

OCTOBER 2011 – ADI NEWS ALERT

BY

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This news alert¹ covers:

- Division One phone numbers changed;
- Riverside district attorney's change of address;
- Reminder to take account of Penal Code section 1538.5, subdivision (m)'s requirement of making or renewing a suppression motion in the superior court;
- Passings: We note sadly the deaths of the Honorable David Sills, former presiding justice of Division Three, and the first ADI staff attorney, Harold Tyvoll.

Division One telephone numbers

As of September 19, 2011, all of the Division One phone numbers were changed. The main number is **(619) 744-0760**. Attached is the clerk's office list effective that date.

Riverside district attorney address

Division Two complains that, even though the Riverside district attorney moved in February 2010, some attorneys are still serving them at the old address. It is imperative that attorneys check their proof of service forms and other boilerplate and update them. Failure to make required service is a ground for rejecting a filing. (Cal. Rules of Court, rules 8.18, 8.25(a), 8.360(d).)

Once again, the new address is:

District Attorney
County of Riverside
3960 Orange Street
Riverside, CA 92501
(951) 955-5400

¹As always, panel attorneys are responsible for familiarizing themselves with all ADI news alerts and other resources on the ADI website.

We have asked the court to provide us with the names of panel attorneys who do not comply, and we will take appropriate action.

Making sure that a motion to suppress was properly preserved by motion in the superior court after the preliminary hearing and was not waived as part of a guilty plea

We have noticed several cases recently in which attorneys have raised search and seizure suppression issues even though the suppression motion had not been made in the trial court, meaning the *superior* court. If the original motion was made before or at the preliminary hearing, it was not before a judge sitting as a “superior court” and must be renewed in that court to be reviewable on appeal under Penal Code section 1538.5, subdivision (m), and *People v. Lilienthal* (1978) 22 Cal.3d 891, 896-897. (See ADI Criminal Appellate Practice Manual, §§ 2.35-2.36, for more information on this requirement and the ways in which a suppression issue can be renewed, such as a motion under Pen. Code, § 995 or 1538.5.)

Another problem is attorneys’ failing to notice the suppression motion was waived as an issue on appeal by terms of the plea bargain.

To avoid raising unarguable issues, counsel should make sure that procedural prerequisites have been fulfilled and the issue has not been waived. If there are problems in this regard, counsel should determine whether any argument in favor of considering the issue, anyway, can be made.

The Honorable David G. Sills

We note with deep regret and sadness the passing of former Presiding Justice David G. Sills of Division Three. I met Justice Sills a number of times when visiting Division Three, and innumerable staff and panel attorneys encountered him at oral argument or other functions. He always was a good friend to ADI and the panel and gave us his support whenever we needed it.

Neil Auwarter, ADI’s long-time “ambassador” to Division Three, remembers him in the attached tribute.

Harold (“Ty”) Tyvoll, 1931-2011



Another recent sad loss is the passing of Harold Tyvoll, known to us all as “Ty.” He was the first staff attorney hired by founding Executive Director J. Perry Langford in 1972, when the ADI “One” (a prototype of the present project-panel system) was started. The late Ken Keller was second; I was

the third. Ty was a mentor to the other staff attorneys and all panel attorneys with whom he worked and gave us invaluable guidance.

As the senior staff attorney, Ty was a cornerstone of ADI's success in those precarious early days. His and other ADI representation was so superior to the customary work in the unmonitored, haphazard system previously in place that the court and all other observers soon could not conceive of returning to the "Bad Old Days." Their accomplishments ultimately laid the foundation for the statewide system of indigent appellate representation we know today.

Ty handled some significant Supreme Court cases during his career, including victories in *People v. Chadd* (1981) 28 Cal.3d 739, a death penalty case enforcing Penal Code section 1018's requirement of defense counsel's consent to a plea of guilty to a capital offense; *People v. Drew* (1978) 22 Cal.3d 333, establishing a new formulation of the insanity defense (but later superseded by Pen. Code, § 25, subd. (b), which reinstated the *M'Naughten* test); and *People v. Williams* (1976) 16 Cal.3d 663, reversing a conviction for use at trial of statements to police made by an unavailable witness. He was on the unsuccessful side in several other ADI cases and also handled some civil and non-ADI criminal cases in the high court. And that does not even cover the hundreds of Court of Appeal cases he did.

It was a privilege working with Harold Tyvoll. His legacy to all of us is the crucial contribution he made in establishing the credibility and effectiveness of the project-panel system.