RIVERSIDE LAWYER

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In This Issue

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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 our members, our communities, and our legal system.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Riverside Legal Aid, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Mock Trial, State Bar Conference of Delegates, Bridging the Gap, and the RCBA - Riverside Superior Court New Attorney Academy.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of *Riverside Lawyer* published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication, and timely business matters.

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

The Riverside Lawyer *is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are $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 the* Riverside Lawyer.

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

Calendar

February

6 **Mock Trial – Round 1**
5:30 – 8:00 p.m.
Regional Competition
Riverside, Indio, Murrieta Courthouses

7 **Bridging the Gap**
8:00 a.m. – 4:00 p.m.
RCBA Gabbert Gallery

11 **Civil Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speakers: Darren O. Aitken & Christopher R. Aitken
Topic: "Minor" Details: Tips for Successful Minor's Comps Petitions & Hearings"
MCLE – 1 hour General

13 **Mock Trial – Round 2**
5:30 – 8:00 p.m.
Riverside HOJ

18 **Family Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Judge Jennifer Gerard
Topic: "State of the Family Law Court"
MCLE – 1 hour General

19 **Estate Planning, Probate & Elder Law Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speakers: Judge Thomas Cahraman, Judge Kenneth Fernandez,
Thomas Johnson, Sheri Gulino
Topic: "2020 Probate Update"
MCLE – 1 hour General

20 **Solo/Small Firm Section**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Veronica Cutler
Topic: "Hiring and Firing Your First Employee"
MCLE – 1 hour General

Mock Trial – Round 3
5:30 – 8:00 p.m.
Riverside HOJ

21 **General Membership Meeting**
Noon – 1:15 p.m.
RCBA Gabbert Gallery
Speaker: Stacy L. Douglas
Topic: "Elimination of Bias in the Legal Profession"
MCLE - 1 hour Recognition & Elimination of Bias

22 **Mock Trial – Round 4**
8:30 – 11:00 a.m.
Riverside HOJ

27 **Mock Trial – Elite 8 Round**
5:30 – 8:00 p.m.
Riverside HOJ

29 **Mock Trial – Semi Final**
9:00 a.m.
Historic Courthouse

Mock Trial – Final Round
1:00 p.m.
Historic Courthouse

Mock Trial
Championship Awards Ceremony
3:30 p.m.
Historic Courthouse

EVENTS SUBJECT TO CHANGE.
For the latest calendar information please visit the RCBA's website at riversidecountybar.com.

President's Message

by Jack Clarke, Jr.

A Comment About Black History Month: Reflections On, and Perhaps Deriving Practical Lessons From, History

Black History Month, for me, is a time of deep reflection, particularly about the function of our legal system in our society. To put my thoughts in some context, please read the republished 1964 article from the Riverside *Press-Enterprise* Newspaper, which is included next to this column. The article featured my father, Jack B. Clarke, Sr. who recently had been elected as president of a local chapter of the National Association for the Advancement of Colored (NAACP).

In my opinion, the article contains multiple nuggets of insight about, and historical context for, the seemingly indelible problems we have regarding race, intolerance and bigotry. I re-read the article frequently. I never forget the names my sister, Virginia, and I were called while we attended Mountain View Elementary School here in Riverside. Obviously, we were not alone. If you were of African-American decent in the twentieth century, and sometimes even today, you were going to be called vile names and perhaps endure bigoted stares or actions. Indeed, at least in the past, you hoped you would just be called names. I won't recount all of the horrors of the past here. But I do want to make two observations that I think have utility now.

First, I still hear echoes of questions about why we should take special note of the experience of African-Americans in this country, as opposed to any other identifiable group. I, for one, believe there are multiple unique lessons that an examination of Black history can teach anyone who wishes to read and learn with an open heart.

A foundational lesson is the clear damage to any community which is created any time we construct an "us" that in some way is of more worth than a "them." I don't care in what context that stupid dichotomy is created. I cannot think of a situation where that thinking has taken root when things have worked out well. I am not talking about the discussion or even the vigorous debate of theories, ideas, or values. Discussion and debate sharpens our minds and protects against dogmatic complacency. It is the, usually prideful, manufacturing of a "they," "them" or "those people" that is inherently inferior to "us," that is of concern. That concept, that if we could just rid ourselves of "them," our communities would be a paradise, is just toxic. I would submit that a study of Black history would support my hypothesis.

Look at how this society, described "us" as African Americans. Supposedly, we were less intelligent. We were, it was claimed by some, less in terms of moral fiber. Allegedly, we physically were only good for hard labor. Indeed, entire tomes of pseudoscience were devoted to proving African Americans were inferior. For example, in his 1868, three hundred and thirty-nine (339) page book, *White Supremacy and Negro Subordination or Negroes a Subordinate Race*, Dr. J. H. Van Evrie wrote in part:

> "What is here termed 'American slavery,' is the status of the negro in American society—the social relation of the negro to the white man—which, being in accord with the natural relations of the races, springs spontaneously from the necessities of human society. The white citizen is superior, the negro inferior; and, therefore, whenever or wherever they happen to be in juxtaposition, the human law should accord, as it does accord in the South, with these relations thus inherent in their organizations, and thus fixed forever by the hand of God."

I would note parenthetically, in light of such arguments, that as my mom used to say: "You aren't paranoid if they really are out to get you." Racial minorities and other groups were, and in some quarters still are, a "them." Our legal system in particular was stymied for decades on how to interpret simple language such as this:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it…."

It is tragic that educated women and men struggled with words as simple as "all" and "equal." But, Black history presents one cultural example of how a system of laws can, over time, help to lessen the symptoms of the societal infection called bigotry.

One of my favorite books on these subjects is *Simple Justice* by Richard Kluger. In his book, Kluger gives a compelling history of our Supreme Court's decision in *Brown v. Board of Education*. That his-

tory reminds me of why that we, as attorneys, have to stay engaged in civic conversation. We need to foster ideas concerning our communities in a respectful way and we must safeguard our arguably, most important system of justice: our courts. Consider a portion of Kluger's commentary on the role that the *Brown* Court played in helping this country:

> "The law, as interpreted by the Supreme Court [prior to the *Brown* decision], had pronounced it permissible—indeed, it was normal and expected—to degrade black America.
>
> It was into this moral void that the Supreme Court under Earl Warren now stepped. Its opinion in *Brown v. Board of Education*, for all its economy, represented nothing short of a reconsecration of American ideals. At a moment when the country had just begun to sense the magnitude of its global ideological contest with Communist authoritarianism and was quick to measure its own worth in terms of megaton power, the opinion of the Court said that United States still stood for something more than material abundance, still moved to an inner spirit, however deeply it had been submerged by fear and envy and mindless hate. "What the Justices have done," editorialized the *Cincinnati Enquirer*, "is simply to act as the conscience of the American nation." The Court had restored to the American people a measure of the humanity that had been drained away in their climb to worldwide supremacy. The Court said, without using the words, that that ascent had been made over the backs of black America—and that when you stepped on a black man, he hurt. The time had come to stop."

My second point is this. In addition to being a reminder that our systems of justice must be safeguarded, Black History month, in my opinion, can serve another function. I would submit that if anyone needs a handbook on how to survive even the most dire and horrific of times, read Black history.

If you are having difficulty learning or mastering some type of subject matter, read Booker T. Washington's *Up From Slavery* or Frederick Douglass' *Narrative of the Life of Frederick Douglass* or Thomas Monroe Campbell's *The Moveable School Goes to the Negro Farmer*. All of these writers and many others, document how perseverance and determination truly are the most important elements to learning and the mastery of any body of knowledge.

If you begin to doubt the underpinnings of our system, read J. W. Peltason's *58 Lonely Men*. In that book, Peltason documents the terrific difficulties encountered by the federal judges in the south who were charged with enforcing the *Brown* Court's school desegregation orders. Consider this excerpt:

> "A judge who violates local beliefs may indeed—despite his constitutional independence—find his position so uncomfortable that he is forced to retire. Judge J. Waties Waring, a native South Carolinian appointed to the bench by Roosevelt in 1942, had won national fame and local notoriety in 1948 when he sharply rapped South Carolina and Democratic party officials for attempting to circumvent the Fifteenth Amendment. 'It is time,' he told these officials, 'to realize that the people of the United States expect [you] to follow the American way of elections.'[1] In 1951 District Judge Waring, as one of the three judges hearing a challenge to South Carolina's segregation laws, dissented from the court's ruling that segregation was constitutional. He became the target of intense local abuse, his life was threatened, and his wife slandered. Shortly thereafter he retired from the bench and moved to New York."

If your spirit needs refreshing, read the works of Maya Angelou, Nikki Giovanni, or Langston Hughes. These authors, as well as others, write of both the beauty and depth of the human experience.

Finally, if you need a reminder that bigotry and intolerance are not just "out there" or "over there," read *No Easy Way, Integrating Riverside Schools – A Victory for Community* by our own Arthur L. Littleworth, past president of the RCBA. The reason why I keep referring to his book is several fold. My father knew Art Littleworth in the 1960s. Even then, my father referred to Mr. Littleworth as a "good man." In the years that I got to know Art Littleworth, I came to agree. But I did not understand the depth of why I was correct in believing that Art was a good man until I read his book. In it, he documents his experience as president of the Riverside Unified School District School Board and the events in the 1960s when the District "voluntarily" desegregated our schools. Art's role in that process was both invaluable and heroic. He was able to help navigate a tremendously complex sequence of events. But here is where history can help us. The question is: How was Art able to do what he did? What were the values that he could have used when he was trying to weigh what to do as he, his family and an entire community were in severe peril? I believe the answer is imbedded in the ideas he expressed to a journalist who was covering

1 *Brown v. Baskin*, 78 F. Supp. 933 (1948).

the City's handling of the school desegregation matter. This is what Art wrote on the issue:

> "As I said to [*New York Times* columnist] Tom Wicker, education is but one facet of integration, I think the need to bring us together as one people is equal to the need for improved education." And today I think that the need to bring us together as one people is even more important.

In May 27, 1997, Dan Bernstein, a columnist with the *Press-Enterprise*, quoted me (quite accurately):

> "What we need almost more than anything is to remain as one people. Segregated schools lead to segregated attitudes, and, I think, take us in the wrong direction."

We are all "one people." Not "us," "them," or "you people." One. Black history teaches us, in brutal detail, the perils of demonizing any group of people. It is a history available to all and it is a history that I believe remains, unfortunately, more relevant than ever today. Here is to Black History month. Be well.

Jack Clarke, Jr. is a partner with the law firm of Best, Best & Krieger LLP.

1964

Discrimination . . . a fact of life

New president of NAACP faces job philosophically

By ART NAUMAN

Not long ago, Jack Clarke's six-year-old daughter heard herself called a "black nigger, a black ape" by a classmate at Mountain View School.

GINNY WAS puzzled, and she asked her mother to explain what it all meant.

"You are a Negro," said Mrs. Clarke, "and you have no reason to be ashamed of it."

A few days later little Ginny, while walking home from school, again heard the word "nigger" tossed at her, this time by a white classmate a little older than the first.

Personal profile

The little girl replied quickly: "I'm a Negro and I'm proud of it, and you are not too smart."

RELATING THE incident is Jack Clarke, the 50-year-old newly elected president of the Riverside chapter of the National Association for the Advancement of Colored People.

Pulling gently on his pipe, Clarke speaks with the quiet intensity of a man feeling deeply the travail of his race.

Yet he speaks as a man coming to terms with the problem, in a way that gives him the defense of equanimity.

"You've got to be philosophical about these things," he says. The incident was a key facet — however unpleasant — in his daughter's education.

AND YET, there is a quality that is characteristic of the speech of many civil rights leaders — the quality that gives the movement the force of an understatement, instead of the bludgeon of tirade.

"Here I am, a Negro, who has been raised in a white society," Clarke goes on. "I am compelled to think like a white person but I'm never allowed to forget I'm a Negro.

"For example, I'll be in a group of my peers and there are introductions all around. 'Mr. So-and-so, I'd like you to meet Mr. Smith, Mr. Brown and Mr. Green. And this is Jack Clarke.'

"It's subtle, but it's there."

Born in San Francisco, Clarke is the supervising parole officer and officer manager of the California Youth Authority's Riverside district.

HE BEGAN social work straight out of San Francisco State College — with a bachelor's degree — as a group worker in the Booker Washington Community Center in that city (at $70 monthly).

At the outbreak of World War II he worked a few months in a Richmond shipyard — during the days when Negroes had to get work permits from the union, but had no vote in union matters.

Drafted into the Army, Clarke served in the South Pacific, rising to the rank of staff sergeant in a segregated unit of the Quartermaster Corps.

After his discharge in December 1945, he was hired by the San Francisco recreation department, working in the Hunter's Point region. His work was largely with the youthful "gangs" in that area — some masterminded, he remembers, by girls.

IN 1947 HE was hired by the California Youth Authority, probably the first Negro on its staff. He worked in supervisorial capacities at several forestry camps operated by the CYA until, in 1961, he was transferred to Riverside for his present job.

In 1955, after about a five-year courtship, Clarke married the former Elizabeth Campbell who was born in Tuskegee, Ala. George Washington Carver, the famous Negro scientist, was a good friend of the Campbell family.

Mrs. Clarke, who holds a master's degree in physical education from the University of Wisconsin, works about four hours daily as a physical therapist.

The Clarkes have two children, Virginia (Ginny) and Jack, Jr., 8. They reside at 5740 Walter — a street, Clarke remembers with no fondness, which a few years ago had its street sign repainted, with professional skill, to "Nigger Street."

"ACTS LIKE this take place with little public notice, with indifference and complete apathy," he asserts.

To most white Americans, he says, even many who practice it, "discrimination is just a word. But to the Negro in America, in California, in Mississippi, in Riverside, it is a fact of life, a central fact."

Affable and articulate, Clarke is a hefty fellow (250 pounds), an admitted trencherman who sees himself also as something of an epicurean. "I just enjoy life," he smiles. Additionally, he's blessed with a full intellectual bank account of self-confidence: "I don't have time to worry about little details."

He does have time for gardening—"I think I have a pretty fair green thumb." His other principal hobby is his children. Like all youngsters, they have to be carefully taught. But because the Clarkes are Negro, the curriculum appears, perhaps, more intense.

"WE'RE TELLING our Jack," Clarke explains, "that you're really going to have to get in there and study. This is a competing world. You have to have an open mind. And you have to tell yourself, 'I can do a job as well as the next man.'"

Thousands of Negroes, Clarke maintains, "have stopped their education because they haven't been able to see their goals . . . Parents must bird-dog their children, and their schools . . .

"It's an old story: The kids have to be continually motivated to achieve future goals."

There's also some educating to be done on the part of whites, he believes. "The Negro has contributed to American culture in so many ways. It wasn't until I was in junior college that I realized this. The average white youngster has no idea of these contributions. So there must be an effort to see that all people — Negro and white — can learn of these."

Some improvements are discernible, he says.

"THE CIVIL Rights Law of 1964 — it is one of the finest things to happen," he remarks. In the past, when the family traveled into the deep south to Tuskegee, "I had to plan the trip like a military campaign: take extra gas, take extra food. Where can I stop for the night? What motels will accept me?"

A few years ago it was, "What can I do for you, boy?" Since then, Clarke says, "I've received as much courtesy as any man."

Clarke has taken over a one-year term heading the local chapter of what he calls the "most damned group of respectable citizens, and, on the other hand, one of the most praised groups in America — the NAACP."

And, again in a thoughtful mood, Clarke will say: "You know, man's history has always been filled with violence . . . And we really have short memories. Why, just a few years ago six million Jews were exterminated.

"Viewed in that light, the problems of being a Negro are really rather minor."

JACK CLARKE
"To the Negro in Riverside . . ."

"Discrimination is a fact . . .

"A central fact of life."

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Barristers President's Message

by Paul Leonidas Lin

A Brief History of the Galactic Empire

A long time ago in a galaxy far, far away there was a republic that stood for thousands of years. This Galactic Republic comprised of thousands of worlds spread across the galaxy, with each world represented by a senator to represent their home world's interest on the galactic stage. At the head of this senate was a Supreme Chancellor chosen from and by the senators to direct congressional sessions, act as the head of state, and direct both the executive and legislative branches of government. This form of government was built with the idea that politicians could sit down, discuss the problems, agree on what's in the best interest of all people, and then do it. But corruption, greed, and stubbornness caused the Galactic Republic to no longer function as intended. Enter the Galactic Empire.

The rise of the Galactic Empire was cemented when the Galactic Republic failed to act during the Invasion of Naboo in 32 BBY.[1] Queen Amidala of Naboo narrowly escaped capture from invaders to her republic home world and beseeched the Galactic Senate for aid. However, rather than provide aid the corrupt senate sought to create a commission to investigate the truth of the accusations. If not for the brave actions of Queen Amidala, the people of Naboo would have suffered great due to the inactions of the senate.

Ultimately, it was inaction, once again, that brought upon the end of the Galactic Republic in 22 BBY. While the galaxy stood on the brink of civil war and the newly formed Confederacy of Independent Systems were amassing a vast droid army. The defenseless Galactic Senate spent their days debating the need of creating an army rather than doing it. Ultimately, the senate wisely bestowed emergency powers to the Supreme Chancellor, which became the building blocks of the Galactic Empire. The Grand Army of the Republic was immediately formed, the Clone Wars ended soon after, and the Galactic Empire rose from the ashes of the outdated Galactic Republic.

During the brief two-decade reign of the Galactic Empire, peace flourished throughout the galaxy after decades of strife, war, and unrest. This all came to an end when an insurgent campaign led by radicals seeking to restore a corrupt government assassinated the Emperor. Lawlessness and chaos descended following this tragedy and the galaxy became a place where even a Mandalorian cannot safely travel with his child without having to fight off kidnappers.

As you can tell, as of the writing of this article the Barristers have not had their first event of 2020 yet. So there was nothing to report on that end. I hope you enjoyed this brief history of the Galactic Empire. If you are ever interested in discussing the history of the galaxy far, far away, come on out to one of our upcoming events and grab a beer with us.

Upcoming Events:

- Friday, February 21 – Happy Hour at Brickwood starting at 5:00 p.m.
- Friday, March 13 – Happy Hour at Heroes starting at 5:00 p.m.
- Thursday, March 26 – Trivia Night at Raincross Pub + Kitchen at 5:00 p.m.
- TBA – Escape Room.

Follow Us!

Stay up to date with our upcoming events!
Website: RiversideBarristers.org
Facebook: Facebook.com/RCBABarristers/
Instagram: @RCBABarristers

Paul Leonidas Lin is an attorney at The Lin Law Office Inc. located in downtown Riverside where he practices exclusively in the area of criminal defense and is the immediate past president of the Asian Pacific American Lawyers of the Inland Empire (APALIE). Paul can be reached at PLL@TheLinLawOffice.com or (951) 888-1398.

1 Before the Battle of Yavin. The unit of measurement used to reference time in the galactic calendarbased on the Battle of Yavin, which was the first major battle of the Galactic Civil War that les to the destruction of the first Death Star.

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Understanding Tribal Governments

by Rahsaan J. Tilford

When European explorers set foot in North America, they encountered Indian tribes that were independent self-governing societies; however, the degree and kind of organization varied among them.[1] The forms of political order existing at the time of European contact included multi-tribal confederacies, governments based on towns and pueblos, and systems in which authority rested in heads of kinship groups or clans.[2] Prior to European contact, the actions of tribal governments were informed by spiritual guidance and aimed to achieve spiritual instead of material fulfillment.[3] Tribal governments placed more of an emphasis on responsibility to the community, conflict resolution, and group harmony and in these respects differed from the Western political tradition.[4]

Initial European contact, removal of Indian tribes from their indigenous lands, the creation of reservations, federal allotment and assimilation policies, and the resulting loss of tribal lands destabilized and weakened tribal governments. It was not until Congress adopted the Indian Reorganization Act of 1934 (IRA) that Congress sought to reverse almost two centuries of failed federal Indian policy. The IRA's overriding purpose was to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically."[5] The IRA formally ended federal allotment policy[6] by prohibiting further allotment of Indian reservations.[7] The IRA also authorized tribes to organize and adopt constitutions[8] and to form business corporations under charters of incorporation issued by the Secretary of the Interior.[9] A tribe that adopts an IRA constitution exercises "all powers vested in [it] by existing law," as well as the enumerated powers "[t]o employ legal counsel; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local governments."[10] An IRA-adopted constitution becomes effective when ratified by a majority of adult tribal members at an election called by the Secretary of the Interior and approved by the Secretary.[11] An IRA constitution may be revoked or amended by a majority vote of the adult members of the tribe; amendments also require the approval of the Secretary of the Interior.[12]

While the vast majority of Indian tribes have adopted constitutions pursuant to the IRA, tribes may adopt constitutions outside the IRA process.[13] The main difference between IRA and non-IRA tribal governments is that IRA constitutions and their amendments are subject to the IRA's voting and secretarial approval provisions.[14] In addition, some tribes operate without a written constitution, but the absence of a constitution does not affect the self-governing powers of tribes under federal law.[15]

Since there are currently 573 federally recognized Indian tribes,[16] the structures of tribal governments can vary. For some tribes, the power and authority to adopt laws, enforce laws, and adjudicate disputes is centered in a tribal council - a departure from the American system of separation of powers (*i.e.*, the Madisonian form of government). The tribal council-centered form of government is typically associated with those tribes that have adopted constitutions pursuant to the IRA.[17] Under these constitutions, tribal officers are most often agents of the tribal council, lacking independent control over bureaucracies or the power to veto legislative acts.[18] For other tribes, the tribal council plays a limited legislative role. For these tribes, the tribal executive is endowed with the power to enforce tribal laws and the tribal judiciary empowered to adjudicate disputes. Tribes that have embraced the Madisonian form of government have like-

1 Stephen Cornell, *The Return of the Native: American Indian Political Resurgence* (New York, NY: Oxford University Press, 1988), 72-76.
2 Nell Jessup Newton; Felix Cohen; and Robert Anderson, *Cohen's Handbook of Federal Indian Law* (2019), § 4.04 [1].
3 *Id.*
4 David E. Wilkins, *American Indian Politics and the American Political System* (Lanham, MA: Rowman & Littlefield, 2d. ed. 2007), 127-132.
5 *Morton v. Mancari*, 417 U.S. 535, 542 (1974).
6 Federal allotment refers to the division of large Indian reservations into smaller parcels, with individual parcels of typically 160 or 80 acres "allotted" to Indian heads of households, and the rest of the reservation land being put on the open market as surplus lands that nonmembers could purchase.
7 25 U.S.C. § 5101.
8 25 U.S.C. § 5123 (a).
9 25 U.S.C. § 5124.
10 25 U.S.C. § 5123 (e).
11 25 U.S.C. § 5123 (a).
12 *Id.* at subds. (a), (b).
13 See 25 U.S.C. 5123(h) (providing that "each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section").
14 Nell Jessup Newton; Felix Cohen; and Robert Anderson, *supra* note 3, § 4.04 [3][a][i].
15 *Id.* at § 4.04 [3][b].
16 84 Fed. Reg. 1200 (February 1, 2019).
17 Nell Jessup Newton; Felix Cohen; and Robert Anderson, *supra* note 3, § 4.04 [3][c][i].
18 *Id.*

ly amended their IRA constitutions to establish independent branches of government with constitutional status. As an attribute of inherent sovereignty, tribes retain the power to decide what form of government works best - whether that is a tribal council-centered form of government, Madisonian form of government, or something in between. This decision is most likely driven by political and economic realities and a tribe's unique cultural identity.

Even though the structures of tribal governments may vary, Indian tribes all enjoy inherent sovereignty. There are three kinds of sovereigns within the United States - federal, state, and tribal.[19] The Constitution recognizes the authorities, duties, and limitations of the United States in relation to state governments, but the structure and text of the Constitution also acknowledges two other sovereigns - foreign nations and Indian tribes.[20] As the third sovereign under the Constitution, the Supreme Court has characterized tribes as "domestic dependent nations."[21] As a domestic dependent nation, a tribe has inherent sovereign authority.[22] Inherent sovereignty is the most basic principle of all Indian law and is regarded as those powers lawfully vested in a tribe that predate European contact and that have never been extinguished.[23] Some of the powers of inherent sovereignty, which courts have recognized, are the power to constitute and regulate a form of government,[24] to determine membership,[25] to legislate and tax,[26] to administer justice,[27] to exclude persons from tribal property,[28] and power over nonmembers[29] - however, the judiciary has significantly curtailed this power as discussed below.

It is important to note, however, that as domestic dependent nations, Indian tribes are subject to Congressional control.[30] So, Congress has the power to limit any inherent sovereign authority that a tribe may possess.[31] However, courts will not find a federal limitation on inherent sovereign authority unless there is a clear and specific expression of congressional intent to extinguish traditional prerogatives of authority.[32] The judiciary has also limited inherent sovereign authority through what the Court has labeled the "implicit divesture of [tribal] sovereignty."[33] This legal doctrine provides that tribes were implicitly divested of any inherent sovereign powers, which were inconsistent with their status as domestic dependent nations.[34] The doctrine applies to cases where the exercise of inherent powers is in conflict with the overriding sovereignty of the United States.[35] The Court invoked this legal doctrine to deny tribes jurisdiction over crimes committed by non-Indians in Indian country.[36] Subsequently, the Court has applied this doctrine to prohibit tribes from exercising various types of civil legislative and adjudicative jurisdiction over nonmembers.[37]

In the face of significant obstacles, hurdles, and barriers tribal governments thrive. Tribal governments provide public safety and first-responder services, operate tribal court systems, provide education, workforce development, housing, healthcare, land management, infrastructure maintenance and development, and other social programs. To fund these social programs and the costs of governing, today's tribes also operate sophisticated multi-million dollar enterprises such as casinos, hotels, biomedical research firms, telecommunications companies, oil and gas businesses, banks, and sovereign wealth funds. Inherent tribal sovereignty means the freedom of self-governance and with this freedom Indian tribes can continue to thrive, maintain their independence, and preserve their unique cultures.

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19 Matthew L.M. Fletcher; Jesse H. Chopper; and Joshua Dressler, *Federal Indian Law* (St. Paul, MN: West Academic Publishing, 2016), § 1.2.
20 *Id.*
21 *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).
22 *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla*, 498 U.S. 505, 509 (1991).
23 *United States v. Wheeler*, 435 U.S. 313, 323-324 (1978).
24 *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 62-63 (1978).
25 *See, e.g., id.*
26 *Wheeler*, 435 U.S. at 323.
27 *See, e.g., id.*
28 *Worcester v. Georgia,* 31 U.S. 515 (1832).
29 *United States v. Mazurie*, 419 U.S. 544, 557 (1975).
30 *United States v. Lara*, 541 U.S. 193, 200 (2004).
31 *Wheeler,* 435 U.S. at 323.
32 *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999).
33 *Wheeler,* 435 U.S. at 326.
34 *See Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).
35 *Id. See also, Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1979).
36 *Wheeler,* 435 U.S. at 326.
37 *Oliphant,* 435 U.S. at 212.

Transitioning to the Bench

by Honorable Eric A. Keen

I have always embraced change. Especially if that change presented an opportunity for growth and self-betterment. I have had many transitions in my life: getting married, becoming a father, promotions at work and accepting new roles, to name just a few. But recently, I transitioned from being an attorney to being a judge. The decision to become a judge, for me, was not an easy one to make. I worried that I would not be very good at it, I questioned whether I was smart enough, or whether other people would accept me in that role. I had been appearing in front of judges my whole career and seen many examples to draw from (some good and some not so good). And so, in making my decision I thought I knew how I would approach the role. But, looking back, I did not really appreciate what being a judge meant and, honestly, I am still figuring it out.

In speaking with much more seasoned judges, I have learned that being a judge is one transition after another. Not just from one assignment to another, but in one's judicial philosophy. As with most things in life, our outlook on things around us changes over time as we mature – our perception, our feelings, our understanding of things changes. Most judges tell me that they are ever evolving, or transitioning if you will, with each passing year. But that is true for all of us, it's the human condition.

Having been on the bench for just over a year now, I look back on my first months and can see a great deal of self-growth. This is to be expected. I imagine there will always be a rather large learning curve when taking on a new role, especially one as significant as becoming a judge. But looking forward, I realize I will never stop growing. Transition, after all, means moving from one state to another. So even though I may be on the bench for many years to come, I expect my transition will be slow and ongoing.

Being a judge is extremely rewarding and has been one of the best decisions I have ever made. I loved my former job (ask anyone who knows me) and I worried that becoming a judge would not bring me the same level of fulfillment. I worried that I would feel isolated and that I would miss litigating. Trial work, after all, can be very exhilarating. But I was wrong. Being a judge is incredibly fulfilling. I can remember reading a motion my first week on the bench and thinking to myself that it was a good motion and it ought to be granted, almost like I was a spectator. When, like a flash, it hit me, wait a minute, I am the judge – I get to decide whether this motion is granted or denied. What an amazing feeling that was. That it is my job to find the justice in every case before me. What can be more fulfilling than that?

Coincidentally, as I write this article I am in the middle of a pretty big transition. I am moving from a criminal law assignment, which is where I have spent the last 22 years of my legal career, and heading to a family law assignment, talk about a "transition." As I move into this new assignment, I am excited about the transition. I have always loved to learn and although it feels rather like being thrown into the depths of the ocean, I am looking forward to navigating my way through this new challenge.

So what advice can I give anyone who might be thinking of becoming a judge? Think long and hard. Like an iceberg floating in the water, what you see as an attorney in the court room is only the tip of what being a judge means. As I have said, it is extremely rewarding, but it is not for the faint of heart. The decisions judges make everyday have immediate, real life impacts on people's lives, freedoms, family, children, money, possessions, rights, and inheritances, to name just a few. The judges that I have known over my career as an attorney and the judges I have met over the course of the last year from around our state all take great pains to come to the most just and fair decisions they can, knowing that they will not always get it right, but having the courage to decide anyway. And that is really what it comes down to, being a judge is about being able to make a decision, often with less than all the information one would like to have.

So, I guess, if you are comfortable with change, making heavy decisions, hard work, and public scrutiny and you want to become a judge, the transition should be fairly easy for you.

The Hon. Eric A. Keen is a judge for the Riverside County Superior Court. He was appointed to the bench in 2018. Judge Keen received his B.A. from the University of California, Riverside in 1992. He went on to earn his J.D. from Western State College of Law in 1995.

A Strategic Look at Federal Court Removal

by Derek Wallen

Since 1875, when Congress passed the first Removal Act, state-court defendants have been able in some cases to choose a new battlefield. Where "removal jurisdiction" exists, a defendant in state court can elect to have the action proceed in federal court instead. This can be a powerful strategic tool. But in civil cases a notice of removal must be filed within 30 days after a defendant's receipt of the complaint,[1] meaning defense counsel has little time at the outset of litigation to weigh the pros and cons of removal.

The first step is to determine whether removal is permissible. All grounds for removal are statutory, and federal courts strictly construe those statutes *against* removal,[2] so in many garden-variety civil cases, it will not be an option. But where plaintiff alleges a cause of action under federal law or there is complete diversity jurisdiction,[3] removal becomes one of the clubs in defense counsel's bag. Whether to use it requires counsel to evaluate how removal would affect the parties' substantive positions, the timeline to trial or dispositive motions, and leverage in settlement talks. The 30-day deadline forces counsel to make this strategic call quickly, likely without the benefit of discovery.

What are the factors to consider? They can broadly be grouped into four categories.

1. **The importance of federal substantive law.** In many cases, the most important factor will be the centrality of federal law to the parties' claims and defenses. Federal judges and clerks encounter cases implicating federal laws on a daily basis and will start federal-question disputes from a position of greater familiarity with governing statutes and case law. This may be especially critical with complex federal statutes that are rarely litigated in state court, such as civil claims under the Racketeer Influenced and Corrupt Organizations (RICO) Act. Moving such disputes to federal court enhances predictability of outcomes and reduces (without, of course, eliminating) the likelihood of a capricious result.
2. **Discovery.** Early discovery is easier in federal court because of mandatory "Rule 26" disclosures, which require each party, early in the case, to provide the other with information about witnesses, relevant documents, damages and insurance.[4] Rule 26(f) conferences, after which the parties have 14 days to develop a joint discovery plan, also get discovery moving quickly. A party inclined to sandbag in discovery will find it more difficult in federal court than in California state court, where dilatory tactics can take months to bring to a court's attention and require tedious, expensive motion practice. Also, Federal Rule of Civil Procedure 45(b)(2) permits nationwide service of subpoenas in federal actions, allowing litigants to avoid the more cumbersome rules of interstate discovery acts.[5]

   Note, however, that although an anti-SLAPP motion in California state court will automatically stay discovery,[6] Ninth Circuit federal courts do not stay discovery in all anti-SLAPP cases.[7] That can be a persuasive reason for anti-SLAPP movants to remain in state court.
3. **Pretrial procedure and motions.** The timeline to trial in federal court might differ significantly from state court. There is no hard-and-fast rule. It depends on the specific courts (indeed, the specific judges) involved. Post-recession funding increases in the California system are improving case flow (though dockets remain congested), while increases in federal judicial vacancies are slowing timelines in federal court.

   A defendant wanting to transfer a case to another state will find it easier to do in federal court. California state courts lack the power to transfer

1 28 U.S.C. § 1446(b)(1).
2 *Libhart v. Santa Monica Dairy Co.* (9th Cir. 1979) 592 F.2d 1062, 1064.
3 These are the most common forms of removal jurisdiction, but others are set forth in 28 U.S.C. §§ 1441 *et seq.*
4 Fed. R. Civ. P. 26(a).
5 *See, e.g.*, Civ. Proc. Code § 2029.100 et seq. (Interstate and International Depositions and Discovery Act).
6 Civ. Proc. Code § 425.16(g).
7 *See Planned Parenthood Federation of America, Inc. v. Center for Med. Progress* 890 F.3d 828, 833 (9th Cir. 2018) (applicability of discovery stay depends on basis for anti-SLAPP motion).

an action to another state.[8] On a forum non conveniens motion, the state court can only dismiss or stay the action,[9] but 28 U.S.C. § 1412 allows transfer of federal cases nationwide.

The likelihood of a dispositive motion is also critical to consider. Federal judges are simply more likely to grant them.[10] And the self-calendaring systems of federal district courts means a dispositive motion (or any motion) can often be heard more quickly.

4. **Jury rules and procedures.** Federal courts are located mostly in major metropolitan areas. State courts are more dispersed and extend into mid-size cities and rural areas. This affects the composition of jury pools. If a defendant in a rural action would prefer a jury pool that includes city residents, removal may be attractive. The same is true if the defendant wants a jury pool drawn from a larger geographic zone.

Consider also that federal courts have a minimum of six jurors compared to the default rule of 12 in California civil trials. And in federal court the verdict must be unanimous, whereas in California state trials, three-fourths of the jury can render a verdict.[11] In assessing removal, defense counsel should weigh how one or a few dissenting jurors will affect trial outcomes.

As a final thought exercise, defense counsel should contemplate why plaintiff chose to file in state court to begin with. In most cases the choice is deliberate and rests on a perceived advantage to proceeding in state court. In the zero-sum game of litigation, that in itself is reason to give removal a careful look.

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8 2 Witkin, Cal. Proc. 5th Jurisd § 380 (2019).
9 Civ. Proc. Code § 410.30.
10 *See Zamora v. Wells Fargo Home Mortg.* (D.N.M. 2011) 831 F.Supp.2d 1284, 1293 (noting widely held view that federal judges "are more likely to be defense-oriented or to grant dispositive motions").
11 *Compare* Fed. R. Civ. P. 48 with Cal. Const., art. I, § 16.

The Impeachment Trial of President Donald Trump: All the Wrong Lessons

by Dean Erwin Chemerinsky

No one thought that the United States Senate would remove Donald Trump from office, but the script used by Republicans is sure to be followed in the future by both parties when there is a threat of impeachment. It makes impeachment and removal from office a hollow threat. The result is a big step away from checks and balances and towards a more authoritarian presidency.

My great fear is that all of the wrong lessons will be drawn from the Senate's vote and have dire consequences for the future. What are these wrong lessons?

President Trump did nothing wrong.

After all, he continues to claim that his call with the Ukrainian President Volodymyr Zelensky was "perfect" and he sees the Senate's decision as an "acquittal" of the charges against him. On the day after the Senate verdict, he said that he was "vindicated."

President Trump used the powers of his office to his own partisan political advantage. As Chief of Staff Mick Mulvaney said, and as many confirmed, it was a quid pro quo conditioning United States military aid to the Ukraine on their investigating a political rival. There is no other way to interpret President Trump's words, "I need a favor, though." It is just wrong for presidents to use their powers in this way.

The Senate vote should not be taken as acquittal or vindication or approval of the conduct, but as a partisan choice by the Republican Party to stick with their president. Republican Senators might have concluded that this was not serious enough to rise to the level of an impeachable offense, but it doesn't deny that President Trump acted improperly. Indeed, the General Accounting Office said that the withholding of funds violated a specific federal statute, the Impoundment Control Act.

A president should not be impeached in the last year of a term.

President Trump's supporters repeatedly criticized the impeachment effort as an attempt to undo the 2016 election and said that it is wrong to impeach a president facing reelection.

Of course, any impeachment is removing a president who has been elected. The Constitution might have, but didn't, say a president could be removed from office for "treason, bribery, and other high crime and misdemeanors except in an election year." But that is not what it says.

A president can ignore congressional subpoenas with impunity.

President Trump refused to comply with all congressional subpoenas and directed his aides to ignore them. This was the basis for the second article of impeachment.

But it must be remembered that every past president facing an impeachment inquiry – Andrew Johnson, Richard Nixon, and Bill Clinton – complied with subpoenas. Supreme Court precedents establish broad authority for Congress to issue subpoenas to effectuate checks and balances. In the future, Congress will need to consider using its "inherent contempt power," something which has not been used since the 1930s, which involves Congress imposing sanctions on the failure to comply with subpoenas. There is irony that Republican Senators criticized House Democrats for not more thoroughly investigating at the same that they excused President Trump for completely refusing to comply with lawful subpoenas for information.

A "high crime and misdemeanor" requires a criminal act.

This was the central argument by President Trump's defenders in the Senate. The claim was that absent a crime, a president cannot be removed from office. Opponents of impeachment in the future, regardless of the party of the president, will that say that the Senate's decision about Trump supports limiting impeachment to criminal acts.

This argument is wrong historically and terrible as a matter of constitutional law. The phrase "high crimes and misdemeanors" comes from English law where it was used to remove officials for abuses of power. The framers, such as Alexander Hamilton in Federalist Number 65, were clear that this phrase referred to and allowed for impeachments when there were serious abuses of power. Hamilton said that impeachment was for "the misconduct of public men, or, in other words, from the abuse or violation of some public trust." Supreme Court Justice Joseph Story in his famous Constitutional Commentaries in 1833 said this too. As he pointed out, there were not federal crimes in 1787. Andrew Johnson was impeached for an abuse of power that was not a crime. Most important, there should be the ability to remove a president who seriously abuses power even if the conduct is not criminal.

The Senate does not need to provide a "trial" or pretend to be impartial.

The Senate refused to call witnesses, even when there was potentially important new evidence, such as John

Bolton's book manuscript. Senators had no trouble announcing their votes before the trial even began. It was the strangest trial in that no evidence was heard and the verdict was known before it began.

But every Senator took an oath of "impartiality." Oaths should matter. It is inexplicable how there could be an impartial trial with those who were voting never heard the witnesses or saw the evidence. Every prior impeachment trial of a president involved witnesses. The refusal to call them here should not be seen as a matter of constitutional principle, but a political choice by Republicans to not risk public disclosure of evidence that would be harmful to their president.

Whatever the president thinks is in the public interest cannot be an impeachable offense.

This is what Professor Alan Dershowitz said: "Every public official that I know believes that his election is in the public interest, and mostly you're right. Your election is in the public interest, and if a president does something which he believes will help him get elected in the public interest, that cannot be the kind of quid pro quo that results in impeachment."

This is akin to President Richard Nixon saying that if the president does it then it cannot be illegal. It is a frightening proposition that would allow a president to do virtually anything to help his reelection and say, "keeping me in office is in the public interest" so therefore it must be accepted. Dershowitz later tried to back away from his statement, but it surely will be used by those opposing impeachments in the future.

What are the lessons then to be drawn from all of this?

The impeachment proceedings reflected a country that is deeply polarized and exacerbated these divisions. Democrats overwhelmingly favored impeachment and removal; Republicans with equal fervor opposed it.

The real message for future presidents is that so long as their party sticks with them, they do need to fear impeachment and removal almost no matter what they do. Republicans in the future will follow this script if a Republican President ever faces impeachment and removal. But so will Democrats know to copy this if it is a Democratic president. Impeachment has been rendered a political circus with no consequences.

At the same time, President Trump and the Department of Justice have steadfastly maintained that a sitting president cannot be criminally indicted. President Trump is now arguing, in cases pending in the Supreme Court, that a president's records cannot be subpoenaed in court.

In other words, every avenue for inquiry and holding the president accountable is being foreclosed. The result is to create a president who is very much above the law.

Those who wrote the Constitution deeply distrusted executive power. They had lived through the abuses of the king and wanted no part of it. Undermining checks and balances serves Trump's interests and today that of the Republican Party that backs him. But it has constitutional consequences that I believe our country will come to deeply regret.

No democracy or form of government lasts forever. Usually when democracies are lost it is not all at once, but gradually over time constitutional protections are eroded. President Donald Trump and the United States Senate have now taken a large step towards undermining our constitutional system.

Erwin Chemerinsky became the 13th Dean of Berkeley Law on July 1, 2017, when he joined the faculty as the Jesse H. Choper Distinguished Professor of Law. Prior to assuming this position, from 2008-2017, he was the founding Dean and Distinguished Professor of Law, and Raymond Pryke Professor of First Amendment Law, at University of California, Irvine School of Law, with a joint appointment in Political Science. Before that he was the Alston and Bird Professor of Law and Political Science at Duke University from 2004-2008, and from 1983-2004 was a professor at the University of Southern California Law School, including as the Sydney M. Irmas Professor of Public Interest Law, Legal Ethics, and Political Science.

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Practicing Law in All Three Branches of Government

by Boyd F. Jensen, II

[Editor's Note: We asked the author, an experienced civil litigator, to write about his involvement in drafting and testifying about legislation and regulations, not normally associated with civil litigation.]

Knott's Berry Farm: Jury Verdicts or Legislative Solutions

In the late 70s and early 80s, before general cell phone usage, when fax machines were widely used for document communication (faster than the United States Postal Service), Los Angeles biker gangs effectively faxed about events and gatherings. With the push of a few buttons, fax machines could instantaneously send detailed information, including flyers, to be posted at dozens of remote locations. Knott's Berry Farm's Grand Avenue, a public street, travels right across the east corner of the park, accessible to patrons of the Chicken Dinner restaurant and other shops walking down public, Beach Blvd sidewalks. Like the Santa Cruz Boardwalk and the Santa Monica Pier, patrons were technically not on park property, yet susceptible to security risks, unlike Disneyland or Magic Mountain, where park property access is privately managed.

Among a dozen jury trials in Orange County for Knott's Berry Farm, one related to gang activity, resulted in a deadlocked jury and was retried. Knott's was successful (in all of those cases) but the time and the cost inspired thoughts about a legislative solution, which could aid other similarly situated parks. Thus in 1995, I drafted California Assembly Bill 2482 intended to amend Civil Code section 1714.49 and Penal Code section 490.6. The drafting and entire legislative process was absorbing – applying first hand knowledge from the courtroom in an effort to provide a broader "legal solution," rather than isolated jury verdicts. The Civil Code section failed due to pressure from plaintiff attorney lobbyists, but the Penal Code remains, empowering amusement parks to enforce and defend violations of not just state and municipal codes, but "lawful amusement park rules."

Six Flags: Worst WaterPark Incident In American History

In June of 1997, when a waterslide in Concord, California collapsed, injuring dozens of Napa High School seniors, Six Flags, who operated the park, requested that I not only defend the civil action, but resist incident-minded politicians, responding with legislation to regulate amusement park rides. Mobile rides and trams were already regulated in California within the Department of Industrial Relations "DIR," Amusement Ride and Tramway Unit. With the support of Knott's Berry Farm and Six Flags, I recruited other amusement ride operators around the state, and both national and international amusement associations. After meeting with legislators, I testified before the California Assembly Labor Committee and formed an organization called California Amusement Park Association "CAPA." With this support all legislative efforts were successfully resisted – except for the City of Concord, which asked that I draft an ordinance to curtail irresponsible conduct.[1]

Disneyland: Amusement Rides Become Subject to Regulation

Everything changed after Christmas Eve of 1998, when a cleat from Disneyland's boat Columbia tore lose striking an individual in the head, which the ever-fastidious Disney staff quickly cleaned up, while keeping the police from the scene for over 4 hours. There was outrage at the incident and Disney's obviously self-serving response. Incident-minded legislators again sought legislation and this time with success. Disneyland needed to reassure its world-wide patron base, that their park was safe and that governmental oversight including post-incident investigations would be welcomed.

Though collegial, Disneyland had previously been reluctant to involve themselves in anything that was not strictly "Disney." But in a surprising late night telephone call, they asked to become formally involved with CAPA and support to effectuate positive legislative change. We combined resources, and through numerous public and legislative meetings, AB 850 *Permanent Amusement Ride Safety Inspection Program* was drafted. It contained input from consumers, critics, existing California DIR regulators, CAPA members and after passage, resulted in Labor Code sections 7920-7932. This law required further public hearings and testimony to implement "administrative and technical regulations."[2]

1 See *Patron Responsibility at Amusement Parks*, §§ 74-61 to 63 (1997) – renumbered Concord Municipal Code §§ 4.10.010 – 4.10.030 (2002.)

2 DIR; *Chapter 3.2. California Occupational Safety and Health Regulations, Subchapter 2. Regulations of the Division of Occupational Safety and Health, Article 6. Administration of Permanent Amusement Ride Program* §§ 344.5 – 344.17

Byproducts: The Executive Branch of Government, Nationally and Internationally

Through this work, I became familiar with the executive branch, forming relationships with government officials, who became professional friends, though we didn't always agree. And amazingly, following the passage of AB 850 and the implementation of the regulations, three experienced government employees, including their division leader, requested a training and orientation session for "a couple of days." I was surprised, but very impressed.

During litigation, in the years which followed, there were disagreements, but we generally worked through them. However, in 2007, our differences were unworkable and on behalf of six California "mobile amusement ride operators," I filed an administrative action against the California DIR, Division of Occupational Safety and Health.[3] It involved a "Giant Wheel" and though we prevailed, I was placed in the awkward position of having to depose and later cross-examine government officials I had helped train. (We are still friends.)

Further work for the portable ride "carnival industry" in California required that I form a second organization, California Portable Rides Operators (CalPRO.) Between 2011 and 2014, CalPRO successfully sued the California Division of Occupational Safety and Health for actions, which exceeded their statutory authority.[4]

Besides drafting statutes for Arizona (Arizona Laws §§44-1799.61 – 64 (2006)); and Utah (Utah Code 78-27-61 (1998) and Utah House Bill 381 (2019)) and responding to the requests from other states (e.g. New Jersey, Florida, Ohio and Texas) for regulatory suggestions or counsel, I became active with the American Society for Testing & Materials International (ASTM), F-24 Committee on Amusement Rides and Devices. I traveled around the United States and other parts of the world, providing counsel and developing relationships to implement standards, including ASTM F-24 Standards, which by operation of law, become statutorily enforceable in many states and also some countries.

Conclusion

It is a privilege to be an advocate before California judges and juries; and though unplanned, I have also learned that lawyers may be equally privileged, working with legislators and those who execute and enforce our laws through regulation and administrative action.

Boyd F. Jensen, II, a member of the Bar Publications Committee, is with the firm of Jensen & Garrett in Riverside.

(administrative regulations); and *Article 6.2* §§ 3195.1 – 3295.14 (technical regulations.)

3 Cases No. 07-0181-OSH through 07-0186-OSH.

4 *CalPRO v Division of Occupational Safety and Health LASC* B242219 (2014).

The State of Court

by Honorable John Vineyard

The state of the Riverside Superior Court is slightly improved from its state when I last reported in January 2019. The court's priorities remain new judgeships, new courthouses, and new money in the budget, all of which can move us to the ultimate goal: increased access to justice for the citizens of Riverside County.

Judgeships

Twenty years ago, in 2000, Riverside County had 68 judicial positions, 48 judges and 20 commissioners, serving a population of 1.55 million people. In 2019, I reported that we had 81 judicial positions, 66 judges, 14 commissioners, and 1 hearing officer, serving a population of 2.43 million people. That reflected a 55.4% increase in population and a 19% increase in judicial officers. In 2019, the legislature, led by Senator Richard Roth, funded 25 previously authorized judicial positions statewide. Five of those new positions were allocated to Riverside County. While judgeships (and money) are not allocated based on population or population growth, population growth significantly contributes to the factors, such as new case filings, that are used to allocate resources in the judicial branch.

The 25 judgeships funded in 2019 were a portion of the 50 positions that were authorized, but not funded, in 2007. Riverside County also received 2 of those authorized positions in 2018, thanks to a bill authored by Assembly member Sabrina Cervantes. Twenty-three positions remain to be funded. The Judicial Council has adopted a recommendation that would allocate 3 of those remaining positions to Riverside County if they are funded.

In 2019, we took a step toward closing the gap between our assessed judicial need and our judicial positions. Based on the latest Judicial Needs Assessment by the Judicial Council, Riverside County should have 117 judicial positions. We now have 86. That gap of 31 is less than our gap of 36 a year ago, but it is far from fair and just for the citizens of Riverside County, and we will continue to work with our local legislators to close that gap.

In the meantime, our focus is now on judicial appointments. As I write this article, we have 6 vacancies with another coming in April. The vacancy created by the retirement of Judge Sharon Waters was filled in October by the appointment of Judge Carol Greene. Judge Greene is completing her orientation in Department 62 (criminal trials) and will move to Department 2 (civil) in February. The vacancy created by the retirement of Judge Michael Donner has not yet been filled, nor have the five newly created positions. In April, Judge Becky Dugan's retirement will become official and her position will also be available for appointment.

For those that have had an interest in a judicial career, now is the time to apply – actually, the time to apply was several months ago – but it's not too late. We need quality judicial candidates, and in particular, we need quality candidates from the desert. The last time Riverside County had this many available judicial positions was 2007. Once these positions have been filled by appointment, it's anyone's guess when we will have more. My door is always open to those that would like to discuss the application and appointment process or life as a judge; simply call the Executive Office and make an appointment.

Courthouses

We have two new courthouses at various stages of development. In Indio, family and juvenile; in Menifee, family and civil. We have had delays with both projects, but they are funded and scheduled to open in 2022. The current plan, once the Menifee courthouse has been completed, is to replace the Hemet Family Law courthouse and move civil departments from the Southwest Justice Center in Murrieta, freeing up courtrooms for criminal departments.

In Indio, we are moving juvenile proceedings from the existing juvenile courthouse to the Larson Justice Center this week. To make that move possible, in 2019 we moved probate and other proceedings to Palm Springs, adding a new courtroom to that already crowded facility. Juvenile proceedings will now be heard in Departments 1A and 1B at the Larson Justice Center. Demolition of the juvenile courthouse will begin soon, and the new family and juvenile courthouse will start construction. Once completed, it will house two juvenile departments and three family law departments, freeing up courtrooms in Larson for new criminal departments.

Money

There has been both good news and bad news on the budget front. In 2019, Senator Roth's bill to fund new judgeships included funding for support staff. Rather than allocate those funds to the courts that received new judgeships, the Judicial Council chose to distribute those funds to all 58 counties using the WAFM formula designed to allocate trial court funding generally. As a result, Riverside County received approximately $700,000 with the five new

judgeships, rather than the $7.5 million dollars necessary to fund support staff for five new departments.

As I reported last year, Riverside County operates nine departments countywide with retired judges through the Assigned Judges Program. Since we did not receive new funding sufficient to open new departments, we will be using our newly appointed judges to phase out our use of the Assigned Judges Program.

However, we were able to find the funds to open two new departments in 2019. We moved the community court - unlawful detainer, small claims, etc. – from Department H1 in Hemet to the Southwest Justice Center. In H1, we created a new Family Law Domestic Violence Court. In the Historic Courthouse in Riverside, we moved the mandatory settlement conferences from Department 2 to Department 12, and opened a new civil trial department in Department 2. Judge Ronald Taylor (ret.) has been conducting "express" civil trials in that department since June. In February, he will move to the Hall of Justice in Riverside where he will continue to hear civil trials, but will also hear criminal trials as needed. Judge Greene will take over Department 2 as a traditional civil trial department, including law and motion.

The good news is that the Governor's proposed budget, released on January 10, 2020, provides additional funding for the judicial branch. The new budget does not cure our budget issues, but it helps. As always, the budget is not final and we will have to wait to see the final product. Assuming no significant modifications to the trial court funding proposal, we will have additional funding – new money – but our court will still not be funded at 100 percent of our need.

We continue to plan for the future and we are watching, among other things, the trends with regard to fines, fees, and civil assessments that are a substantial portion of our annual budget. Legislative changes in those areas could have an enormous impact on our ability to adequately provide access to justice. We also continue to meet some of the unfunded or underfunded mandates, such as AB 1437, Proposition 66, bail reform, and others.

Judicial Assignment Changes

There have been a few changes in judicial assignments for the new year. Judge Eric Keen and Commissioner Samra Furbush have moved to family law in Riverside. Commissioner Candice Garcia-Rodrigo has move to the Southwest Justice Center to hear limited civil and unlawful detainers, and Judge Gail O'Rane has moved to a criminal calendar at the Hall of Justice in Riverside.

Judge Johnetta Anderson has moved from criminal trials in Indio to criminal trials in Banning, which allowed Judge Tim Hollenhorst to take the criminal calendar department vacated by Judge Becky Dugan's retirement.

Judge Sam Shouka has moved from Banning to Riverside juvenile, allowing Judge Mark Peterson to move to Southwest juvenile, which in turn allows Judge Sean Lafferty to move to Hemet family law, where he will take the department heard by Judge James Warren (ret.), who will now hear the new family law domestic violence calendar in Hemet H1.

In the desert, Commissioner Mickie Reed has moved from the community calendar in Palm Springs (PS4) to family law in Larson. Judge Randall White (ret.) will sit in PS4. Judge Greg Olson will hear criminal trials.

Assistant Presiding Judge John Monterosso has moved from the criminal master calendar in Southwest, to the Hall of Justice in Riverside. Until April, he will cover Department 33 in hear the domestic violence calendar, while Judge Jacqueline Jackson is on magistrate duty. He will then cover Department 61 while Judge David Gunn is on magistrate duty. In June, he will take a trial department in the Hall of Justice in Riverside until his term as Presiding Judge begins in January 2021. Judge Paul Dickerson has taken the Southwest master calendar.

Finally, the big news in the Civil Division is the return to a modified direct calendar system, countywide, beginning in February. The master calendar system allowed the court to address our issues with backlogs and older cases, and we now seem to have a handle on those issues, allowing the return to direct calendar.

The bottom line is that the Riverside County Superior Court is in a slightly better state than this time last year, but we can do better. We still need new judgeships – 31 – and the judicial candidates to fill our current vacancies. By the time our two construction projects are open, we'll need more. And we are still under funded.

The Honorable John Vineyard is the presiding judge of the California Superior Court located in Riverside County, and is the chair of the Krieger Meritorious Service Award Committee, and a past president of the RCBA.

Federal Bar Association, Inland Empire Chapter

by Ami Sheth Sagel

The Inland Empire Chapter of the Federal Bar Association is looking forward to an exciting year!

We typically hold two larger events on an annual basis – FBA Judges' Night and a Constitutional Law Forum. This year, we held the Judges' Night at the Mission Inn on February 6, 2020. The keynote speaker was the Honorable Martin J. Jenkins (ret.), former Associate Justice of the California Court of Appeal and the current judicial nomination secretary for Governor Gavin Newson. The Honorable Virginia Phillips, Chief Judge of the Central District of California, offered remarks on the state of the district. This evening event was well attended by private and government attorneys, as well as by many state and federal judges. Our Constitutional Law Forum, which typically takes place in May or June, offers a great opportunity to stay abreast of Supreme Court cases. Each year, Dean Erwin Chemerinsky lectures about recent or upcoming opinions from the highest court in the land. This event is not to be missed!

Also, our organization aims to hold lunchtime MCLE programs once a month at the George E. Brown, Jr. Federal Courthouse. The topics of these talks vary, but usually have a connection to the practice of federal law. Last year, the FBA/IE hosted a number of successful and educational events including a panel on judicial diversity, a showcase of local pro bono and public interest work, a seminar focusing on the most commonly litigated parts of the American Disabilities Act, and an ethics MCLE about navigating the waters in a post "me too" era. Furthermore, the FBA/IE holds a Criminal Justice Roundtable each year, alternating between prosecutors and public defenders as speakers. Last year, the panel consisted of the U.S. Attorney for the Central District of California and the District Attorneys from Riverside and San Bernardino counties, with the Federal Public Defender moderating the event. This year, we hope to have the U.S. Attorney moderate a discussion between the Public Defenders of Riverside and San Bernardino counties, and the Federal Public Defender. Finally, the FBA/IE typically holds a yearly legal writing seminar, which is extremely useful to new and seasoned attorneys.

In addition to offering continuing legal education, we aim to hold one or two social happy hour events each year, with one of those events taking place in the summer to allow interns and judicial clerks to network and gather in a social setting. Also, the FBA/IE engages in civic outreach through the RCBA Elves program, participation in local high school Career Day fairs and other programs that offer volunteer and pro bono opportunities to our members.

This year, we welcome Mario Alfaro into the position of FBA/IE president. Mario is a share partner at Stream, Kim, Hicks, Wrage & Alfaro and in addition to his work, he is committed to the enrichment of our Inland Empire legal community. As a board member, Mario has contributed significantly to the success of our past events and the board is excited to have Mario at the helm. Also, the board welcomes two new directors: Veronica Mittino, a deputy district attorney in Riverside County, and Tom Yu, currently of-counsel at Wagner Pelayes. Both individuals have demonstrated a strong commitment to the legal community and we eagerly anticipate their contributions and involvement to the FBA/IE.

On behalf of the FBA/IE board of directors, I invite you to join our organization. Since the creation of our Chapter, we have had a dynamic and involved membership made up of attorneys committed to the legal community. Joining the FBA/IE offers an easy way to stay involved and engaged with peers and colleagues and allows for networking and socialization opportunities. Furthermore, membership in the FBA/IE presents a great path to leadership through involvement as a board member, as we encourage members to apply to fill one of three open board seats each year. If you are unsure about joining, we welcome you to attend one of our programs (all events are open to nonmembers) and see for yourself the value of becoming an FBA/IE member. We hope to see you at one of our upcoming events!

Ami Sheth Sagel is the owner and Principal Attorney at Supportive Adoptions, a law firm focused on adoption, dependency, and guardianship law, and is the immediate past president of the Federal Bar Association, Inland Empire Chapter.

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Krieger Award Nominations Sought

by Honorable John Vineyard

The Riverside County Bar Association has two awards that can be considered "Lifetime Achievement" awards. In 1974, the RCBA established a Meritorious Service Award to recognize those lawyers or judges who have, over their lifetimes, accumulated outstanding records of community service beyond the bar association and the legal profession. The E. Aurora Hughes Award was established in 2011 to recognize a lifetime of service to the RCBA and the legal profession.

The Meritorious Service Award was named for James H. Krieger after his death in 1975, and has been awarded to a select few RCBA members that have demonstrated a lifetime of service to the community beyond the RCBA. The award is not presented every year. Instead, it is only given when the extraordinary accomplishments of particularly deserving individual come to the attention of the award committee.

The award honors the memory of Jim Krieger and his exceptional record of service to his community. He was, of course, a well-respected lawyer and member of the Riverside bar. He was also a nationally recognized water law expert. However, beyond that, he was a giant in the Riverside community at large (please see the great article by Terry Bridges in the November 2014 issue of the *Riverside Lawyer*). Past recipients of this award are Judge Victor Miceli, Jane Carney, Jack Clarke, Jr., and Virginia Blumenthal, to name a few.

The award committee is now soliciting nominations for the award. Those eligible to be considered for the award must be (1) lawyers, inactive lawyers, judicial officers, or former judicial officers (2) who either are currently practicing or sitting in Riverside County, or have in the past practiced or sat in Riverside County, and (3) who, over their lifetime, have accumulated an outstanding record of community service or community achievement. That service may be limited to the legal community, but must not be limited to the RCBA.

Current members of the RCBA board of directors are not eligible, nor are the current members of the award committee.

If you would like to nominate a candidate for the Krieger Award, please submit a nomination to the RCBA office no later than April 10, 2020. The nomination should contain, at a minimum, the name of the nominee and a description of his or her record of community service and other accomplishments. The identities of both the nominees and their nominators shall remain strictly confidential.

The Honorable John Vineyard is the presiding judge of the California Superior Court located in Riverside County, is the chair of the Krieger Meritorious Service Award Committee, and a past president of the RCBA.

Article II: Questions Concerning the Exercise of Executive Powers

by Professor Charles S. Doskow

The Article II of the Constitution provides that the executive power is vested in the president of the United States. The president is the only person named in the Constitution, outside of a passing reference to a vice president whose sole duty is to preside over the Senate.

There is no question that the presidency is, and was intended to be a powerful position; the power of the presidency has grown greatly in recent years. President Trump has said, "I have an Article II where I have the right to do whatever I want as President."

But there are limits. Some powers are blended, with Senate approval required to confirm appointments to judges and high executive department officials, and to ratify treaties. The presidential veto of a bill passed by Congress can be overridden by a two-thirds vote in both chambers. The Supreme Court found the 1951 seizure of the steel companies by President Harry Truman to be in excess of presidential powers in the *Youngstown Sheet & Tube* case.

Two recent executive actions illustrate both the power of the executive, and how that power can be questioned. The first is a military action; the second, an apparently routine action by a cabinet department. Both have been extremely controversial.

A great deal of controversy surrounds the recent killing by drone attack of the Iranian General Qassem Suleimani. The military action was undertaken unilaterally, ordered by President Trump, with no prior consultation with or approval by Congress. It was clearly an act of war.

The Constitution charges Congress with the duty to declare war, but the United States has not made a formal declaration of war since World War II. Hostilities in Korea, Grenada, Panama, Vietnam, the Gulf War, and Iraq have taken place without a declaration. The War Powers Resolution of 1973, enacted by Congress over a presidential veto after Vietnam, requires presidential notification to Congress when military action is undertaken, and cessation of military involvement unless Congress ultimately approves. Every administration since its enactment has denied its constitutionality, although some presidents have complied with its notification requirements. (The White House gave Congress formal though confidential notice of the Suleiman killing in accordance with the Act.)

As a practical and political matter, no president can deny funding to American troops who are in harm's way.

The president as commander-in-chief has the responsibility to defend this country. The question being raised with respect to Suleimani is whether that gives him the right to engage in the extrajudicial killing of foreign leaders. Clearly that right exists in wartime, as was the case when the United States targeted a plane carrying General Yamamoto during World War II. But we are not at war now.

[As a matter of international law justification of the Suleimani action is not free from doubt. The United Nations Charter guarantees the right of self-defense, which the U.S. is asserting. A presidential directive from the 1970s prohibits assassination. The U.N. officer charged with addressing the subject found that it "most likely" is a violation.]

One question is whether the Constitution allows a single person to make a decision that takes the country close to war. The administration finds its justification in prevention of an imminent danger. We can only speculate whether the founders would have regarded the action as within the president's Article II powers.

When the Constitutional Convention considered the provisions empowering the executive branch, their experience had been with George III. They had no way short of revolution to be relieved of his rule, and believed that there had to be some check on the executive in the Constitution. Impeachment was the solution they chose.

But impeachment is slow, bulky, uncertain, and extreme. Consequently controlling presidential actions, particularly those that commit troops to battle, is largely ineffective. The Suleimani debate will continue.

The second aspect of executive branch jurisprudence to consider addresses what standard the courts will apply to domestic actions of the executive when they are challenged. A recent case in the United States Supreme Court (*Department of Commerce v. New York*) found action by the secretary of commerce to be reviewable under the Administrative Procedure Act, and to require substantive judicial consideration under unique factual circumstances.

To meet the need to reapportion Congressional seats every ten years, the Constitution requires that a decennial census be taken. The Constitution assigns this duty to Congress, which has delegated it to the Secretary of Commerce. For many years the census, in addition to counting heads, has requested various items of information from the public, and compiled them for statistical purposes.

In 2018, the Secretary of Commerce announced his decision to include a question on citizenship on the standard census questionnaire. The question had been asked in prior years, but more recently dropped. The Justice Department had requested this inclusion, the Secretary of Commerce said, for its use in enforcing the Voting Rights Act.

The matter immediately fueled a controversy. Democrats and representatives of minorities questioned the motives of the administration. The concern was that minorities would believe themselves threatened by the question and would fail to fill out census questionnaires. An undercount could negatively impact states with substantial minority populations and cost them seats in the House of Representatives.

States, municipalities and non-governmental organizations brought legal action to have the action set aside. The suits claimed that the Secretary's process of decision that resulted in inclusion of the question violated the Administrative Procedure Act ("APA"). The APA requires certain procedures for executive actions.

The Department of Commerce was required to submit to the court its "administrative record" of the materials the Secretary had considered in making his decision. After an initial submission, there was some back and forth, and additional materials were submitted.

In addition, the Court allowed discovery outside the record, including the deposition of Secretary of Commerce Wilbur Ross. (This gets a little technical, but hang in there.)

The Court first had to decide whether the Secretary's decision was judicially reviewable. It found that there was in fact law to apply, and review could not be avoided by classifying the decision as one "committed to the agency's discretion."

The executive was thus required to disclose the basis on which its action was based. Normally this is limited to review of the record, but the Court determined that it could go outside the record to inquire into the mental processes involved if there is "a strong showing of bad faith or improper behavior."

The Supreme Court ultimately found a "significant mismatch" between the Secretary's decision and the rationale he provided for it. One point was that the Secretary had requested the Department of Justice to restate its request for the information; this suggested to the Court that the Department was seeking a rationale, rather than responding to a legitimate request.

Chief Justice Roberts' opinion held: After viewing the evidence as a whole, we share the District Court's conviction that the decision to reinstate a citizenship question cannot be adequately explained in terms of the DOJ's request for improved citizenship data to better enforce the [Voting Rights Act.]

The District Court had suggested that discovery regarding pretext was in order. The Supreme Court found that there were strong indications that the reason being given for the Secretary's action may have been pretextual. It remanded that question to the lower courts, to remand to the Department of Commerce for further consideration.

By that time the census' schedule made it impossible to include the question, at least for 2020.

[It should be noted that there was a vigorous opinion by Justice Thomas concurring in part, but disagreeing of the inquiry into the actual motives, if there were any acceptable explanations at all. The four opinions in the Supreme Court expressed a variety of views on the scrutiny to be given executive actions. The legal question of how much deference is to be given to executive decisions is a recurring one, frequently exposing fundamental differences of opinion.]

But it is the later developments on the motivation for inclusion of the question that makes the case most interesting.

Subsequent to the Supreme Court's decision, a committee of the House of Representatives brought suit to obtain certain documents that had been requested from the Government, but had not been produced during or after the trial. These documents showed that a Republican strategist, Thomas B. Hofeller (since deceased) may have initiated the effort to include the citizenship question. For purely partisan reasons. (The Justice Department continues to insist that these documents were "inadvertently" omitted from required production during the lawsuit.)

That motivation had been charged from the start: discouraging minority voters in Democratic states would reduce those states' representation in Congress. (Hofeller was the national Republican Party's expert in redistricting.)

The documents in question have only recently surfaced. On November 30, 2019, the *New York Times* headed its article on the newly disclosed documents, "A Census Whodunit: Why Was the Citizenship Question Added?" And a January 6 story this year on National Public Radio detailed the efforts of the Republicans in the North Carolina legislature to keep the files on the hard drive of the late Mr. Hofeller from going public.

This story is not over. Nor is the drone attack on the Iranian general. Stay tuned.

Charles S. Doskow is Dean Emeritus and Professor of Law at the University of La Verne College of Law in Ontario, where he teaches Constitutional Law. He is past president of the San Bernardino County Bar Association, as well as the Western San Bernardino County Bar Association and the Inland Empire Chapter of the Federal Bar Association.

Judicial Profile: Honorable Carol A. Greene

by Maxine Morisaki

One of a Dozen aka the Honorable Carol A. Greene.

Honorable Carol A. Greene

It all started with Joseph (Joe) and Henrietta (Hanky) Greene in Sigourney, Iowa. Joe and Hanky were married and 16 years later, had 12 little Greenes. Carol Ann Greene, the newest member of the Riverside Superior Court, was number 11 of the 12. Judge Greene was "one of a dozen." The following recollections are based on a 30-year history.

Sigourney (pronounced "SIG-or-knee") is a small town (last census population approximately 2,000 people). Being one of the dozen meant that Judge Greene was raised with a strong work ethic and a keen appreciation of working together. If the kids wanted to go out and play, Hanky had them weed for an hour or two in the family's garden. The garden's bounty ended up on the table. Everyone pitched in with chores. Judge Greene coined the doctrine (at least to me) of "shifting alliances" such as being attuned to the personalities and tides of emotions. Hard work and an awareness of working collaboratively with others are traits Judge Greene has carried with her throughout her life.

Her father's twin brother was a Roman Catholic priest who taught at Saint Ambrose College in Iowa. Judge Green attended college there and law school at the University of Iowa. She worked and put herself through school. I first heard the term "detasseling" of corn as that was one of Judge Greene's paying jobs. I think it has something to do with corn welfare and procreation. To this day, after meeting her in 1989, I have never seen Judge Greene eat corn. You can fill in the pieces (kernels).

In 1989, Judge Greene arrived in Riverside to work as a law clerk for Thompson & Colegate. She went on to become an attorney. She had no family or friends in town, but boldly struck out and made a home. She's still here and invested herself in the community. Her nearest relative was a sister in San Diego. Her legal work was on the business and transactional side of the firm; everything was a case of first impression. Judge Greene also adapted to and learned new areas of law and counseled clients while working as a deputy county counsel for the County of San Bernardino. With a Midwestern disinclination for self-aggrandizement and the same innate quality, it took a while to realize that Judge Greene was very, very bright. She put her head down, applied herself, worked hard and "got" it. She knows how to come to a conclusion and make decisions. Yet at the same time, she has always remained open to new input, information and ways of looking at the various aspects of an issue.

A case in point is her association in the RCBA Barristers. The young single people in this group participated in activities together. There was increasing mention of a "John" who joined in activities. Judge Greene was singularly adamant that "John" was only a friend and had no other interest in her. Not knowing his character or intentions, he was vetted by Judge Greene's friends. By the way, he made the cut. It took some suggestions that perhaps she might want to review this relationship in a different light, which Judge Greene "heard" and mulled over; it resulted in her changing her position. This is her adaptability, even after she has come to a conclusion. Today, "John" Vineyard, the presiding judge of Riverside County Superior Court, and Judge Greene have been married for 26 years. They have two children, Kathleen (22), and James (20). Our late Judge Victor Miceli married them at the Mission Inn. Most of Judge Greene's family came out for the wedding, even some who were overseas. For her recent enrobement ceremony on January 3, 2020,

The Greene Family

Hon. Carol Greene being sworn in by Hon. John Vineyard

10 of the remaining 11 siblings came out. Again, some came from overseas.

Judge Greene is a loyal friend. Through the ups and downs, changes, life experiences, she holds onto good friends. One such good friend is Cynthia Nance, who is the Dean Emeritus and Nathan G. Gordon Professor of Law at the University of Arkansas School of Law. Dean Nance and Judge Greene met the first day of law school and have remained good friends for over 30 years. Dean Nance was one of the two non-family speakers at Judge Greene's enrobement ceremony (Presiding Judge Vineyard being the third). Dean Nance is a self-proclaimed girl from the Southside of Chicago. I was honored and privileged to be a speaker and am a self-proclaimed girl from Boyle Heights on the East Side of Los Angeles ("Go, Rough Riders"). Over the last 30 years, the lady lawyer friends formed in 1989 and still get together for "Girls' Day" and other adventures. Judge Greene started this tradition.

Maxine Morisaki, Hon. Carol Greene, and Dean Cynthia Nance

Hon. Carol Greene, and San Bernardino County Supervisor Josie Gonzales

Besides a strong intellect, Judge Greene is compassionate. She brings these qualities to her life and her work. Family is also very important. Every year, the family has a reunion at the homestead and it just keeps getting bigger. They collect bicycles for everyone to have at their disposal in the metropolis known as Sigourney. It must be a sight to behold because Judge Greene has described bicycles to mean 30 to 40 of them. The annual reunion is an opportunity for the siblings to come together, and their children to get to know their many, many cousins. Those children are getting married and having children. Rather than the term "gang," we may politely call it a "crowd" that descends on Sigourney annually.

A penultimate comment is that Judge Greene is known for having a wicked sense of humor. She truly enjoys jokes and laughs and appreciates them. Judge Greene also has a history of some funny, funny pranks which will not be enumerated but will remain shrouded in the mists of time. This is

mostly to protect the innocent, but not exclusively. The pranks are legendary and well remembered! Lastly, a little known fact will be shared. We always marveled how Judge Greene loved spicy food. Coming from the land of cheese casseroles where the spices one cooked with were salt, pepper and butter (or so we "sophisticates" used to tease), Judge Greene amazed us by her very liberal use of different types of HOT sauce and spices. She loves Sriracha, would buy selections of Louisiana Cajun hot sauce in New Orleans, and piled on Chinese chili pepper sauce. You name it; she used a LOT of it and still does.

What a great combination of qualities. Congratulations to Riverside County on the newest addition to our bench, and congratulations to our newest Superior Court Judge, the Honorable Carol A. Greene.

Maxine Morisaki is an attorney who practices civil law primarily in the counties of Riverside and Orange. She resides in Orange County and remains an astute observer of shifting alliances.

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective February 28, 2020.

Vanessa D. Corona – Solo Practitioner, Corona

William R. Dak – Engineers At Law, Riverside

Arturo Garcia – Law Student, Riverside

Amber Star Leal – Fagen Friedman & Fulfrost, Corona

Mykhal N. Ofili – Law Office of Mykhal Ofili, Ontario

Ashley A. Richardson – Law Office of George R. Bravo, Wildomar

Cameron Ridley – Office of the U.S. Trustee, Riverside

Anna Sacco-Miller – Fabozzi & Miller, Murrieta

Kristine M. Santos – Solo Practitioner, Bloomington

Classifieds

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 Charlene Nelson at the RCBA, (951) 682-1015 or rcba@riversidecountybar.com.

Office Space – Downtown Riverside
Riverside Legal & Professional Center. Downtown Riverside walking distance to Courthouse. Private Executive Suite offices, virtual offices and conference rooms rental available. We offer a state of the art phone system, professional receptionist and free parking for tenants and clients. Accessible from the 91, 60 and 215 freeways. (951) 782-8089.

Available for Referrals, Co-Counsel, Consultations
Legal Malpractice Certified Specialist Joel G. Selik by the CA State Bar Board of Legal Specialization. Referrals, Co-Counsel, consultations. California and Nevada. Also available for referral, pro hac vice for Nevada cases. Contact Joel@SelikLaw.com or 760-479-1515.

Conference Rooms Available
Conference rooms, small offices and the Gabbert Gallery 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.

Riverside County Superior Court Public Notice
Unlimited Civil Calendar Changes Effective Monday, February 17, 2020. The following civil calendar changes will be made as follows:

New Unlimited Civil cases – Blythe unlimited civil cases will be assigned to Department 260 in Blythe for all purposes. Riverside unlimited civil cases will be assigned to Departments 01, 02, 03, 04, 05, 07, and 10 for all purposes. Southwest Justice Center unlimited civil cases will continue to be assigned to Departments S302 and S303 for all purposes.

Existing Unlimited Civil cases – All unlimited civil cases that have a case age over 24 months will be assigned to Department S303 for case management purposes.

CEQA Writs of Mandate – CEQA writs of mandate cases will be assigned as follows: Cases originating from the Desert Region will be assigned to Judge Russell Moore in Department S205 at the Southwest Justice Center. Cases originating from the Western Region will be assigned to Judge Sunshine Sykes in Department 06 at the Historic Courthouse. Cases originating from the Mid County Region will be assigned to Judge Raquel Marquez in Department S303 at the Southwest Justice Center.

Should you have any questions regarding these changes, please contact the court clerk's office at (951) 777-3147.

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