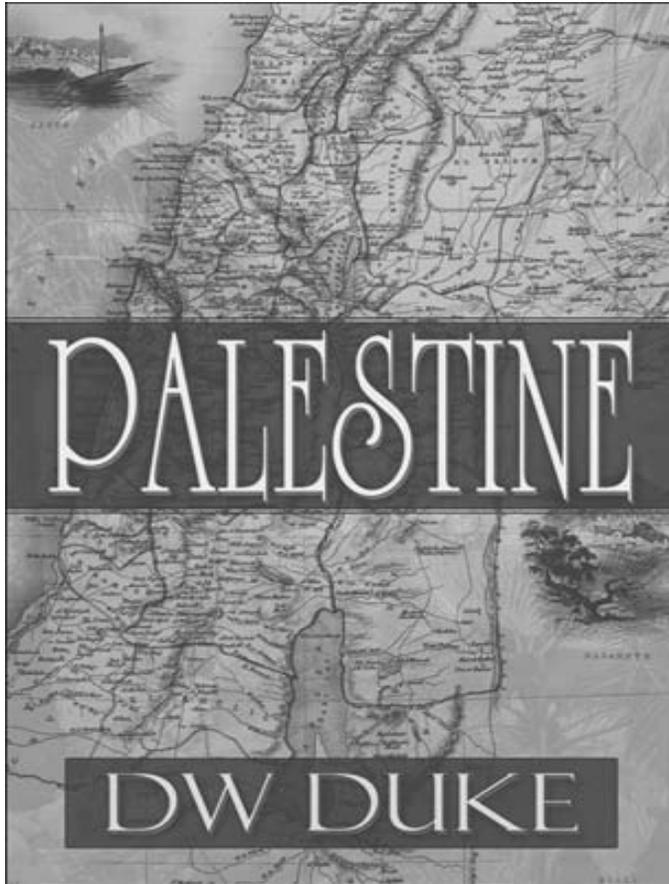
If deemed necessary, a deputy could be stationed in the hall, and since he has a radio, he could rush to any of the courtrooms if any judge activated the emergency device.

There are some criminal calendars and criminal trials that necessitate having more than one deputy in the courtroom. Civil, small claims, unlawful detainer, probate, and dependency are all noncriminal actions; therefore, a deputy is *not authorized* to attend. The court "may use" court attendants in courtrooms handling these cases. Generally, there is no substantial need to do so.

Family law cases are "noncriminal actions," and therefore a deputy is *not authorized* to attend – in effect, is forbidden. Government Code section 69922 is a binding legislative decision. As noted, Government Code section 69922 states, "A sheriff shall attend a noncriminal, nondelinquency action, however, *only* if the presiding judge or his or her designee makes a determination that the attendance of the sheriff *at that action* is necessary for reasons of public safety." (Italics added.) This exception is for that infrequent case that has a history of such a nature that a judge "makes a determination that the attendance of the sheriff *at that action* is necessary for reasons of public safety."

Judge Elwood (Woody) Rich retired from the Riverside County Superior Court in 1980.





Palestine

by DW Duke

Product Details

ISBN: 978-1-4489-4611-2

Pages: 160 pages

Dimensions: 5.5 x 8.5

Format: Softcover

***Palestine* is about a Jewish boy named Aaron Levy who, at the age of five, is traveling with his family in Israel when the vehicle in which they are riding is attacked by Palestinian terrorists. His entire family is killed in the attack. Aaron is traumatized and emotionally scarred.**

Many years later, Aaron enrolls in medical school in the United States and meets a beautiful female Palestinian medical student named Al Zahra who is a descendant of Mohammad, the founder of Islam. They become very close but their religious and ethnic differences place them into a forbidden romantic relationship. After four years of medical school, they part ways, and many years later, they meet again when Aaron, as an Israeli Defense Forces medical officer, comes face to face with Al Zahra, who is now a Palestinian doctor working in a hospital in the municipality of Gaza. Under the pressures of a combatant situation, their religious differences and their human strengths are put to the ultimate test. Described as an "action romance," this book will keep you on the edge of your chair from beginning to end.

DW Duke is the managing partner of the Inland Empire law office of Spile, Siegal, Leff & Goor, LLP and has published numerous books and articles on various topics of law. He is extensively involved in matters of human rights with emphasis in the Middle East and in particular Israel and Iran. While trying to develop a way to get his message to the public he decided to write a novel called "Palestine" to address the Israeli/Palestinian crisis.

***Palestine* will be available soon at Amazon.com and your local bookstore.**

To order directly from the publisher call 301-695-1707.

MAKING THE INVITATION TO THE PARTY MEANINGFUL

by Allen K. Easley

I have a sticker on my car that says, “100% Hapa.” Hapa is Hawaiian for “half,” and the first word in the common Hawaiian phrase, “hapa haole,” or “half white.” I am half Japanese, half Caucasian, born in Hawaii, and so “100% Hapa.” This fact has informed my life since my earliest memories, when, having attained an age of modest cognition, I realized all of my friends were either Japanese or white, while I was neither, or perhaps both. Only years later did I learn that my parents’ marriage was illegal in my father’s home state of North Carolina until 1967, when *Loving v. Virginia* was decided.¹ I am proud of my heritage. Like most people, I am not prone to talk about it. However, because of my name and physical appearance, I find myself often deciding whether to bring my heritage to the surface. I am half white and half invisible, and I stand on both sides of the river simultaneously.

So I think about race often, and I have some thoughts that I want to share here about the challenges that organizations face in making diversity work. This is not the question of attracting diverse individuals, which is itself a significant problem that still befuddles us, but rather the question of making the diversity that we achieve work.

I want to start with a story, because stories leave a deeper impression. This story is about a Japanese-American who was ordered to the internment camps during World War II. As an aside, two of my uncles were interned during the war. They were college students here in California. But the story I want to tell is not about them, but rather about Fred Korematsu, who refused to obey internment orders, resulting in a felony conviction. His case rose to the Supreme Court. *Korematsu v. United States*² was the first case in which the Supreme Court declared race a suspect classification, holding that laws that discriminate on the basis of race must be subjected to the strictest scrutiny. The court went on to

say, without a hint of careful scrutiny, that compelling interests that have since been acknowledged never to have existed justified the government’s discriminatory treatment of Japanese-Americans.

Mr. Korematsu lived most of his adult life hampered in his ability to earn a living by his conviction. That conviction was finally vacated in 1983 when a federal judge in San Francisco granted a writ of *coram nobis* based on evidence that the prosecutor had withheld evidence showing that Japanese-Americans posed no threat to national security.

And in 1998, on Martin Luther King Day, President Clinton awarded the Presidential Medal of Freedom to 15 Americans who had dedicated their lives to King’s cause of equality, including Fred Korematsu.

So here is the core story: Mr. Korematsu was notified of this award by the White House one week before the award ceremony was to take place. When he informed the official who contacted him that he could not afford the cost of a last-minute plane ticket to Washington to receive this award, the official responded that the White House could not help. For most of the world, this minor glitch went unnoticed. For members of the Asian-American community, it provoked minor outrage, though it also brought enough attention to Mr. Korematsu’s plight that donors stepped forward to help finance his cross-country travel to receive this award.

1 388 U.S. 1 (1967).

2 323 U.S. 214 (1944).

So why the minor outrage? After all, President Clinton did not sign Executive Order 9066, authorizing the internment of Japanese-Americans during World War II. He was trying to recognize Mr. Korematsu's important contributions to the cause of equality, not to cause greater harm.

The problem is, the Medal of Freedom award ceremony was a party, and Mr. Korematsu was invited to the party in a way that to him felt less than genuine. The White House wanted to make the right gesture, by reaching out to Mr. Korematsu with this nice invitation, but didn't seem to care whether it was financially feasible for him to accept the invitation.

We all see the world through lenses that are colored by our own life experience.

For Japanese-Americans who lived through World War II, the memories of that experience are still vivid. I recently attended the funeral of one of my uncles who was interned during the War, where I learned a lesson about perspective. For many Americans, FDR is either a hero or the devil, depending on your views about the Great Depression, World War II, big government, states' rights, social security, and the welfare state. But for some of the Japanese-Americans who were interned in the camps during World War II, he was simply a bigot. Why? Because he signed Executive Order 9066, changing the lives of a discrete group of Americans forever. Of course, that view of FDR is too narrow, as are perhaps most views of FDR. We all view him through our

own lenses. But we blind ourselves to a reality that was devastating for some Americans during World War II if we refuse to see their point of view.

What happened to Mr. Korematsu in 1998 was, in many respects, a minor slight. And of course, we all experience minor slights every day. But not all of us are asked to pile those slights on top of a history of terrible wrongs. Race issues become more difficult when we confuse our relationship to our history. We are not responsible for the fact of our history. But we are responsible for knowing our history.

Put another way, President Clinton was not responsible for the relocation of Japanese-Americans during World War II. But he was responsible for knowing that history. And so, perhaps, if he wished to honor Mr. Korematsu, a better start would have been to come to know Mr. Korematsu, to know his history, to understand what a prior occupant of the White House did to Japanese-Americans then nearly 60 years ago, to understand the opportunity this award ceremony presented to broaden public understanding of the terrible wrong that had occurred, and maybe to avoid the dishonor of extending an empty invitation to the party.

An invitation to a party feels less genuine when you make no effort to know the person you have invited, to know that person's history, to know that person's story.

Allen K. Easley is Dean and Professor of Law at the University of La Verne College of Law.



OPPOSING COUNSEL: MARK C. SCHNITZER

by L. Alexandra Fong

Providing People with a Fresh Start

Mark C. Schnitzer was born and raised in Virginia. While in undergraduate school, he was in the Air Force Reserve Officer Training Corps (AFROTC). He graduated from the University of North Carolina in 1963 with a B.A. in political science and deferred his commitment to the Air Force by attending law school. While in law school, instead of interning at a local law firm during the summer, he worked on the police force of the City of Virginia Beach, which had a program to hire law students to augment the force. He wore a uniform, had a weapon, and drove a police car around the city and saw and experienced events from the perspective of a police officer.

In his third year of law school, he took the Virginia bar exam. He graduated with his J.D. from the T.C. Williams School of Law at the University of Richmond, in Richmond, Virginia, and received his license to practice law on the same day, June 6, 1966.

Although he originally intended to be a pilot in the Air Force and had passed all the necessary exams, he ultimately entered the Judge Advocate General (JAG) Corps after law school. He served four and a half years in the JAG Corps, including one year in Vietnam, where he gave legal advice to military personnel stationed at the Tuy Hoa Air Base. He also traveled throughout Vietnam, handling court martials and administrative discharge proceedings as the advocate for military personnel (defense).

While in the JAG Corps, Mr. Schnitzer was stationed at Norton Air Force Base in San Bernardino. He took the California bar exam and became a licensed California attorney in 1971. He left the Air Force in 1971, having achieved the rank of Captain. He never returned to practice law in Virginia.

He began with a general practice before specializing in bankruptcy law in the late 1970s. When he first began practicing law, he shared an office with Norm Hanover, who was a bankruptcy attorney. His interest in bankruptcy grew through that association and they formed a partnership in 1984. He practiced exclusively



Mark C. Schnitzer

in San Bernardino until 2002, when opportunity knocked and he joined Reid & Hellyer.

As a bankruptcy attorney, he primarily represents debtors in Chapter 7, 11, and 13 bankruptcies. A Chapter 7 bankruptcy is designed to allow debtors to discharge all their debts and retain the exempt property they are allowed to keep, providing them with a fresh start. A Chapter 11 bankruptcy is designed as a sophisticated reorganizational process; although individuals can file a Chapter 11, it is usually filed by a business entity.

A Chapter 13 bankruptcy is designed to allow debtors to pay some or all of their debt by making monthly payments to the Chapter 13 trustee for a period of time, not to exceed five years. Mr. Schnitzer enjoys the challenge of helping debtors resolve their debt issues, and it is an ever-evolving area of practice.

He is an active member of the Inland Empire legal community. From 1992 to 2007, he was on the board of directors of the Inland Empire Bankruptcy Forum, serving as its president in 1993-1994. He is also a member of the San Bernardino County Bar Association, having served on its board of directors from 1993 to 1999 and as its secretary in 1997-1998, and he continues to serve as Chairman of the Client Relations Committee. He

On May 25, 2010, the Inland Empire Chapter of the Federal Bar Association will be presenting its "Eleventh Annual Constitutional Law Forum" at the San Bernardino Hilton, featuring Erwin Chemerinsky, Dean of the University of California Irvine's Donald Bren School of Law. Dean Chemerinsky will speak about what's new in constitutional law and recent United States Supreme Court cases of interest. Reservations may be made and additional information can be obtained by contacting Roberta Hoffner at (949) 263-2600 or Roberta.Hoffner@bbklaw.com. Please remit payment to: FBA/IE, c/o Best Best & Krieger LLP, 5 Park Plaza, Suite 1500, Irvine, CA 92614.

has been an active member of the Riverside County Bar Association since 2002. In addition, he has been a Lawyer Representative to the Ninth Circuit Judicial Conference and currently serves on the Bankruptcy Court Mediation Panel and the District Court Settlement Panel.

He is a former president of the Inland Empire Bankruptcy Forum, whose members generally practice in the field of bankruptcy law. He was the co-chair of a joint committee of the Riverside County Bar Association and the San Bernardino County Bar Association to evaluate whether to have a joint Federal Bar Committee or to form a chapter of the Federal Bar Association. The rest, as they say, is history. The Inland Empire Chapter of the Federal Bar Association was founded in 1997, and he was its first president.

Mr. Schnitzer has been married to his wife, Denise, for 32 years, and has three children (David, Stacy, and Emily) and three grandchildren. He is a proud new grandfather of a three-month old granddaughter. He has many hobbies, including reading mystery novels, but most of all enjoys spending his spare time with his family.

L. Alexandra Fong, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.



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 (click on >For Our Members, >Resources) 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.



JUDICIAL PROFILE: HON. DAVID A. GUNN

by Donna Thierbach

Looks like Southern California was able to lure yet another Midwest college graduate away from his small town. However, in this case, it was not the sunshine that brought him here, although it is our good fortune that it kept him here once he arrived! Judge David Gunn grew up in Newton, Iowa. His father was an industrial engineer at Maytag and his mother occasionally worked in retail, but for the most part was a stay-at-home mom.

Judge Gunn was adopted as a baby, but no sooner was he adopted than his mother became pregnant. As a result, he is the oldest of three boys, but he and his middle brother are very close in age. That brother is a physician's assistant in Cedar Rapids, who is married with three children. Sadly, his youngest brother died of cancer a few years ago. His parents are retired now and still live in Newton.

So with no lawyers in his background, how did Judge Gunn become interested in law? He said during high school he read a book by F. Lee Bailey, "The Defense Never Rests," and that developed his interest in criminal law. To add the icing to the cake, he really enjoyed the debate team and was the Iowa state champion debater his senior year.

After Judge Gunn graduated from high school, he attended the University of Iowa. Since he already had the idea he wanted to be a lawyer, he earned a Bachelor's in General Studies. He especially enjoyed history and literature classes and developed an interest in film appreciation. While attending the university, he worked part-time at the school for the campus police. He was not armed; he just walked around at night checking doors and occasionally riding in a patrol car; for a short time, he was a dispatcher.

After graduating from the University of Iowa, Judge Gunn applied to several law schools. He was on a waiting list for the University of Iowa Law School, but not wanting to take any chances, he attended the first law school that accepted him, Southwestern Law School in Los Angeles, California. He had never even been to California, but he hopped on a plane and moved. Since he did not have a car, for his first year he lived in a hotel by the college.



David A. Gunn

That hotel, the Hotel New Hampshire, was a historic hotel that had fallen on hard times. Often there would be people sleeping in the halls. His room was tiny, with a Murphy bed. Fortunately, in his second year, a friend moved out of a little nicer apartment a few blocks away, and he was able to assume the rent. What is really amazing is he managed to live in Los Angeles for the entire three years of law school without a vehicle. He got to some clerking jobs by taking the bus, but the transportation issue was a definite handicap. Once in law school,

he became involved in Mock Trial, and his team won the Roger Traynor Criminal Law Competition during his first year. By graduation, he knew he wanted to stay in California, so he took the California bar exam and began looking for a job in Southern California. Given his interest in criminal law and his desire to do trial work, he applied at various district attorney's and public defender's offices in Southern California that were hiring. He was so anxious to stay in Southern California that he accepted the first job offered to him, that of deputy district attorney in the Riverside County District Attorney's office. At that time, it was a small office, and Grover Trask was running for district attorney. Judge Gunn was there from 1982 to 1987. He has many fond memories of the office and developed a lot of lifetime friends (one of whom is my husband).

After five years in the district attorney's office, Judge Gunn decided he wanted to try private practice, so he left the office in 1987 and for the next 20 years he was a sole practitioner specializing in criminal law and under contract with the Conflict Defense Panel in Riverside. In 2007, ready for a break from the grind of a heavy trial calendar and anxious to be more of a mentor and teacher, he accepted a position with the San Bernardino Public Defender's office. There he tried two more murder cases, then accepted the position as the Supervisor of the Homicide Defense Unit (HDU).

Judge Gunn had never thought about becoming a judge until his colleagues encouraged him to apply. After giving the idea some careful consideration, he thought he had something to offer and would enjoy it.

Judge Gunn was appointed to the bench on March 26, 2009. During his first eight months, he presided over criminal trials, an area where he was very comfortable, since he had tried numerous felonies, including over 50 murder cases and seven death penalty cases. In January 2010, he was transferred to Family Law. He said the only experience he had in that area of law was that he had been divorced himself. However, he is enjoying meeting the family law bar and learning how to manage the calendar. He said there has been a pretty steep learning curve, and his court staff has been invaluable in helping him with the transition. He said Family Law is interesting work and he handles something new and different every day. As a judicial officer in Family Law, he especially enjoyed Adoption Day, when children were united with good families, since he was adopted himself.

Did I mention Judge Gunn is single? But sorry, ladies, he is engaged, and he and his fiancée, Heather, plan to marry in June. His bride is a real estate agent in the Riverside area. His hobbies are reading mysteries and history books, and he continues to enjoy old movies and movie trivia. He remains a loyal fan of the University of Iowa Hawkeyes football team. He also enjoys cooking, good wine and gourmet meals. He especially enjoys cooking spicy Cajun dishes.

Donna Thierbach, a member of the Bar Publications Committee, is Retired Chief Deputy of the Riverside County Probation Department.



Interested in writing? Seeing your name in print? Advancing your career? Addressing your interests? Being published? Expressing your viewpoint?

Join the Riverside Lawyer staff NOW and be a part of our publication.

Contact Charlene or Lisa at the RCBA office
(951) 682-1015 or lisa@riversidecountybar.com



*Do you want to save time and money????
Let us help you achieve that goal.*

We offer the following services and more:

- Network Infrastructure/Security
- Email and Web Hosting
- Backup and Recovery
- IT Management
- Remote Access
- Microsoft Exchange
- Data Archiving and Destruction

**Call for a FREE site evaluation
951.530.9609**

**Start saving money now!!!
www.inlandpremier.com**

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 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.



**FINAL DRAWING
of the
Riverside
Historic
Courthouse
by Judy Field**

**\$100 each
(unframed)**

Signed and numbered limited edition prints.

Great as a gift or for your office.

**Contact RCBA office, (951) 682-1015
or rcba@riversidecountybar.com**

REVERSE DISCRIMINATION: *RICCI V. DEStEFANO*

by L. Alexandra Fong

When one asks a non-lawyer what he thought about *Ricci v. DeStefano*, ___ U.S. ___ [129 S.Ct. 2658] (2009) (*Ricci*), a quizzical look comes to his face. “Huh?” is usually the first response out of his mouth, followed by “What are you talking about?”

But when one mentions that *Ricci* is a United States Supreme Court case about reverse discrimination against white firefighters, a light will shine in his eyes. Most will recall the case as one in which then-appellate court Judge Sonia Sotomayor (now Associate Justice of the United States Supreme Court) affirmed the trial court’s ruling granting summary judgment in favor of the City of New Haven (“City”).

In 2003, 118 City firefighters took examinations to qualify for promotion to the rank of lieutenant or captain. Promotional examinations in the City were infrequent and the results of the examination would determine who could be promoted for the next two years. The examination was developed and administered by Industrial/Organizational Solutions, Inc. All candidates who wanted to take the examination were provided a list that identified the source material for the questions, including the specific chapters from which the questions would be taken.

The results of the examination showed that white candidates had outperformed minority candidates, and the City, after much public discussion, decided to throw out the results. No one was promoted.

Firefighters who would have been promoted based on the results of the test sued, alleging discrimination based upon race, in violation of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e *et seq.* (Title VII), and the Equal Protection Clause of the Fourteenth Amendment. The City countered that if the results had been certified, it could have faced liability under Title VII for adopting a practice that had a disparate impact on the minority firefighters. The City rejected the test results because “too many whites and not enough minorities would be promoted were the lists to be certified.”

After the City prevailed on summary judgment, which was upheld by the appellate court, the Supreme Court granted a writ of certiorari.

The Supreme Court heard the case on April 22, 2009 and issued its decision on June 29, 2009. Justice Anthony Kennedy, writing for the majority, concluded that New Haven’s decision to ignore the test results violated Title VII.

Title VII prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. It prohibits both intentional discrimination (disparate treatment) as well as practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (disparate impact).

Rejecting the City’s arguments, the court stated that “the City could be liable for disparate-impact discrimination only if the examinations were not job related and consistent with business necessity, or if there existed an equally valid, less-discriminatory alternative that served the City’s needs but that the City refused to adopt.” *Ricci v. DeStefano*, *supra*, at 2678. The court concluded that “there is no strong basis in evidence to establish that the test was deficient in either of these respects.” *Ibid.* “Fear of litigation alone cannot justify an employer’s reliance on race to the detriment of individuals who passed the examinations and qualified for promotions.” *Id.* at p. 2681.

The court further concluded that “[t]he record in this litigation documents a process that, at the outset, had the potential to produce a testing procedure that was true to the promise of Title VII: No individual should face workplace discrimination based on race. Respondents thought about promotion qualifications and relevant experience in neutral ways. They were careful to ensure broad racial participation in the design of the test itself and its administration. . . . [T]he process was open and fair.

“The problem, of course, is that after the tests were completed, the raw racial results became the predominant rationale for the City’s refusal to certify the results. The injury arises in part from the high, and justified, expectations of the candidates who had participated in the testing process on the terms the City had established for the promotional process. Many of the candidates had studied for months, at considerable personal and financial expense, and thus the injury caused by the City’s reliance on raw racial statistics at the end of the process was all the more severe. Confronted with arguments both for and against certifying the test results – and threats of a lawsuit either way – the City was required to make a difficult inquiry. But its hearings produced no strong evidence of a disparate-impact violation, and the City was not entitled to disregard the tests based solely on the racial disparity in the results.” *Ricci v. DeStefano*, *supra*, at 2681.

The court further held that the firefighters were entitled to summary judgment on their Title VII claim, and it remanded the case for further proceedings consistent with the opinion. As of March 2010, there are a few motions pending before the United States District Court for the District of Connecticut, including a motion for entry of judgment in favor of the plaintiffs, a motion for an extension of time to respond, and a motion to transfer, disqualify, or recuse the trial judge.

L. Alexandra Fong, a member of the Bar Publications Committee, is a deputy county counsel for the County of Riverside.



CLASSIFIED ADS

Office Space – Riverside

Office space available in the Tower Professional Building located on the corner of 13th and Lime Street in downtown Riverside. We are within walking distance to all courts. All day parking is available. Building has receptionist. Please call Rochelle @ 951-686-3547 or email towerpm@sbcglobal.net. Residential services available also.

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.

Independent Contractor Paralegal

22 years experience in Plaintiff and Defense. Services include preparation of discovery and court documents, review and summarization of records and other projects as may be discussed. All work completed from my home office. Stephanie Michalik, (951) 735-3165 or smichalik@ca.rr.com

Seeking Attorney

Associate attorney to split contingency cases. Will train. Please call for interview appointment. (951) 662-8920.



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 31, 2010.

J. Brady Brammer – Best Best & Krieger LLP, Riverside

Jessica L. Hirsch – Best Best & Krieger LLP, Riverside

C. R. “Bud” Marsh – Law Offices of C.R. “Bud” Marsh, Indio

Mark H. McGuire – Brown White & Newhouse, Redlands

Stacey L. Mitchell (A) – Intuitive Investigations, Lake Elsinore

Shumika T. Robinson – Sole Practitioner, Moreno Valley

Austin C. Sung – Law Office of Austin Sung, Murrieta

Derek Thomas (A) – Derek Thomas, CPA/ABV, Temecula

Margaret M. Warner – Bonnie Moss & Associates, Riverside

Bruce A. Wilson – Bruce A. Wilson, APLC, Riverside

(A) – Designates Affiliate Member



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 rcba@riversidecountybar.com

PRSR STD
US POSTAGE
PAID
PERMIT #1054
RIVERSIDE, CA

Why DRS?



Riverside County Bar Association
Dispute Resolution Service, Inc.
(A Nonprofit Corporation)

DRS benefits clients:

- Reasonable fee of \$200/hour; no set-up fee or hidden costs
- Minimal waiting time facilitates quicker resolution of issues
- Neutral perspective by an attorney with at least 10 years' experience

DRS benefits attorneys:

- Saving clients' money creates satisfied clients
- Solving problems quickly enhances your reputation
- Innovative solutions can restore faith in lawyers

DRS benefits the courts:

- Prevents nuisance cases from getting to court
- Enables case settlements before going to trial
- Helps alleviate congested court calendars

4129 Main Street, Suite 100
Riverside, CA 92501-3629
(951) 682-2132
FAX (951) 682-0106

BOARD OF DIRECTORS:

Christopher G. Jensen, President
Michelle Ouellette, Vice President
David G. Moore, Chief Financial Officer
Judith A. Runyon, Secretary
James O. Heiting, Director-at-Large
Michael G. Kerbs, Director-at-Large
Elliott S. Luchs, Director-at-Large
Harry J. Histen, RCBA President

Call 951-682-2132