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In This Issue:

Capital Litigation

Domestic Violence Court

Family Justice Center

Proportionality

and the Death Penalty

Riverside County's

Mental Health Court



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C O N T E N T S

Columns:

- 3 **President's Message** *by Harlan B. Kistler*
 10 .. **Barristers President's Message** *by Jean-Simon Serrano*

COVER STORIES:

- 6 **Capital Litigation in Riverside County**
by R. Addison Steele
 12 **Proportionality and the Death Penalty**
by Chad Firetag
 13 **The Family Justice Center**
by L. Alexandra Fong
 14 **Domestic Violence Court**
by Lori Myers
 26 **Riverside County's Mental Health Court**
by Maura Rogers

Features:

- 8... **Proverbial Lessons from a State Bar Suspender**
by Jill A. Sperber
 16..... **The Leo A. Deegan Inn of Court**
by Robyn A. Lewis
 18..... **State of the Court: "Ready for Trial"**
by Hon. Thomas H. Cahraman
 20..... **Judicial Profile: Judge Stephen Gallon**
by Donna Thierbach
 22..... **Opposing Counsel: L. Alexandra Fong**
by Jeffrey A. Boyd
 24..... **Preemption Preempted**
by Richard Brent Reed

Departments:

- Calendar 2 Membership 28
 Classified Ads 28 Bench to Bar 28

CAPITAL LITIGATION IN RIVERSIDE COUNTY

by R. Addison Steele

All specialty legal practice areas have a community that spans the local geographic area, the state and even the nation. Capital defense practitioners are particularly connected to our colleagues because our training seminars attract practitioners from all across the country. Until a few years ago, those of us from non-Southern states would express our support and profound respect for the attorneys who practiced capital case defense in the Southern "Death Belt." Our perception is that in the South, there are so many cases and so few trial lawyers with the experience and skills for capital litigation that people of color are overwhelmingly the clients for whom death is sought, and that those few experienced and skilled attorneys are severely underpaid and overworked when the ultimate punishment is at stake.

That has changed over the last few years, as Riverside County has joined the Death Belt as a place where, in the eyes of the capital defense community, death is sought with reckless abandon. Our reputation is best described by the nicknames Riverside County has developed over the past few years: the "Little South," the "West Coast's South," and "California's Southern Justice." The raw numbers explain how we are seen by the rest of the nation. Riverside County has a population of about 2,000,000 people and has 54 capital defendants. Los Angeles County, with a population of about 10,000,000, has a number of capital defendants in the 60s. Both San Bernardino County and San Diego County, which have roughly the same populations as Riverside County, each have fewer than five capital defendants. The vast majority of our 54 capital defendants are Hispanic or black.

Perhaps death penalty proponents feel that having our county known across the country as the Little South is something of which we should be proud. That is simply a misguided position to take. The Southern Death Belt is not just an appellation that carries a simple definition as a place where death is frequently sought; what comes with that name is a well-deserved perception of an extremely unjust death penalty machine. And that is what Riverside County is now known for being.

The perception is accurate in some ways, such as the high number of capital cases per capita and the number of minority capital defendants, but the truth is, in fact, very different from the perception in many other aspects, most notably the quality of representation for most capital defendants. There have been extreme examples from the South, and Texas in particular, of injustice in capital cases due to incompetent defense lawyers, such as when Calvin Burdine's lawyer slept at counsel table during critical stages of his capital trial. (See *Burdine v. Johnson* (2001) 262 F.3d 336.) In many Southern jurisdictions, the judge handpicks the defense attorney, which carries with it an implied message that the attorney had best not be too difficult when defending the client if that attorney ever wants to get appointed again. The most frequently cited reason for

the poor quality of representation in capital cases is judicially appointed attorneys who are paid on a contract basis per case, as opposed to an established public defender system. With a public defender system, there are safeguards to assure a high quality of representation, such as having direct supervisors who mentor attorneys and evaluate them as they gain experience, and a promotion system in which attorneys work their way up to more and more serious cases. Most importantly, the public defender system provides peer support, which results in clients benefiting from the knowledge and experience base of the many attorneys in the office with whom a client's particular attorney discusses the case to get strategic and legal input; sole practitioner subcontractors don't have that support.

Although the majority of capital defendants in Riverside County are represented by contract counsel, which does carry the inherent risks of subcontractors not having the oversight and support system that deputy public defenders have, the contract system here in our county is quite different from that in most Southern jurisdictions. An administrator appoints the attorney, in contrast to the vast majority of Southern jurisdictions where the subcontracting lawyer is appointed by the judge hearing the case and thus depends on the trial judge for his or her income.

What is also nothing like the South is our Public Defender's office here in Riverside County. In the spring of 2008, we started our Capital Defense Unit, which was made up of four experienced attorneys who could specialize in capital litigation. On June 28, 2010, the Public Defender opened a "glass wall" conflict office for capital cases. Six experienced attorneys (of which I am one) have been assigned to that new office, with the goal of building capital defense units on both sides of the glass so that there is a cadre of lawyers in the Law Offices of the Public Defender who have extensive experience in capital litigation, and so that the Public Defender having to declare a conflict in a capital case can become a rare occurrence.

There is also hope when it comes to the aspects of Riverside County being the Little South that are accurate, such as the sheer number and racial inequality of capital defendants in our county. District Attorney-Elect Paul Zellerbach has said in the press that he intends to review the pending capital cases to determine if they are appropriate cases for seeking the death penalty. For those of us who are opposed to the death penalty, being called the Little South is disheartening, partly because it is not accurate as to the quality of representation that capital defendants receive here in Riverside County, but also because it is so very accurate as to the number and racial inequality of capital defendants in our county. We will continue to hope for change until our nickname of the Little South is no longer accurate in any way.

R. Addison Steele is a Riverside County deputy capital defender.

