

# *Santa Barbara* Lawyer

Official Publication of the Santa Barbara County Bar Association  
March 2021 • Issue 582



**Spotlight on  
the Honorable  
Colleen K. Sterne**

Gender Equity Pronouns / Fair Cross-Section Jury Inclusion  
CA State Bar's Inclusion & Diversity Report Card / E-Bikes & Pedestrian Safety  
Medical Malpractice Plaintiffs Prefer Arbitration / Transformative Attorney Communication  
Language of Forensic Source Comps Part II / Virtual Bench & Bar Conference Recap

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Mission Statement

Santa Barbara County Bar Association

The mission of the Santa Barbara County Bar Association is to preserve the integrity of the legal profession and respect for the law, to advance the professional growth and education of its members, to encourage civility and collegiality among its members, to promote equal access to justice and protect the independence of the legal profession and the judiciary.

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## Articles

- 7 Spotlight on the Honorable Colleen K. Sterne, *Colleen K. Sterne*
- 9 California State Bar's Position on Diversity, Inclusion & Its First Diversity Report Card, *Elizabeth Diaz*
- 11 Happy Gender Equality Month!, *Erin Parks*
- 12 Transformative Communication For Attorneys, *Penny Clemmons, Ph.D.*
- 16 E-Bike Laws & Safety, *Renee Nordstrand*
- 18 The Language of Forensic Source Comparisons (Part II), *Robert M. Sanger*
- 22 Recap of the First Virtual Bench & Bar Conference, *Tara Messing, Teresa Martinez, and Russell Terry*

- 26 Medical Malpractice Plaintiffs' Attorneys Prefer Arbitration Over Trial, *Marc Karlin*
- 28 Fair Cross-Section Jury Inclusion, *Charles White*

## Sections

- 30 Motions
- 34 Classifieds

## On the Cover

The Honorable Colleen K. Sterne  
photograph by Michael Lyons

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# Spotlight on the Honorable Colleen K. Sterne

BY COLLEEN K. STERNE

First things first. . .

Even during the most restrictive periods of the COVID-19 pandemic, the Santa Barbara County Superior Court remained open to provide constitutionally required criminal justice services and civil services for emergency needs like temporary restraining orders. Enormous gratitude is due to CEO Darrel Parker, administration, IT and Court staff, who did the heavy lifting and made many sacrifices to make it work. I know I also speak for my judicial colleagues in thanking these hard-working individuals for their diligence and great good will. And I am grateful to our entire legal community – lawyers and their staff – for their admirable patience and cooperation.

I had to get that off my chest, but I suppose I should get to the task at hand prescribed by *Santa Barbara Lawyer* – that is, a bit about me, and some other remarks.

I am a 1980 graduate of UCSB, with a degree in English. I attended our local Santa Barbara College of Law, graduating and passing the bar in 1988. My practice as an advocate was mostly civil litigation in an insurance defense environment.

Early in law practice I became involved in the budding mediation movement, and as the years passed, I spent more and more time as a mediator, and completing a Graduate Certificate in Mediation from the Strauss Institute at Pepperdine. In 2000, I left advocacy practice and began mediating full-time. I am particularly proud of the years of pro bono mediation work I did for the court before becoming a judicial officer, and thereafter the active role I played in the design and implementation of dispute resolution services such as CMADRESS and the volunteer Settlement Master program. I continue to be closely and happily involved with the Court's dispute resolution programs.

In 2002, I was urged to throw my hat in the ring for a judicial seat with no incumbent. I ran against the Honorable Brian Hill, and he bested me (it was a close race!) Judicial races being quite civil, we got to know each other a bit in the process, and I consider him a good colleague and friend. As he can also tell you, such races are arduous but highly educational.

In 2003, I was selected by the Santa Barbara County Superior Court Judges to become the Family Law Commissioner, hearing the 1058 Child Support Calendars, Temporary Restraining Orders, and other family law matters as assigned. This required hearing matters in Santa Barbara, Santa Maria, and Lompoc. It was an enormous privilege and pleasure getting to know Court personnel and attorneys all over Santa Barbara County. I loved the job and would not have left it except for a long-held desire fulfilled. After seven years as commissioner, I was appointed to the judiciary in January of 2010 by Governor Arnold Schwarzenegger.

And, it has in fact been a dream come true. I have always been attracted to problem-solving and achieving a correct legal result, balanced with equity when appropriate. I love my daily work as a Judge both on and off the Bench. I remain energized to come to the courthouse every day. It is an extraordinary privilege to do this work for the community, to be entrusted with the judicial role. I also enjoy the opportunity to do outreach to schools and community organizations. I am a part of legal organizations including Inns of Court and Santa Barbara Women Lawyers. A key attribute of a good judge is skill as a good listener. Proper results are critical, but just as important are attentiveness to process, fairness, diversity, and civility; all things that require active listening with a calm and rational demeanor. Curiosity and a lively interest in human nature is also important.

My current assignment is in the civil trial department, hearing general civil and family law cases. I am also the South County Probate Judge, hearing probate, conservatorship, and guardianship matters, as well as the LPS mental health calendar. On Friday mornings, I hold the weekly mandatory settlement conference calendar. Fortunately, we have been able to meet nearly all immediate civil needs despite COVID-19. This has meant mostly normalized daily operations, with a number of major hurdles remaining; including but not limited to, handling the extraordinary backlog of litigation activity postponed by the pandemic, and the ability to provide jury trials.



Colleen K. Sterne

I prefer a well-ordered and well-controlled courtroom. I require civility and basic good manners. I do not much care for grandstanding, although I understand the desire to use it in front of juries or a demanding client. I believe that its impact on juries (and clients) is becoming more of a myth each day, as people live in an internet-powered world that lets them instantly recognize and distrust overdone aggression, emotion, and other theatricality. Jurors prefer straightforward lawyers who don't dither around and who keep gratuitous conduct to a minimum.

In the 'don't dither around' category, I place matters like a thorough understanding of how to examine and cross-examine witnesses, and how to lay foundation and get exhibits admitted. Trial preparation and courtroom skills are so central to a litigator's success that I am continuously surprised by the number of attorneys who answer ready for trial but are unready to present their case. In today's environment it can be difficult for new lawyers to get solid trial experience during their formative years in practice, and the results are visible in the courtroom. My recommendation for new lawyers who want to do trial work is threefold. First, try to attend a quality trial advocacy program, like the one offered at the Hastings College of Law (many law schools offer such programs now). Second, early on in your career, try to do some work in the public sector as counsel for a government agency, like the District Attorney or Public Defender, where early trial experience is more likely. Third, take the time to watch some trials in person (film is no substitute), court and jury, from start to finish, pretrial conference through verdict. It may seem like a great sacrifice, but it is in fact time very well spent. It really does lead to better understanding of how all the parts of the trial fit together. Do a bit of due diligence to discover when lawyers admired for their skill are involved, and it will be a terrific learning experience.

I was fortunate to have several judicial mentors who helped me along the way. One of the most steadfast was the Honorable J. William McLafferty, a great civil judge. My relationship with him formed around our mutual interest in dispute resolution programs. He worked in Department 5 of the Santa Barbara Superior Court's Anacapa Division for many years, until we lost him far too soon. Working in his old chambers and courtroom has been wonderful, but also a little strange. Not quite haunted, but I could swear I hear his voice, or the strain of a show tune, from time to time.

I live in the City of Santa Barbara, which allows year-round enjoyment of the ocean, a proximity central to my wellbeing. My preferred exercise is swimming, which I enjoy every chance I get, mostly in a pool rather than the ocean these days. In my spare time, I prefer quiet pursuits.



*Colleen and her husband of 40 years, Jim, vacationing in Venice, Italy.*

I am an avid reader, a literary omnivore. I read a lot of nonfiction (I just finished *Caste* by Isabel Wilkerson- very thought provoking) but in lighter fare, I have a particular affection for science fiction and well-crafted mysteries. I like to needlepoint and crochet. I have been a choral singer since childhood, choir participation has always been important for me. There is nothing like singing to generate useful endorphins. Sadly, group choral singing has been stopped cold by the pandemic. It will be a happy day indeed when I stand up again in the alto section of the choir at Trinity Episcopal Church. I have also had the good fortune to travel quite a bit, and I cannot wait to get back to all of it.

All of us have so much that we are missing as the pandemic rolls on. But it will end, and when it does, the legacy of this time can be positive, if we take what we have learned from it seriously. Professionally, we have made a leap into technology that might have taken a decade to become commonplace. Remote proceedings on platforms like Zoom allow for great savings in time and travel for attorneys, experts, litigants, and witnesses. Other technical, and cultural, changes lie ahead.

Our personal lives have also been changed; our relationships with others limited and tested by isolation. But in many instances beautiful flowers have bloomed in the COVID-19 hothouse, enriching our lives in unexpected ways. This is also a good time to take the measure of what is most important to us in life. For me, in a very strong second position is my work as a judge, the great privilege of public service. In first position are my family and friends, with Jim,

*Continued on page 31*



# California State Bar's Position on Diversity, Inclusion & Its First Annual Diversity Report Card

BY ELIZABETH DIAZ

The position of California's State Bar (State Bar) on diversity and inclusion is that of promoting it in key areas of influence, in particular, the pipeline into the legal profession, retention and career advancement, and judicial diversity. The State Bar adopted as its diversity definition, the reporting categories in Government Code section 12011.5(n): race, ethnicity, gender, gender identity, disability, sexual orientation, and veteran status. (The State Bar of California, 2020, <http://www.calbar.ca.gov/About-Us/Our-Mission/Promoting-Inclusion-and-Diversity>.)

In 2020, the State Bar published its First Annual Report Card on the Diversity of California's Legal Profession. According to Interim Executive Director of the State Bar, Donna S. Hershkowitz:

The State Bar has committed to concrete objectives to help the profession move toward greater diversity and inclusion, and developing this annual Report Card is among them. By creating a snapshot in time based on the most inclusive data available, we provide a tool for accountability for ourselves and a stimulus for others to take action. We know that the lagging growth of diversity in the legal profession limits progress to eradicate inequities in the justice system. By working to diversify the profession, we do our part to address those inequities and help to shape the California we wish to see, ...

(The State Bar of California, 2020, <http://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-publishes-first-annual-report-card-on-the-diversity-of-californias-legal-profession>.)

In the last few years, the State Bar has held annual diversity summits to bring leaders in key legal sectors together to discuss how to improve inclusion and diversity in the legal profession. (*Id.*)

Early in 2019, the Board of Trustees adopted objectives to advance diversity and inclusion within the legal profession. The objectives adopted included:

## **Pipeline programs**

where the State Bar partners with California law schools to study attrition rates for law students of color and identify evidence-based solutions. In addition, the State Bar undertook Bar Exam initiatives,

including a review of exam questions from a diversity and inclusion perspective, as well as additional grading analyses to identify potential disparate impacts of specific essay and performance test questions.

**Retention and Career advancement** through the collection of more data on attorney demographics, practice types, and career trajectories. The State Bar surveyed attorneys who voluntarily transferred to inactive status. The survey results were used to support analyses of diverse attorneys' entry into, retention, and advancement in the legal profession, and to inform future efforts.

**Statewide leadership** to develop an annual report card on diversity in the profession and explore ways to expand and improve elimination of bias training that is part of the mandatory legal education requirements. (The State Bar of California, 2020, <http://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-board-of-trustees-adopts-diversity-objectives>.)

In 2019, the State Bar launched an ongoing voluntary annual survey intended to capture key demographic information as well as information on employment, workplace environment, and issues key to recruitment, advancement, and retention.

The State Bar's First Annual Report Card on the Diversity of California's Legal Profession issued on July 20, 2020 is based on census data collected from licensed attorneys. The intent of the Report Card was to provide information on the state of the profession from a diversity and inclusion perspective and provide baseline data on the diversity and workplace satisfaction of California attorneys among multiple demographic groups and employment sectors. The findings in the Report Card are based on responses



Elizabeth Diaz

from approximately 95,000 active attorneys. (The State Bar of California, 2020, <http://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-publishes-first-annual-report-card-on-the-diversity-of-californias-legal-profession>.)

Although the First Annual Report Card showed that newly licensed attorneys better reflect California's diverse population, it also showed that more work needs to be done in representing California's diversity population amongst California's attorneys.

Key findings in the First Annual Report Card are:

- White attorneys account for nearly seventy percent (70%) of California's active licensed attorney population, while people of color constitute sixty percent (60%) of the state's population.
- Latinos, in particular, are under-represented among California attorneys in comparison to their representation in the state. Latinos make up thirty six percent (36%) of the state's population, and only seven percent (7%) of California's licensed active attorneys.
- In the last thirty (30) years, the proportion of new attorneys who are Asian or multiracial have more than tripled, while the proportion of new Latino attorneys have doubled. The proportion of new attorneys who are Black have remained stagnant.
- Almost three-quarters of California attorneys work in the private sector. A transformative impact on the legal profession would occur if the private sector were more diverse.
- The government and nonprofit sectors where attorney salaries are among the lowest are the most diverse, while private law firms are two-thirds white and dominated by men, are the least diverse. The government and nonprofit sectors comprise seventeen percent (17%) of the legal profession, and although they are more diverse than the private sector, women and people of color remain underrepresented at leadership levels. (*Id.*)

The First Annual Report Card makes a Call to Action for the legal profession to influence and advance an inclusive workplace that supports a diverse workforce. It also makes recommendations to employers and attorneys for Workplace Leadership and Workplace Satisfaction. Here is a summary of the Call-to-Action recommendations:

### **Workplace Leadership for Employers**

- Collect demographic data on recruitment, hiring, promotion and attrition. The staff reviewing demographic data should have the authority to recommend policy changes.
- Be mindful of the increasing diversity of new State Bar

licensees and strive to ensure that new entry-level hires reflect this diversity.

- Set measurable and visible diversity and inclusion goals, and regularly report and discuss progress.

### **Workplace Leadership for Attorneys**

- Take an active role in advancing inclusion and diversity by participating in goal-setting efforts and holding employers accountable for results.

### **Workplace Satisfaction for Employers**

- A diverse workplace is not necessarily an inclusive workplace. Employers must demonstrate a commitment to increasing opportunities and improving the workplace culture for women, people of color, LGBTQIA+, and people with disabilities.
- Work allocation should reflect the priorities of your organization's retention and advancement goals.
- Visit your salary and compensation tables regularly to ensure you are keeping pace with the labor market.
- Think comprehensively about your compensation. Consider automatic bonuses, discretionary bonuses, equity share opportunities, and health care benefits.

### **Workplace Satisfaction for Attorneys**

- Learn what it takes to advance in your workplace. Find someone in your organization to whom you can reach out for this information.
- Think comprehensively about your compensation.

### **Everyone**

- Commit to inclusion and diversity. (*Id.*)

The First Annual Report Card on the Diversity of California's Legal Profession can be viewed in its entirety at: <http://www.calbar.ca.gov/Portals/0/documents/reports/State-Bar-Annual-Diversity-Report.pdf>.

The Santa Barbara County Bar Association (SBCBA) is committed to being more inclusive and believes we all benefit with having diversity in the legal profession. It has created a Task Force committed to producing concrete goals for the SBCBA to promote and support diversity and inclusivity. The SBCBA shares the sentiment of the authors of the First Annual Report Card: "Having a diverse legal profession positively impacts the administration of justice, ensures fairness and promotes the rule of law." ■

*Elizabeth Diaz is the President of the SBCBA and a Managing Attorney of the Family Violence Prevention and Immigration Programs at the Legal Aid Foundation of Santa Barbara County.*



# Happy Gender Equality Month!

BY ERIN PARKS  
she - her - hers

Communications often fail to recognize the diversity of our society thereby encouraging bias and discouraging inclusivity. It is important to use pronouns that correspond to a person's gender identity.

Language and word choice can reflect unconscious assumptions and bias which can be interpreted as discriminatory. Gender-inclusive language enhances trust and confidence and combats unconscious prejudice that can harm others.

The following initial steps can be taken to implement gender equity in language into your daily life and support gender inclusivity:

**1. Never Assume Someone's Gender Identity.** By giving a person an opportunity to share their pronouns, you demonstrate that you did not assume their gender identity based on appearance.

**2. Offer Your Pronouns.** Gender inclusion can start by offering your own pronouns which opens the door to allow

one to be seen for who they are. Pronouns can also be offered through email signatures, Zoom names, name tags and social media profiles.

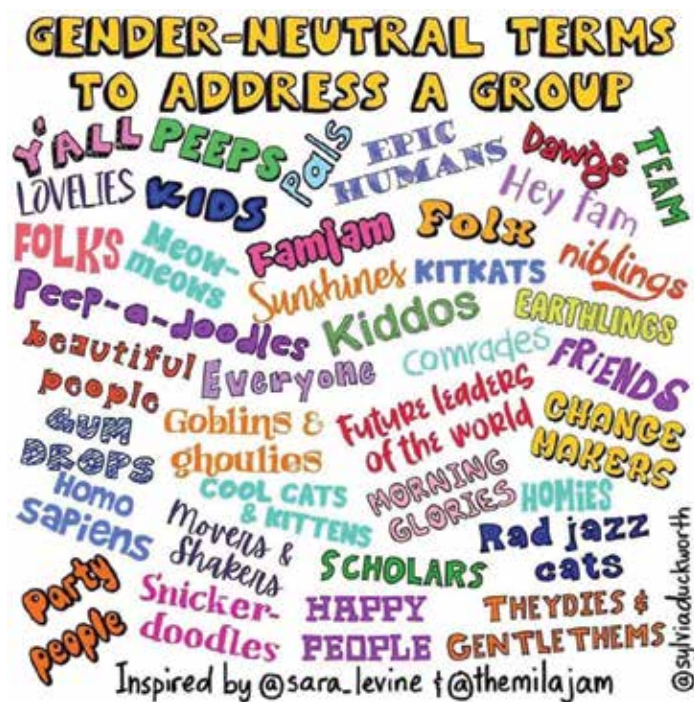
**3. Gender Neutral Language.** Avoid exclusionary forms of language. It is best to always use gender-neutral language. Womxn can also be used as an alternative spelling of woman which is inclusive of trans and nonbinary women, designed to avoid suggestions of sexism perceived in the sequences of "man" and "men."

**4. Education & Training.** Below is a preliminary list of terms to aid in initial efforts:

- **Cisgender:** A person whose gender identity and expression are aligned with the gender they are assigned at birth.
- **Gender:** A set of cultural identities, expressions, and roles – codified as feminine or masculine – that are assigned to people based upon interpretations of their bodies, and more specifically, their sexual and reproductive anatomy.
- **Gender Binary:** A socially constructed system of viewing gender as consisting solely of two categories, "male" and "female," in which no other possibilities for gender are believed to exist. The gender binary is a restrictive and inaccurate way to view gender because it does not consider the diversity of gender identities and gender expressions among all people. The gender binary is oppressive to anyone that does not conform to dominate societal gender norms.
- **Gender Expression:** The multiple ways (e.g., behaviors, dress, etc.) in which a person may choose to communicate gender to oneself and/or to others.
- **Gender Identity:** A personal conception of oneself as male, female, both, neither and/or another gender. Gender identity is a matter of self-identification; no one can tell anyone else how to identify or what terms to use. Gender identity is different from sexual orientation, and everyone has both gender identity and a sexual orientation.



Erin Parks



Continued on page 29

# Transformative Communication For Attorneys

BY PENNY CLEMMONS, PH.D.

In my first semester of law school, a professor posed a question to the class about capital punishment. He called on me and as I began to say, "I feel that..." The professor stopped me in mid-sentence and said, "I don't want to know how you feel, I want to know what you think!" Immediately, I had flashbacks to all the hours of psychotherapy I devoted to getting in touch with my feelings and out of my head! Suddenly, I was in a universe where feelings not only did not count, but they were also considered counterproductive.

It was necessary for me to find a bridge between my passion for the law and my passion for psychology if I was going to successfully balance my two professions. I turned to the theory of Transactional Analysis, which was developed by Eric Berne, M.D. (Berne, *Games People Play*

(1964); see Harris, *I'm OK, You're OK* (1967).)

While working with a patient who was a seasoned and aggressive litigator, Berne noted that the attorney would frequently ask him if he was speaking to the attorney or the little boy. This innocuous question led to the formalization of two of three ego states. The Adult and the Child. While the Parent ego state evolved later, we have an attorney to thank for the theoretical evolution of Transactional Analysis.



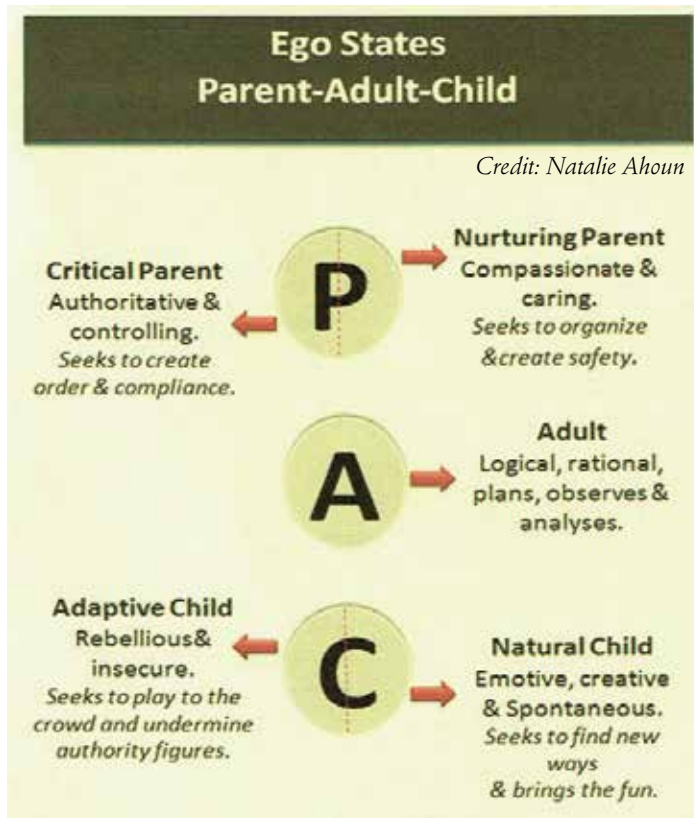
Penny Clemmons

From Freud's psychoanalytic model of the superego, ego, and id, Berne extrapolated his theory of ego states: Parent, Adult and Child. He bisected the Parent into two parts: the Critical Parent and the Nurturing Parent, and the Child into two parts: the Adaptive Child and the Natural Child. These ego states manifest themselves both in our intrarelations with our self and our interrelations with others.

The Parent ego state is developed in the first five or six years of life in the same way the Superego evolves. It has two parts: the Critical Parent and the Nurturing Parent. Examples of the Critical Parent are, "You would get more respect if you became a doctor instead of a lawyer" or "You would make more money if you became a lawyer than a doctor." This is a no-win ego state. It is the "I told you so" ego state.

In one of my first trials, my opponent was a scorched earth litigator. I lost the trial, and my Punitive Parent began to excoriate me about my performance. The next morning there was a voicemail from opposing counsel congratulating me on a job well done and saying if we switched clients I would have prevailed, and he would have lost. His facts trumped my facts.

The Adult ego state is the fulcrum between the Parent and the Child. It is analogous to Freud's ego and develops as a child begins to gain control over their environment in late infancy. The ability to hold an object like a baby bottle or to pick up a toy is its genesis. The Adult ego state has no emotions and is logic personified. It functions as our internal computer and creates an impermeable boundary between thinking and feeling. To be logical and rational, we need to separate ourselves from our emotions. How I felt about the



Continued on page 14



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Clemmons, *continued from page 12*

death penalty was irrelevant to my logical thoughts on the subject. I needed to respond to the question from my Adult.

Lastly, the Child Ego state is the container for emotions and reactions to external events. It is also bifurcated into two parts, like the Parent Ego State: the Adaptive Child and the Natural Child, and is analogous to Freud's id. The Child Ego state begins to develop at birth until about the age of five.

The Adaptive child is rebellious and acts out with authority figures. Frequently it is easily observable in adolescents just as the Punitive Parent can be observed in the parents of the Adaptive Child. This ego state can also be noted in the courtroom when counsel slams a file on counsel table to be sure the Judge knows what he thinks, or a litigator is observed playing solitaire on his iPhone during testimony.

Judges can also manifest their Adaptive Child. Several years ago, I was in trial and did not know the Judge. This was before our Judges had computers on their desks and they took notes by hand. As I was conducting my examination of a witness, I noticed the Judge was very busy on the dais. I was so impressed by the copious notes he was taking and was feeling quite pleased with myself. I asked him if I could approach the witness with a document and he said, "Yes". As I walked up to the witness to show her a document, I glanced over at the Judge's desk and much to my dismay saw that he was not writing notes but rather was busily engrossed in coloring a stained-glass window pattern.

On another occasion, when I was finished pontificating during the Law and Motion calendar, the Judge

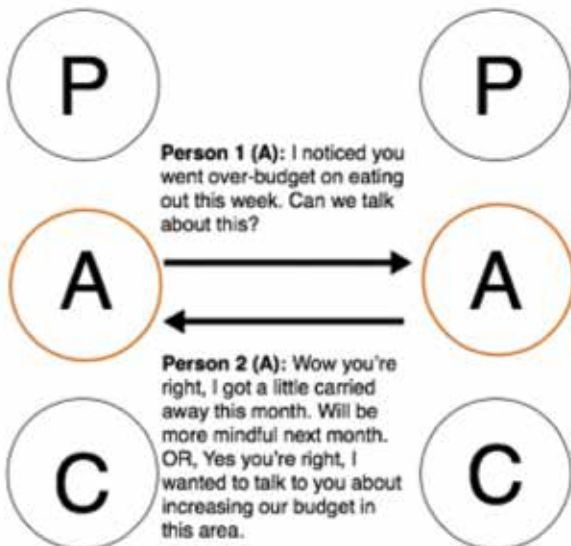
said to me, "Dr. Clemmons, I know you are crazy." This was in front of a standing room only courtroom and my client was present. He then asked if I knew how he knew I was "crazy"? I tentatively (no pun intended) responded, "No" while anxiously awaiting his ruling on my motion, as well as how he arrived at his diagnosis of me. I girded myself for his response and listened as he told the rapt audience, "It was because I was a psychologist, and everyone knew they were crazy. That's why they became psychologists in the first place." He thought it was very, very funny. I was flabbergasted but did win the motion.

The Natural Child is the source of a sense of humor, creative ability, and the seat of emotions. It is playful and spontaneous. It is innocent but not naïve. It is the source of energy for healthy relationships.

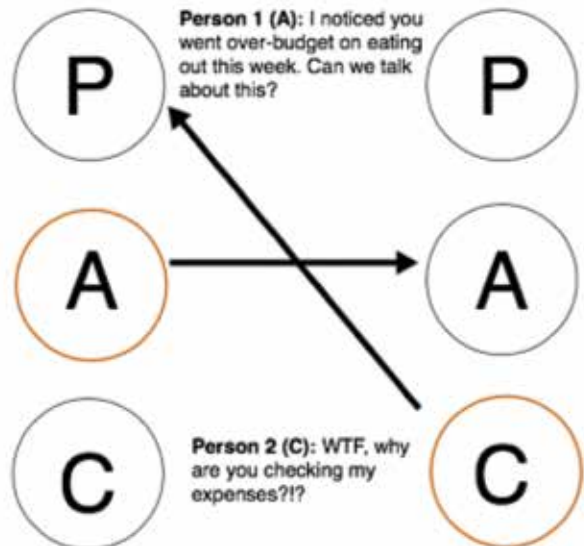
To benefit our communications with ourselves and others, our task is to enhance the Nurturing Parent and the Natural Child while tempering the Critical Parent and the Adaptive Child. Concurrently, the Adult ego state needs to maintain its capacity to analyze and regulate the ego states.

The more we can recognize our own tendencies towards a particular ego state, we can correct and prevent miscommunication and inappropriate behavior. Think for a moment about the ego states you embrace. Are you authoritative and judgmental? Check Critical Parent and consider who treated you this way as a child. Do you like to plan for deadlines to avoid stress? Check Nurturing Parent. Do you like to show off in front of other people? Check Adaptive Child. Do you take time for a fun hobby? Check Natural Child. You can see from this exercise that the Critical Parent is the enemy of the Natural Child. We can transform our communications as lawyers by examining how our

**COMPLEMENTARY TRANSACTION**



**CROSSED TRANSACTION**





ego states interact, or to use Berne’s terminology, transact.

The goal of our communications is to avoid what are defined as cross transactions and utilize complementary actions. Complementary transactions occur when a person in one ego state sends a message to another person and gets an answer from the same ego state. In this way, communication can continue without interruption. This could be Parent to Parent or Child to Child or Adult to Adult. “What time would you like to have dinner?” “7 pm would be great. “

A crossed transaction is one in which the ego state addressed is not the one which responds. Some people get stuck in a single ego state like the Punitive Parent making it difficult to interact with people. The response to what time would you like to have dinner becomes why do I always have to decide what time to have dinner? Crossed transactions create defensiveness in the receiver of the message.

**Examples of Crossed versus Complementary Transactions:**

**Question:** What day of the week is it? (A frequent question during the COVID-19 pandemic.)

**Crossed Answer:** Stop asking me. Why don’t you look at the calendar!

**Complementary Answer:** It’s Tuesday.

**Question:** Where in the heck is my brief, in a loud and angry voice.

**Crossed Answer:** Do you think I am your secretary?

**Complementary Answer:** I’ve spent an hour looking for the blasted thing too, it’s annoying.

The Transactional Analysis paradigm is a construct to apply to our interactions with our inner selves, our relationships, and our work. It can assist us in determining where our communications break down and become ineffective or even toxic. A Google search will provide the reader with several self-administered tests to determine one’s predominant ego state and with this knowledge how to communicate more effectively. ■

**ONLINE RESOURCES:**

- Lauren Martin, What Ego State Are You Living In? (January 7, 2019), <https://wordsofwomen.com/what-ego-state-are-you-living-in/> .
- Natali Morad, How to Use Psychology to Communicate Better and Avoid Conflict (February 28, 2018), <https://medium.com/@NataliMorad/how-to-communicate-better-with-transactional-analysis-d0d32f9d50da#:~:text=Complementary%20transactions%20%3D%20effective%20and%20successful,and%20actually%20receive%2C%20are%20aligned.>

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# E-Bike Laws & Safety

BY RENEE NORDSTRAND

There is a new kid on the block...or, should I say, bike path. It is the electric bike, or E-bike, which everyone and their mother seems to be purchasing in Santa Barbara and beyond, particularly during this last year of the COVID-19 quarantine. E-bikes are especially popular with those who are not avid cyclists and want a little help when faced with hills or headwinds. They are also a great alternative to enclosed transportation since they offer low cost, energy efficient, and emission-free transportation that also has physical and health benefits. Recognizing that E-bikes are more than just a trend, Santa Barbara has begun work on a new E-bike sharing program. Manufacturer BCycle will supply 250 E-bikes and 500 docking stations at three Eastside locations (including by Trader Joe's on Milpas Street and by the Eastside Library), and two Westside locations are in the works. Eventually, BCycle will also have docking stations on the Waterfront, Cabrillo Boulevard, and Mission. Anyone interested in testing out an E-bike for free can check out the County of Santa Barbara's EZ-Bike Project where interested riders can borrow a bike for an hour or a long weekend. (See [www.trafficsolutions.org/ezbike](http://www.trafficsolutions.org/ezbike) for details).

Santa Barbara also continues to move forward on implementing its 2015 Bicycle Master Plan Update, which will include the construction of several new multiuse bike pathways for bicyclists and pedestrians. (See [www.sbbike.org/sb](http://www.sbbike.org/sb) for more detailed information.) Another notable development is the Stearns Wharf Pedestrian and Cyclist Safety Improvement Project scheduled to be completed in February 2021, and is part of the City's Vision Zero Strategy designed to end severe or fatal transportation-related injuries. Among other safety improvements, the project aims to keep pedestrians and cyclists separated through the construction of a separate bike pathway entitled the "Beachway" along the heavily trafficked Cabrillo sidewalk.

Notwithstanding these safety improvements, we will likely see a rise in personal injury accidents on our bike paths and streets given the growing popularity of E-bikes and these various programs. Injuries associated with E-bikes include head and traumatic brain injuries; broken bones; back and spinal issues; and garden variety cuts and bruises. As attorneys, we need to remain knowledgeable about risks

and liability as it relates to this emerging area of personal injury law.

In 2015, California updated its bicycle laws to accommodate E-bikes. Like twenty-one other states, California sorts E-bikes into three classifications based on top speeds and whether pedaling is a necessary function. Class 1 is for pedal assist with a maximum of 20 mph – great for bike lanes, bike paths, roads or anywhere you would ride a traditional bike. Class 2 is equipped with a throttle that provides a boost without pedaling and stops assisting at 20 mph. Class 3 bikes are equipped with a speedometer and only assist until the bike reaches 28 mph (the maximum speed allowed by law) and is an excellent choice for commuters. (See Veh. Code § 312.5(1)-(3).) As of 2017, all E-bikes in California are required to have a label that describes its type, top assisted speed, and motor wattage. (See Veh. Code § 312.5(c).)

For the most part, E-bike riders are subject to the same rules and legal requirements that apply to people riding traditional bicycles when it comes to speed, proper passing, following local traffic laws, obeying posted speed limits, yielding to pedestrians, riding with the flow of traffic, and other state and local ordinances. (See generally Veh. Code §§ 21200, *et seq.*) And because E-bikes are classified as bicycles (as opposed to motor vehicles), riders do not need to be licensed, registered, or carry any form of liability insurance. California law requiring helmets for E-bikes users less than 18 years old similarly applies. (See Veh. Code § 21212.)

There are, however, certain laws that are specific to E-bikes. For example, all E-bike operators need to be 16 years or older and all Class 3 riders must wear a helmet regardless of age. (See Veh. Code § 21213.) Class 3 E-bikers are not allowed on any "multi-use" bicycle paths or trails, bikeway, equestrian trail, or hiking or recreational trail because they can go up to 28 miles per hour, which poses significant dangers to families walking, joggers, and young children who may be new to riding. (See Veh. Code § 21207.5.) All classes of E-bikes, however, can utilize properly designated bike lanes on public roadways. It should be noted that each city and county in California has its own rules about riding bicycles, including E-bikes, on sidewalks. Here in Santa Barbara "no person shall ride a bicycle on any sidewalk



Renee Nordstrand



except at a driveway or on a designated bikeway.” (See SBMC 10.52.130.) It should also be noted that certain hiking and mountain biking trails, such as the popular Romero Canyon trail, do not permit any type of E-bike, so be sure to check out signage at the various trailheads to see what is permitted or not.

E-bikes are clearly here to stay, as their demand and appeal has skyrocketed in recent years for a variety of reasons: they work for recreation, for fitness, and for commuting. Santa Barbara has recognized that E-bikes are more than just a passing trend and, as noted above, actively supports this “green” form of transportation with its collaboration with BCycle sharing program and EZ-Bike test ride project. How this all plays out in our community remains to be seen. As community members, we should applaud our City and citizens for embracing this new “green” mode of transportation. As attorneys, we should remain vigilant to the safety and emerging legal issues it presents. ■


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# The Language of Forensic Source Comparisons: Part II

BY ROBERT M. SANGER

This *Criminal Justice* column is Part II of a three-part summary that addresses the word choices for forensic examiners in writing reports and giving testimony regarding source comparisons.<sup>1</sup>

Part I, published last month in the *Santa Barbara Lawyer*, addressed what language should be used to describe the results of the analysis of the data, such as “opinion,” “conclusion,” “explanation,” or “interpretation.”

Part II, the subject matter of this month’s column, addresses what the scientific basis is for making forensic source comparisons. This month’s column will explore the fundamentals of making source comparisons and the significance of the difference between comparing “class characteristics” and “random characteristics.”

Part III, which will be the subject of the *Criminal Justice* column next month, will get down to the actual words which have been used in source comparisons—such as, “identification,” “consistent,” “cannot be excluded,” “excluded,” “inconclusive,” “match,” and words like “certainty,” “strong,” “weak,” or “moderate.” The final part of the article will then look at the case law, and professional and academic literature to address the language which best meets the scientific and legal requirements of forensic testimony.

Here, we will start with what constitutes a valid source comparison opinion and then address the class and random characteristics issues.

## Valid Scientific Opinion or Interpretation in Source Comparison

Creating standards and best practices for the language of source comparison reports and testimony is part of a national discussion which is presently occurring within several organizations. The National Institute of Science and Technology (NIST) has active working groups for each forensic discipline. (See, National Institute of Standards and Technology, OSAC Registry (created October 27, 2015, updated January 19, 2021), <https://www.nist.gov/osac/osac-registry>.)<sup>2</sup>

Meanwhile professional organizations—such as the

Association of Firearms and Toolmarks Examiners (AFTE), the National Fire Protection Association (NFPA) or the National Association of Medical Examiners (NAME)—are promulgating their own rules. Law enforcement organizations, such as the United States Department of Justice (DOJ) are independently issuing language guidelines. (U.S. DOJ, “Uniform Language for Testimony and Reports,” (updated January 11, 2021), <https://www.justice.gov/olp/uniform-language-testimony-and-reports>.)



Robert M. Sanger

The American Academy of Forensic Sciences (AAFS) has been designated a Standards Development Organization by the American National Standards Institute (ANSI) and through its Academy Standards Board consensus bodies it is attempting to synthesize all other efforts and to create uniform standards and best practices for adoption by ANSI.<sup>3</sup> As discussed in Part I, this requires an analysis of the language of forensic opinions or interpretations considering science, logic, and philosophy.<sup>4</sup> And, empirical research is continuing so that we can better understand the impact of the language used on the ultimate consumer, the jury. To begin, there are three preliminary considerations.

First, as was the tentative “conclusion” of Part I, the term of art usually used in the law for expressing the results of the expert’s analysis is “opinion.” For other reasons “interpretation” was running a close second. The term “opinion” is used in the Federal Rules of Evidence and in state law. “Interpretation” still might be more accurate, particularly in source comparison. We rejected “explanation” because it assumes the ground truth of what is being explained, and “conclusion” because it assumes a type of deductive logic where, again, the premises are assumed to be true. For that reason, for the most part the remainder of this article will use “opinion” (reserving the right to argue for “interpretation”) to represent what is written in the report or testified to by the examiner regarding the analysis of the data as to a source comparison.

Second, it is fundamental to the scientific method that an opinion as to what happened on a previous occasion is subject to error.<sup>5</sup> The question of which shoe left an impression in the mud or which firearm fired the bullet found at the scene, is something that is subject to analysis of (more

or less reliable) data by an (more or less qualified) examiner who forms an opinion based on the comparison of data between the impression or bullet on the one hand, and a shoe or firearm on the other. In other words, the scientific principle of uncertainty is intrinsic to any forensic source comparison opinion. (See, e.g., Lindley, *Understanding Uncertainty* (2014) pp. 260-264.)

Third, while the principle of uncertainty is a necessary factor in any source comparison opinion, there are two categories of comparison. One category is that of “class” characteristics” and the other is of “individual” or “random” characteristics. A definition of “class characteristics” for firearms source comparisons is, “Measurable features of a specimen which indicate a restricted group source. They result from design factors and are determined prior to manufacture.” (AFTE, Glossary, 6th ed., [https://afte.org/uploads/documents/AFTE\\_Glossary\\_Version\\_6.110619\\_DRAFT.PDF](https://afte.org/uploads/documents/AFTE_Glossary_Version_6.110619_DRAFT.PDF).) The same glossary defines “individual characteristics”—using the term “random”—as, “Marks produced by the random imperfections or irregularities of tool surfaces. These random imperfections or irregularities are produced incidental to manufacture and/or caused by use, corrosion, or damage.” (*Id.*)<sup>6</sup> For the purposes here we will use “class” and “random” as the two categories of characteristics observed in forensic source comparisons.<sup>7</sup>

### **Class Characteristics**

This consideration, regarding class as opposed to random characteristics, is particularly significant in its implications for source comparisons. While it is a basic distinction, it might be helpful to take some examples. Generally, an analysis of class characteristics can lead to an opinion that tends toward either excluding or not excluding the possibility that an object (e.g., firearm) was the source of another object (e.g., expended bullet). In simplistic terms, a .44 Magnum bullet cannot be fired in a revolver chambered for .38 special rounds—the diameter of the cartridge is too large to fit in the chamber, and the bullet is too large to enter and travel through the barrel. Assuming the data is reliable (that is, properly collected and preserved), and there is not something else going on (such as interchangeable chambers and barrels), an examiner could offer an opinion with a fairly high level of confidence that the .44 magnum bullet found at the scene was not fired from a .38 special revolver.

The reverse is not true, however, even if the class characteristics are all consistent. For instance, a bullet that appears to be from a nominal .38 caliber cartridge cannot be confirmed to have been fired from a particular .38 caliber revolver simply because of class characteristics. Assuming that class characteristics were similar—e.g., the nominal

caliber, the number and width of the lands and grooves and the direction of twist—all that could be said is that the class of .38 revolvers is consistent with a firearm that could have fired the bullet. That class, with those lands and grooves measurements and direction of twist, might include firearms manufactured by dozens of known companies and thousands of possible models. The class would also have to include possible manufacturers or models, including one-off firearms, that are not in the comparison database. Thus, class characteristic alone cannot provide the kind of information that can be the basis for an opinion that a particular firearm was the source of a particular bullet.

But class characteristics can also be misleading. For instance, in firearms’ source comparisons, a nominal .38 special cartridge can be chambered in a .357 magnum revolver and the bullet fired from that weapon. In fact, although it would be a dangerous misuse of a weapon, it might be possible to force a .357 magnum cartridge into a .38 special and fire it. There are other combinations that were not intended but that can be forced. While firearms enthusiasts and others trained in the proper use of firearms might generally use ammunition appropriate to the firearm, it is notorious in criminal cases that haphazard collections of ammunition are often found with weapons for which they were not designed. So, sometimes, the initial belief that a firearm was excluded due to a mismatch might be revised considering further inquiry.

There are other issues regarding forensic source comparison. In glass comparison, an example is given of a proficiency test where analysts were given broken glass purportedly found at the scene and other glass purportedly found on the person of a suspect.<sup>8</sup> The class characteristics of the glass at the scene included findings of a particular refractive light index and elemental composition, a finding that the color was clear and a finding that the glass was concave in shape. The glass on the person was of a different refractive light index and slightly different elemental composition, was red in color and was cylindrical in shape. Since this was a test, the correct results were known: both samples were from the same source, a clear wine goblet with a red stem. In other words, an opinion of exclusion of the glass at the scene as the source of the glass on the person of the suspect, based on class characteristics, was false.<sup>9</sup>

It is also possible that class characteristics can be altered especially where a source has dynamically imparted characteristics on the evidentiary item. There is a danger in interpreting any possible dynamics as a reason for similarities or non-similarities to justify what would otherwise be an anomaly in the source comparison. For instance, forensic odontology—bite mark evidence—has been thoroughly

discredited because either inclusions or exclusions can be justified by the claim that the medium in which the impressions are made is elastic. (See, *In re Richards* (2016) 63 Cal.4th 291 [California Supreme Court unanimously reversed conviction based on unscientific bite mark testimony].) The same can be said of shoe print impressions where consistent or inconsistent data points can be attributed to the dynamics of the way the impression was made. (See, e.g., Frisbie and Garrett, *Victims of Justice* (2005).) Expanded bullets and expended cartridge casings are particularly susceptible to dynamic distortion. Bullets are generally recovered at the scene after they impacted at high velocity with a wall, a car or other solid object, or with a human where they may have struck bone or cartilage. Expended cartridge casings may have impacted walls or roadways and are sometimes run over by vehicles. In all these situations, examiners are often not able to discern some or all the usual class characteristics and may make assumptions regarding the characteristics they observe or do not observe.

In these cases, and others, even the basic opinions of “inclusive” or “exclusive” may not be made with the same confidence of, say, the opinion excluding the .38 special revolver as the source of the .44 magnum bullet. But it is information—data that can be analyzed—and a comparison can often be made between some set of relatively objectively identified class characteristics of the questioned source and the individual piece of evidence. However, any opinion based on such a comparison must acknowledge the additional uncertainty introduced by the assumptions and the fact that alternative hypotheses may not be refuted by the data. And, at best, an opinion cannot be given based on class characteristics as to whether an evidentiary item is from a particular source; only that a class of known sources could be a candidate.

In other words, based on class characteristics, in pattern comparisons, a particular model (or particular production run) of a Nike running shoe may generally make a certain sole pattern, and it may be possible to compare it to the imprint at the scene. In firearms, a particular model (or production run) of a Smith and Wesson revolver may have a particular nominal caliber, number and size of lands and grooves and either a right or left rifling twist which can be compared to the bullet at the scene. If a shoe or firearm were seized—say, associated with a suspect—that shoe or firearm could be compared to the imprint or bullet found at the scene. An expert could compare the class character-

istics, determine if they are similar or dissimilar and then express an opinion (with some level of confidence based on the facts) that the class of shoe or class of firearm could or could not have been the source of the shoeprint or bullet. But, based on class characteristics alone, it would only mean that the potential source was of the general class of items that could or probably could not have produced the item of evidence. Based on class characteristics, therefore, there is no basis for an opinion that a particular shoe or firearm was the actual source.

### **Random Characteristics**

If random characteristics can be discerned in the analysis of the source and the piece of evidence, theoretically, a source comparison forensic expert can further refine his or her opinion. However, no matter how much data appears to be similar, scientifically, the determination of a particular source to a particular piece of evidence is still uncertain. In glass comparison, for instance, it is said that that an

examiner may offer an opinion that two or more glass fragments (probably) originated from the same broken glass source by determining that all the class characteristics are consistent,<sup>10</sup> but may do so only if there is also a “fracture fit” conclusion based on microscopic observations of how the pieces fit together. Even then, according to the standards of the DOJ, “When offering a ‘fracture fit’ conclusion, an examiner shall not assert that the fragments originated from the same broken glass object to the exclusion of all other broken glass sources.” (DOJ, Department of Justice Uniform Language for

Testimony and Reports for the Forensic Glass Discipline, (Sept. 24, 2018).)

Other disciplines have less of an ability to compare random characteristics. There may be a defect in the sole of a shoe due to wear or damage, but there is no way to make the determination that a similar wear pattern or defect is not present in other potential sources. Similarly, even microscopic striations in bullet comparisons (between an evidentiary bullet and one test fired) cannot prove that the firearm is the source of the piece of evidence. It is still an opinion and it is scientifically uncertain. Hence, the DOJ says that, “an examiner shall not: ... assert that two toolmarks originated from the same source to the exclusion of all other sources.” (DOJ, Uniform Language for Testimony and Reports for the Forensic Firearms/Toolmark Discipline Pattern Examination (effective August 15, 2020) p. 3, <https://www.justice.gov/olp/page/file/1284766/download>.)

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All that can be done scientifically is to determine whether the data refutes a hypothesis.

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## Conclusion of Part II

Within the context of valid scientific analysis, including inherent uncertainty, forensic opinions are further circumscribed by the nature of the data that is available for analysis. Class characteristics may offer more value in excluding a source, but random characteristics are necessary to making a more nuanced correlation between a potential source and an evidentiary item. All that can be done scientifically is to determine whether the data refutes a hypothesis. If it does not, that does not mean that the hypothesis is proven. Any alternative hypotheses must be acknowledged. With this fundamental understanding of forensic source comparisons, we can move on to the actual language of source comparison opinions or interpretations. Part III, in next month's edition of the Santa Barbara Lawyer, will look at current case law as well as professional and academic literature regarding what actual words are best used to convey the opinion (or interpretation) that is to be expressed by the examiner to the trier of fact. ■

*Robert Sanger is a Certified Criminal Law Specialist (Ca. State Bar Bd. Of Legal Specialization) and has been practicing as a litigation partner at Sanger Swysen & Dunkle in Santa Barbara for 47 years. Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is a Professor of Law and Forensic Science at the Santa Barbara and Ventura Colleges of Law and an Associate Member of the Council of Forensic Science Educators (COFSE). Mr. Sanger is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization, and Past Chair of the Board of Death Penalty Focus. The opinions expressed here are those of the author and do not necessarily reflect those of the organizations with which he is associated. ©Robert M. Sanger.*

- 1 This is a summary of a more detailed academic paper in progress. Therefore, arguments and citations are kept to a minimum.
- 2 Most of the standards and best practices are still being processed and many more should be published over the next two years.
- 3 The present author has been the Chair and Co-Chair with Jennifer Floyd, Senior Forensic Firearm and Tool Mark Examiner, Arkansas State Crime Laboratory, of the AAFS Firearms and Toolmarks Academy Consensus Body (FATM ASB) for the last four and one-half years. While this article does not necessarily represent the views of the FATM ASB or AAFS, or any of its members, it is informed by the excellent work of Co-Chair Floyd and the other firearms examiners, lawyers and academics who serve on the ASB. The current group includes Aaron Brudenell, Joseph Cassilly, Heather Dover, Jill Dupre, Cole Goater, Adam Grooms, Chris Gunsolley, Richard Gutierrez, Gregory Laskowski, Nat Pearlson, Nicholas Petraco, Kate Philpott, Srinivasan Rathinam, Douglas Scott, Ronald Scott, John Wang, Kent Weber – none of whom bear any responsibility for errors herein.
- 4 Recall, for instance, the references to philosophers Karl Popper and Carl Hempel in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*

(1993) 509 U.S. 579. The Department of Justice (DOJ) referred to “inductive inference” (citing the Oxford Dictionary of Forensic Science) which is a reference to logic.

- 5 The entire process of a trial does not result in “knowledge” of what happened. Plato described this succinctly and without objection. Plato, *Theatetus*, 202b-c: “[T]hey are judging without knowledge, although, if they find the right verdict, their conviction is correct.” (Hamilton and Cairns, *The Collected Dialogues of Plato* (1963).)
- 6 Note that the definition includes one additional sentence that is omitted because uniqueness is not accepted as a scientific principle: “They are unique to that tool to the practical exclusion of all other tools.” (AFTE, *Glossary of The Association of Firearm and Tool Mark Examiners*, 6th Ed.)
- 7 These distinctions go back at least as far as the Platonic “forms” and were the subject in Thomistic thought where Aquinas made the distinction between “substance” of a thing and its “accidents.” Fortunately, class and random characteristics of manufactured items, e.g., shoes or firearms, are more susceptible to objective description.
- 8 The present author observed such a proficiency test at the 2015 67th Annual Scientific Meeting of AAFS in Orlando, Florida.
- 9 And, in the exercise, several experienced examiners came to this conclusion.
- 10 For glass, those would include assessed physical characteristics, refractive index, and elemental composition.

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# Recap of the First Virtual Bench & Bar Conference

BY TARA MESSING, TERESA MARTINEZ, AND  
RUSSELL TERRY

The Bench & Bar Conference is the premier annual event for the Santa Barbara County Bar Association (“SBCBA”) that brings together attorneys, judges, and other professionals from San Luis Obispo, Santa Barbara, Ventura and Kern counties. The Conference offers a full day of MCLE credits shortly before the State Bar reporting deadline. Despite facing a global pandemic, the SBCBA proudly offered the Bench & Bar Conference this year on a virtual event platform, Pheedloop. The use of this innovative event management software was made possible by our generous Platinum Sponsors, Keller Rohrback and Reicker Pfau, and Gold Sponsors, Herring Law Group, Jack L. Collison, Fell, Marking, Abkin, Montgomery, Granet & Raney, and Hall, Hieatt & Connely.

Hosting the first-ever virtual Bench & Bar Conference this year required the SBCBA to entirely reimagine the Conference. Fortunately, Pheedloop offered a user-friendly platform to provide quality content through live session streaming while also encouraging networking through features like real-time chat. Attendees had instant access to the Conference website immediately after completing registration and will continue to have access to the recorded presentations and MCLE materials for months after the Conference. Pheedloop also gave attendees the opportunity to fully customize their profiles as well as to generate their personalized MCLE certificates by the simple click of a button. The SBCBA has received an overwhelmingly positive response about the Conference technology. Thank you to all our speakers, sponsors, and attendees for your willingness to try something new!

The 2021 Bench & Bar Conference had an exceptional lineup of speakers, headlined by distinguished constitutional scholar and UC Berkeley Law School Dean, Erwin Chemerinsky. The theme of this year’s Conference was emerging legal issues and trends in a post-2020 world. Presentations focused on a range of issues: competency, housing, employment, privacy, environmental and immigration law. The Conference also included a personal injury case study, training on marketing strategies for the legal profes-

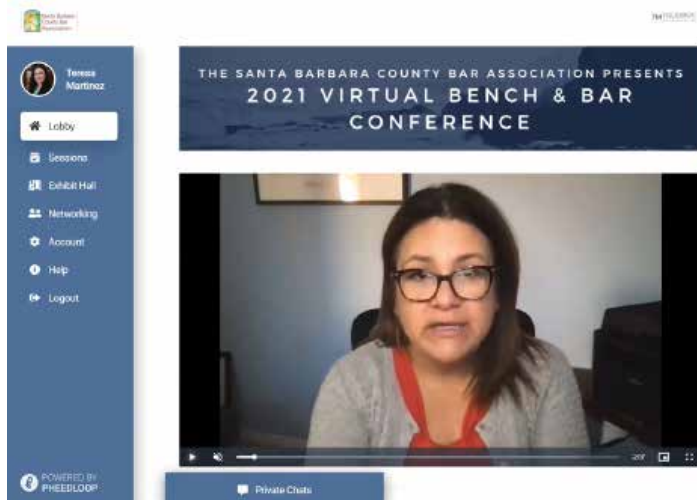
sion, and a panel discussion about operating a successful law firm. Judge Maxwell and Judge Deroian engaged in an interactive discussion on the ethics of an attorney’s duty of candor and contacts with the court and jurors. A summary of the presentations is below.

**Keynote Presentation – Constitutional Law.** Constitutional law scholar Erwin Chemerinsky delivered the keynote presentation on the state of the U.S. Supreme Court. Professor Chemerinsky summarized the impact of the COVID-19 pandemic on the Court’s prior term followed by a discussion of key upcoming Supreme Court decisions in areas such as the Affordable Care Act, civil rights, criminal procedure and punishment, free speech, and religious freedom. He also provided his thoughts on the appointment of Amy Coney Barrett, partisanship versus ideology on the Court, and the impact of the current Court on key issues and the future of the United States of America.

**Business and Law.** Danielle DeSmeth, Managing Partner at Bamieh & DeSmeth, PLC, R.W. “Hap” Ziegler, Jr. of Mesa Consulting, LLC, and Jason Janzen, CPA, Partner at Palius, O’Kelley, & Janzen, provided an overview of the challenges facing the legal industry due to the COVID-19 pandemic. The panel discussed how the use of technology can grow business through customer relationship management (CRM) software, enhance the attorney-client relationship, and increase business performance, while maintaining an attorney’s duty to maintain client confidentiality. The panel also discussed how technology can improve access to justice and keep attorneys competitive with a virtual practice. Bamieh & DeSmeth, PLC can be found at [www.bamiehdesmeth.com](http://www.bamiehdesmeth.com); Mesa Consulting, LLC can be found at <http://bit.ly/36wckBb>; and Palius, O’Kelley & Janzen can be found at [www.pojcpa.com](http://www.pojcpa.com).

**Employment and Privacy.** Angela Roach, Managing Director and Associate General Counsel for Maxim Integrated Products, Inc., discussed practical challenges for employers during the COVID-19 pandemic including employment and privacy considerations relating to employee testing, temperature screening and medical questionnaires, contract tracing and reporting, and vaccines. Ms. Roach provided a comparison of laws across a variety of countries to the U.S. and discussed employer best practices.

**Environmental Law.** Linda Krop, Chief Counsel at the Environmental Defense Center, discussed oil and gas development issues in the Santa Barbara County region. Ms. Krop identified relevant local, state, and federal laws,



regulations, and case law. She also addressed offshore leasing and permitting (including fracking), the Plains All American pipeline oil spill, ExxonMobil's application to truck oil, and proposals to pursue cyclic steam injection in northern Santa Barbara County. More information about the Environmental Defense Center can be found at [www.environmentaldefensecenter.org](http://www.environmentaldefensecenter.org).

**Judges' Panel - Ethics.** Judge Maxwell and Judge Deroian made up the Judges' Panel at this year's Conference. They discussed Rules of Professional Conduct, Rule 3.3 (formerly 5-200(B)) regarding an attorney's duty of candor to the tribunal and Rule 3.5 (formerly 5-300) regarding contact with judges, officials, employees, and jurors. The Judges discussed the rules as interpreted in current case law, provided issues to consider when faced with ethical challenges, and polled attendees on their understanding of the rules in practice. This presentation qualified for 1 hour of ethics credit.

**Housing.** Local real estate and housing attorneys, Elise Cossart-Daly, Founding Attorney of Cossart-Daly Law; Alex Entekin, Staff Attorney at the Legal Aid Foundation of Santa Barbara County; Michelle Roberson, President of Sierra Property Management; and John J. Thyne III, Founder of Thyne Taylor Fox Howard, LLP, discussed how the COVID-19 pandemic has impacted the real estate market and exacerbated the affordable housing crisis. The panel discussed recent local, state, and national legislation designed to help homeowners, renters, and landlords during the pandemic. Additionally, the panel discussed the recent ballot initiative Proposition 19 and its effects on real property transfers in 2021. You can find Cossart-Daly Law at [www.cossart-dalylaw.com](http://www.cossart-dalylaw.com); the Legal Aid Foundation of Santa Barbara County at [www.lafsb.org](http://www.lafsb.org); Sierra Property

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**Immigration Update.** Kraig Rice, an immigration attorney at Santa Barbara Immigration Lawyers, Inc., provided an update on recent and emerging immigration law issues. Mr. Rice covered topics such as Deferred Action for Childhood Arrivals (“DACA”), COVID-19 and religion-based travel bans, the border wall, general border security issues, and proposed immigration bills. He also focused on those issues in the context of the Trump administration and anticipated changes to come under the Biden administration. Mr. Rice can be found at Santa Barbara Immigration Lawyers, Inc., [www.sbbimmigrationlaw.com](http://www.sbbimmigrationlaw.com).

**Lawyers & Competency.** Doug Ridley of Ridley Defense, APC, discussed competency for lawyers. Mr. Ridley demonstrated when an attorney’s choices may have consequences in criminal court and with the California State Bar. Mr. Ridley outlined California State Bar reporting requirements, criminal law crossovers with alcohol and drug DUIs, and mental health options in criminal court. His presentation qualified for 1 hour of competency credit. Find Ridley Defense, APC at [www.ridleydefense.com](http://www.ridleydefense.com).

**Marketing for Attorneys.** Lorrie Thomas Ross, CEO of Web Marketing Therapy, and a marketing professional with over 20 years of experience, gave a presentation on the power of online marketing for attorneys and law firms. Ms. Thomas Ross covered topics such as effective branding, building an online presence, maximizing visibility, targeted marketing, and use of social media platforms. Her talk provided valuable insights into effective methods and strategies to grow a legal practice through online and social media presence. You can find Ms. Ross and Web Marketing Therapy at [www.webmarketingtherapy.com](http://www.webmarketingtherapy.com).

**Personal Injury Case Study.** Jessica Phillips and Samantha Baldwin, attorneys at the personal injury firm Maho Prentice, LLP, presented a case study of a trip and fall incident on private property. Ms. Phillips and Ms. Baldwin discussed the facts, potential liabilities, legal and practical factors, and outcome of the case. Their presentation offered an inside look at how personal injury cases are evaluated, pursued, and concluded, proving useful for both personal injury lawyers and general litigators. Phillips and Baldwin can be found at [www.maho-prentice.com](http://www.maho-prentice.com). ■

*Tara Messing is a Staff Attorney at the Environmental Defense Center (“EDC”). EDC is the only non-profit public interest envi-*

*ronmental law firm between Los Angeles and San Francisco and serves community organizations dedicated to environmental protection. Ms. Messing’s work includes litigation and advocacy related to clean water, climate and energy, and open space and wildlife. Tara received her J.D. from the University of Maryland Francis King Carey School of Law with a certificate in Environmental Law.*



Tara Messing

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Teresa Martinez

*Russell Terry is a Partner in Reicker, Pfau, Pyle & McRoy LLP’s corporate group. His practice focuses on emerging companies, mergers and acquisitions, debt and equity financing, and business ventures. Mr. Terry works with many of the premier startups and mature companies on the Central Coast, with an emphasis on the tech industry. Mr. Terry received his J.D. from the University of Washington School of Law.*



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# Medical Malpractice Plaintiffs' Attorneys Prefer Arbitration Over Trial

BY MARC KARLIN

For some time, the plaintiffs' bar has been vigorously fighting against the escalating use of binding arbitration agreements in a variety of contexts. Recently, President Joe Biden campaigned with the promise to enact legislation to ban employers from requiring their employees to agree to mandatory individual arbitration and forcing employees to relinquish their right to class-action lawsuits or collective litigation. (*The Biden Plan for Strengthening Worker Organizing, Collective Bargaining, and Unions* (2021), <https://joebiden.com/empowerworkers/>.) Yet, there is one area where the plaintiffs' bar prefers to submit a dispute to binding arbitration: medical malpractice.

## **Plaintiffs Receive Better Outcomes at Arbitration Than at Trial**

Statistics, as well as anecdotal evidence shared among medical malpractice practitioners, bear out that more awards are received by plaintiffs in arbitration than in jury trials. Nationwide, of the medical malpractice cases that result in a jury verdict, plaintiffs prevailed in only twenty-one percent (21%) of the verdicts. (MH Sub I, LLC dba Nolo, *National Medical Malpractice Statistics* (2021), <https://www.medicalmalpractice.com/lander/national-medical-malpractice-facts>.) The reasons for this outcome are many. Jurors generally have a great affinity for doctors. Jurors often evaluate doctor-defendants' treatment according to the way they would want to be treated as a patient themselves. A defendant-doctor with a good "bedside manner" will often be able to overcome credible evidence of negligence. Moreover, the medicine in a malpractice action can be very complex, with multiple specialists presenting conflicting testimony.

In contrast, most arbitrators in medical malpractice actions are either attorneys who have years of experience in the field, representing plaintiffs or doctors-defendants, or retired judges and justices. As an illustration of the relative advantage for plaintiffs in medical malpractice arbitrations, one of the major medical professional liability insurers in California, CAP/MPT, has discounted the use of mandatory

arbitration by its members. According to CAP/MPT, arbitration no longer provides "clear-cut advantages" to doctors and their medical practices. (Cooperative of American Physicians, *CAP Discontinues Physician-Patient Arbitration Program* (December 1, 2015), <https://www.cap-physicians.com/articles/cap-discontinues-physician-patient-arbitration-program#:~:text=With%20physician%2Dpatient%20arbitration%20no,physicians%20and%20their%20medical%20practices.>)



Mark Karlin

## **Kaiser Permanente Requires All Medical Malpractice Claims to be Submitted to Binding Arbitration**

Despite the above, Kaiser Permanente continues to require that all medical malpractice claims brought by its members be submitted to binding arbitration. Kaiser Permanente is the oldest and largest health maintenance organization (HMO) in California, with approximately nine (9) million members. (Melody Gutierrez & John Myers, *Blue Shield Will Oversee California's Troubled COVID-19 Vaccination Effort*, Los Angeles Times (January 27, 2021), <https://www.latimes.com/california/story/2021-01-27/california-blue-shield-to-oversee-covid-19-vaccination-effort>.) Kaiser's members, either directly or through their employer, sign a binding arbitration agreement when obtaining coverage. In Southern California, to initiate a medical malpractice claim, a Kaiser member submits a demand for arbitration against the intertwined entities which provide medical and related services: Kaiser Foundation Health Plan, Inc. (KFHP), Kaiser Foundation Hospitals, and Southern California Permanente Medical Group (SCPMG). KFHP has a contract with SCPMG, which is a partnership of Kaiser physicians, to provide physician services to members.

Over twenty years ago, the Kaiser arbitration system underwent a major overhaul, primarily due to the California Supreme Court's decision in *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951. In *Engalla*, the court held "there is evidence that Kaiser established a self-administered arbitration system in which delay for its own benefit and convenience was an inherent part, despite express and implied contractual representations to the contrary." (*Id.* at



976.) As a result, the Office of the Independent Administrator (OIA), a third-party contractor, was formed to administer and oversee all claims brought by Kaiser members for medical malpractice. The OIA enforces the rules governing Kaiser arbitrations and facilitates the selection of arbitrators. (Office of the Independent Administrator (Updated 1/15/21), <https://www.oia-kaiserarb.com/14>.)

Under the OIA rules, the parties select a neutral arbitrator via a “rank-and-strike” process of twelve (12) arbitrators proposed by the OIA or they may jointly select a neutral arbitrator by stipulation. In addition to a neutral arbitrator, each party may appoint a separate arbitrator and have the claim adjudicated by a three-arbitrator panel. However, in practice, most parties waive the appointment of a party arbitrator due to the cost and since the party arbitrators generally cancel each other out, leaving the neutral arbitrator as the decider. And, if the plaintiff agrees, the OIA will compel Kaiser to pay all the neutral arbitrator’s fees.

Both Kaiser and non-Kaiser arbitrations are conducted in accordance with the Code of Civil Procedure section 1280, et seq., which includes the right to discovery. (Code Civ. Proc. § 1283.05.) The MIRCA cap of \$250,000.00 on non-economic damages is also applicable. (Civ. Code § 3333.2.) Under the OIA rules, in most instances, the neutral arbitrator in a Kaiser case must issue his or her decision within eighteen (18) months of the service of the demand for arbitration. (Office of the Independent Administrator, *Rules For Kaiser Permanente Member Arbitrations (Amended January 1, 2020)*, Rule 24, pp.9-10, <https://oia-kaiserarb.com/pdfs/Rules.pdf>.)

***Plaintiffs Improve Their Chances of Success by Submitting Malpractice Claims to Binding Arbitration***

Due to the necessity of medical expert witnesses and other litigation costs, medical malpractice claims are very expensive to prosecute. By submitting a malpractice claim to binding arbitration, plaintiffs improve their chances of success. Additionally, during this period of COVID-related delays in the civil courts, arbitration will, in most instances,

lead to a faster resolution of a claim---to the benefit of all parties involved.

*Marc Karlin is the managing partner of Karlin & Karlin. He specializes in plaintiff's side medical malpractice, personal injury, and wrongful death cases throughout California. He is a member of CAALA, CAOC, and SBCBA, and can be reached at [mkarlin@karlaw.com](mailto:mkarlin@karlaw.com); [www.karlaw.com](http://www.karlaw.com).*

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# Fair Cross-Section Jury Inclusion

BY CHARLES WHITE

This Article supports fair cross-section jury inclusion as necessary to American society.

A concurring California Supreme Court opinion would let resident aliens in the jury pool. Chief Justice Bird notes that:

Therefore, while I concur in the reversal of appellant’s conviction on the ground that the trial court erred in admitting portions of his wife’s letters into evidence, I would address the jury issue in this case, and hold that the exclusion of resident aliens from California juries violates the cross-section requirement of the state Constitution. (*People v. Coleman* (Cal. 1985, conc. opn. of Bird, C.J.) 38 Cal.3d 69, 96.)

The concurrence provides:

Such diversity is necessary in our culturally pluralistic society to ‘recognize a fuller range of possible meanings or explanations for particular behavior . . . [¶] . . . [and to] ensure that the common sense of the community is accurately expressed in applying [the reasonable doubt] standard to the facts.’ (*Id* at 98.)

## 9th Circuit

The Ninth Circuit addressed jury pool cases from the states of Nevada and Alaska.

Nevada addressed the composition of a jury pool in *Simmons v. State* (Nev. 2013) No. 58016. In noting that two of the sixty-five prospective jurors were African American, Simmons objected. (*Id.* at 3.) The court determined: “We refuse to ignore the possibility that Simmons’ objection had merit and, if the district court had given him the opportunity, that Simmons could have shown such merit on the

record. (*Id.* at 11-12.) The court further indicated:

Because Simmons’ right and ability to use his peremptory challenges were compromised, and due to the poorly developed record that prevents us from concluding that the selection of the jury venire did not violate Simmons’ constitutional rights, we cannot state with confidence ‘that the verdict would have been the same in the absence of [these] error[s].’ (*Id.* at 12.)

Finally, the Ninth Circuit concluded that “the cumulative effect of the error requires a reversal of the conviction and warrants a new trial.” (*Ibid.*)

In Alaska, citing the disparity between the lifestyle of an Alaska villager and life typically led by residents of the Anchorage area, it was submitted that the almost total exclusion from jury service of village residents occasioned by using the 15-mile limit had the effect of depriving Alvarado of his constitutional right to an impartial jury. (*Alvarado v. State* (Alaska 1971) 486 P.2d 891, 895-96.) The court noted: “The differences between a Native village and the City of Anchorage are neither simple nor superficial; they are not restricted to a single element such as occupation or income.” (*Id.* at 899.) It determined: “This case is reversed and remanded to

the superior court for a new trial to be held in conformity with this opinion.” (*Id.* at 906.)

## Native Americans and Non-Citizens

Courts recognize that Native Americans and noncitizens jurors are appropriate for jury pools.

In *U.S. v. Tranakos* (D. Wyo. 1988) 690 F.Supp. 971, defendants identified Native Americans of the Shoshone and Arapaho tribes as being the “cognizable group” left out, despoiling the “fair cross-section” selection mandated. (*Id.* at 973.) The court decided: “Consequently, the application of the Wyoming plan results in a failure to draw a grand



Charles White

“Such diversity is necessary in our culturally pluralistic society to ‘recognize a fuller range of possible meanings or explanations for particular behavior...’”

jury from a 'fair cross-section of the community,' contrary to the requirements of 28 U.S.C. 1861 and the Sixth Amendment." (*Id.* at 977.)

In *People v. Craver* (N.Y. App. Div. 1947) 272 App. Div. 181, a District Attorney learned that one juror was not a citizen of the United States. (*Id.* at 182.) The court noted:

The Legislatures has prescribed the qualifications of a juror, and citizenship is one of these (Judiciary Law, § 502). The lack of such a technical qualification, however, may be waived, either with knowledge or by failure to make an inquiry when the juror is called and before he is sworn (*People v. Cosmo, supra; Kohl v. Lehlback*, 160 U.S. 293; *United States v. Gale*, 109 U.S. 65; *United States v. Rosenstein*, 34 F.2d 630; *People v. Thayer*, 132 App. Div. 593). Relator's conviction therefore was not illegal and should not have been set aside. But having been set aside on the application of the District Attorney he may not be tried again for the same offense (N.Y. Const., art. I, § 6). (*Id.* at 183.)

### Academic Community

Jurors can be included in a jury pool even if they are only in the United States to attend school. A court considered whether a court erred in denying a new trial after it was discovered that a foreign national sat on the jury that convicted Owens. (*Owens v. State* (2006) 906 A.2d 989, 993.) The Jury Commissioner received a voicemail from Juror 10, Adeyemi Alade, a twenty-eight-year-old Nigerian national. (*Id.* at 998.) Alade expressed concern about his jury service because he was not a United States citizen. (*Ibid.*) Because Owens waited until after *voir dire* (indeed, after a verdict was reached) to challenge the permanent resident Alade's presence on the jury, he waived his statutory right to challenge an unqualified juror. (*Owens v. State* (2007) No. 103, 38.)

One *Owens* court noted, "[a]s a graduate student in the United States, he is 'a permanent resident,' and may remain in this country as long as he is 'working, serving [in] the military, [or] go[ing] to school.'" (*Owens, supra*, 906 A.2d at 998.) It explained, "[a]t the time of the hearing, Alade had been in the United States for two years." (*Ibid.*) The juror was still in school.

A state appealed from a judgment granting a motion to quash an indictment on the ground the grand jury venire excluded all members of the university and college academic community. (*State v. O'Coin* (1980) 417 A.2d 310, 311.) The court affirmed after suggesting:

Consistently with this obligation, in *Jenison* we held that 'a jury selection system that entirely excludes an

identifiable and cognizable class playing a major role in the community, without a rational basis therefor, impermissibly offends the fair cross-section requirement and cannot be tolerated,' and accordingly struck down indictments found by a grand jury selected under a procedure that systematically excluded members of the college and university academic community. (*Id.* at 311-312.)

### Conclusion

Diverse jury pools are countenanced by courts as beneficial to our society. ■

*Charles White earned a Master of Laws LL.M. with an emphasis in Taxation from Chapman University Fowler School of Law. He earned a Juris Doctor from the University of South Carolina School of Law.*

Parks, *continued from page 11*

- **Gender Non-binary:** An umbrella term for gender identities used by people whose gender is not exclusively male or female.
- **Gender Nonconforming:** A descriptive term and/or identity of a person who has a gender identity and/or expression that does not conform to the traditional expectations of the gender they are assigned at birth. People who identify as "gender nonconforming" or "gender variant" may or may not also identify as "transgender."
- **Pronouns:** The pronouns or set of pronouns that a person identifies with and would like to be called when their proper name is not being used. Examples include "she/her/hers," "he/him/his," "ze/hir/hirs," and "they/them/theirs." Some people prefer no pronouns at all.
- **Transgender:** An umbrella term describing people whose gender identity does not match the gender they were assigned at birth.

(Beth Mora, "Language Matters", Contra Costa Bar Association (March 2020) <https://www.cccbba.org/>.)

*Erin Parks is a solo practitioner in Santa Barbara emphasizing Employment Law, Immigration, and Estates and Trusts. Ms. Parks can be contacted at [law@erinparks.com](mailto:law@erinparks.com) or [www.erinparks.com](http://www.erinparks.com).*



# Motions

**Price, Postel & Parma LLP** is pleased to announce that **Shannon DeNatale Boyd** is now a partner at the firm.

Ms. Boyd's practice focuses primarily on education law, employment law, civil litigation, family law, and public entity representation. She acts as general counsel, handling a variety of matters including employment and labor for public entities as well as private clients. In addition, Ms. Boyd practices civil litigation from pre-litigation consultation to resolution, including discovery, law and motion, mediation, trial, and writs and appeals.

Ms. Boyd received a B.A. in Psychology and Italian Studies (magna cum laude) from UCSB. She received her J.D. (Order of the Coif, cum laude) from Santa Clara University School of Law.

Ms. Boyd has been an attorney in Santa Barbara since 2010 and is a past-president of Santa Barbara Women Lawyers. A resident of the Santa Ynez Valley, Ms. Boyd enjoys spending as much time as possible outdoors with her husband and two young sons. Ms. Boyd looks forward to dusting off her Italian language skills and resuming her travels as soon as it is safe to do so.



*Shannon DeNatale Boyd*

\* \* \*

**Trusted Legal**, a boutique law firm specializing in business, litigation, and employment law, is pleased to welcome two new attorneys to its growing team. **Nicole Hornick** and **Elke Kane** joined Trusted Legal earlier this year and are assisting clients with litigation and transactional matters, respectively.

Born and raised in the Santa Ynez Valley, Nicole Hornick is a recent graduate of the Santa Barbara Colleges of Law and is a second-generation trial attorney. During law school she earned two Witkin Awards for legal writing and was published in Santa Barbara Lawyer Magazine. Hornick is experienced in civil litigation in both defense and plaintiff work. She is also passionate about elder abuse law. Hornick lives in Buellton with her attorney husband. When not busy practicing law, she enjoys yoga, running, and gardening.

Elke Kane is a California provisionally licensed attorney who has considered Santa Barbara home for over 20 years. She enjoys helping clients with a wide range of business needs, including contract negotiations, corporate organization, non-profit filings, code compliance, and bankruptcy. Prior to attending law school, Kane owned and operated a successful wedding cake business and bakery, which gave her an intimate understanding of the excitement and challenges of running a business.

A recent graduate with honors from the Santa Barbara Colleges of Law, Kane sat for the California Bar in February 2021. Prior to joining Trusted Legal, Kane worked as an intern for the Environmental and Consumer Protection Division of the Santa Barbara District Attorney's office. She is also fluent in Spanish and has volunteered her time translating and assisting community members with bankruptcy claims. When not hard at work for Trusted Legal, Kane can be found travelling, cycling, or spending time poolside with her husband, two young daughters, and their dogs.

To reach Nicole Hornick or Elke Kane, or to learn more on Trusted Legal, visit [www.trusted.legal](http://www.trusted.legal), email [info@trusted.legal](mailto:info@trusted.legal) or call (805) 979-5160.



*Nicole Hornick*



*Elke Kane*

**Diana P. Lytel**, a partner at the law office of **Lowthorp, Richards, McMillan, Miller & Templeman** has been named 2021 Super Lawyer for Southern California.

The 2021 Southern California Super Lawyers listing recognizes Lytel as among the top five percent of Southern California attorneys. A prominent civil litigator and criminal defense lawyer, Ms. Lytel was also named a Super Lawyer for the region in 2020 and has been on the Super Lawyers Rising Stars list since 2015.

Lytel specializes in general litigation for businesses and individuals, professional liability, premises liability and criminal defense. She has defended a wide variety of high-profile clients, including Fortune 500 companies, financial institutions, mutual funds, and insurance entities.

Prior to joining Lowthorp, Richards, Lytel worked in Morgan Stanley's litigation department, served at regulatory agencies (NASD now FINRA & DBO), and held prominent roles with prestigious law firms recognized by Super Lawyers, Best Lawyers in America, and AV Rating. In addition to the Super Lawyers ranking, she holds the highest "Preeminent 5.0/5.0" AV Rating in her profession.

Ms. Lytel received her B.A. in Political Science from the University of California, Los Angeles (UCLA), and her J.D. in 2006 from Loyola Law School, Los Angeles. She is actively involved in local and national legal organizations, serving as President-Elect of the Association of Southern California Defense Counsel and as an active board member of California Defense Counsel and Santa Barbara Women Lawyers.

To contact Ms. Lytel, call (805) 981-8555, or for more information on Lowthorp, Richards, visit <http://www.lrmmt.com>.



*Diana P. Lytel*

Sterne, *continued from page 8*



my husband of forty years, at the center. We produced no offspring, but we do cherish our dogs, two little ten-pound mutts named Poppy and Tikka.

I was asked to share words to live by. The source of my first choice is biblical: "*Life is short, and we do not have much time to gladden the hearts of those who make the journey with us. So be swift to love, and make haste to be kind.*" Second, a precept from the Vulcan Spock of "Star Trek": "*Strive to do all things in an admirable manner.*" Third, a phrase in popular parlance that I agree with wholeheartedly: "*Don't be mean.*"

## THE OTHER BAR NOTICE

Meets at noon on the first and third Tuesdays of the month at 330 E. Carrillo St. We are a state-wide network of recovering lawyers and judges dedicated to assisting others within the profession who have problems with alcohol or substance abuse. We protect anonymity. To contact a local member go to <http://www.otherbar.org> and choose Santa Barbara in "Meetings" menu.

## John W. Ambrecht joins DT Law Partners.

**John W. Ambrecht**, one of the region's leading estate planning attorneys, and his accomplished associate attorney, **Elizabeth Mackey-Sall**, join the Santa Barbara law firm **DT Law Partners**.

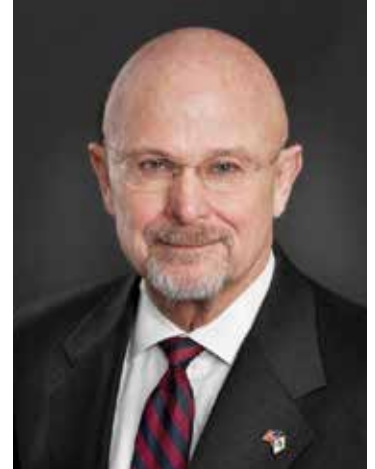
Founded this year, DT Law Partners specializes in business and corporate matters; trust and estate planning; and trust, estate and business litigation. Ambrecht, who joins the downtown law firm as a partner, has more than 30 years of experience in estate planning and estate tax law and is founder of the boutique law firm Ambrecht & Associates in Montecito. Mackey-Sall is a California licensed attorney and estate planning expert who spent six years managing her own private practice in the San Francisco Bay Area before moving to Santa Barbara.

Ambrecht is a certified specialist in estate planning, trust and probate law by the California State Bar Board of Legal Specialization. He's lectured throughout the United States on complex estate planning matters, written articles for numerous business and law publications, and is author of the book *For Love & Money: Protecting Family & Wealth in Estate & Succession Planning*. His practice includes multi-state domestic trusts and estate planning, national and international asset protection, and tax controversies.

Widely recognized as a leader in his field, Ambrecht has been named a Super Lawyer for the Southern California region every year since 2007. He is also a fellow of the American College of Trust and Estate Counsel (ACTEC), a national organization of lawyers elected to membership by their peers for demonstrating the highest level of integrity, competence, and commitment to their profession. Additionally, he is chair of the Business Families Special Interest Group for the USA for STEP World Wide, an interna-

tional organization based in London with 20,000 professionals around the world who incorporate an international tax and family perspective.

Mackey-Sall is an alumna of Southwestern Law School, where she graduated Magna Cum Laude with a Public Service Distinction in 2013. She served as a professor of law and taught the school's bar exam preparation program before launching her own law practice in 2014. She counsels clients on all aspects of estate planning and administration, including wills, revocable and irrevocable trusts, advance health care directives, powers of attorney, charitable giving, probate administration, conservatorships, and other complex estate planning services.



*John W. Ambrecht*

\* \* \*

*If you have news to report such as a new practice, a new hire or promotion, an appointment, upcoming projects/initiatives by local associations, an upcoming event, engagement, marriage, a birth in the family, etc., the Santa Barbara Lawyer editorial board invites you to "Make a Motion!" Send one to two paragraphs for consideration by the editorial deadline to our Motions editor, Mike Pasternak at [pasterna@gmail.com](mailto:pasterna@gmail.com). Any accompanying photograph must have a minimum resolution of 300 dpi. Santa Barbara Lawyer retains discretion to publish or not publish any submission as well as to edit submissions for content, length, and/or clarity.*

## *Santa Barbara Lawyer* Wants to Hear More From SBCBA Members

The focus of the *Santa Barbara Lawyer* in 2021 is to create a forum to engage in rich and provocative conversations across power-differentiated communities, geographic distances, and disciplinary divides. *SBL's* editorial staff invites SBCBA members to remit Articles about social justice, inclusion, and privilege, particularly how these issues pertain to our community. We also strongly encourage the submission of rigorously researched articles that show how law is deeply engaged with socio-political, cultural and climate issues.



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## TWO OFFICES FOR RENT

For rent (available March 1) two professional furnished offices (11'8" x 8'8" for \$1,200.00 and 11'8" x 10'9" for \$1,350.00). Includes a shared reception, two conference rooms, kitchen and workroom with copier. Located in a great Santa Barbara Downtown location across from the Courthouse and above the old Café Ana. Please contact Howard Simon at [hsimon@jhsllaw.com](mailto:hsimon@jhsllaw.com) for further information.

## LEGAL ASSISTANT POSITION

General practice law firm in downtown Santa Barbara is looking for part-time experienced legal assistant. This position could transition to full-time and/or paralegal.

**JOB DESCRIPTION:** Assist general practice attorney(s) in the following areas: Family Law, Estate Planning, Probate, Will Contest, Trust Litigation, Real Estate, and Civil Litigation. Professional communication with clients is essential.

Compensation depends upon experience. Please submit your cover letter and resume by email to [sep@attypenner.com](mailto:sep@attypenner.com) for consideration.

## CITY OF SANTA BARBARA CITY ATTORNEY'S OFFICE SEEKS DEPUTY OR ASSISTANT CITY ATTORNEY

The ideal candidate will be an entry-level attorney (Deputy or Assistant DOQ) with demonstrated interest and commitment to public law. Public law experience is desirable and may be demonstrated through prior public agency representation in either a public or private law office. Litigation experience is highly desirable.

The ideal candidate will enjoy working and contributing in an office environment that emphasizes collaboration and flexibility, with frequent client and co-worker teamwork, both in the office and at the clients' various sites. The Santa Barbara City Attorney's Office is highly computerized, so demonstrated experience with legal case management and document preparation applications is a plus.

**Open until filled. Apply by 5:30 p.m. on March 12, 2021 for priority consideration.**

You may visit the City's website to view more information (including job description) and to complete the application and required supplemental questionnaire: [SantaBarbaraCA.gov/jobs](http://SantaBarbaraCA.gov/jobs)

## HAGER & DOWLING, LLP SEEKS ASSOCIATE ATTORNEY

Highly respected Santa Barbara civil litigation firm seeks associate attorney with civil litigation and insurance law background.

The applicant must have excellent verbal and writing skills, work well both independently and in a team environment, exceptional legal research and enjoy litigation. Competitive benefits include, health and dental insurance, free parking and 401k plan.

Respond with resume, cover letter and references to [kcalahan@hdlaw.com](mailto:kcalahan@hdlaw.com)

# 2021 Bench & Bar Meetings

As Assistant Presiding Judge, the Honorable Pauline Maxwell has set the schedule for the Bench and Bar Meetings that will take place as follows:

**May 20, 2021  
August 19, 2021  
November 18, 2021**

These Bench and Bar Meetings will be held via Zoom. They provide a forum for local members of the Bar to engage in an informal dialogue with the presiding judge as a means of raising issues and concerns that may not otherwise be addressed. All attorneys and paralegals are welcome to attend. For any practitioners wishing to submit agenda items for consideration before any of the scheduled meetings, please email those items to Ian Elsenheimer: [ielsenheimer@aklaw.net](mailto:ielsenheimer@aklaw.net)





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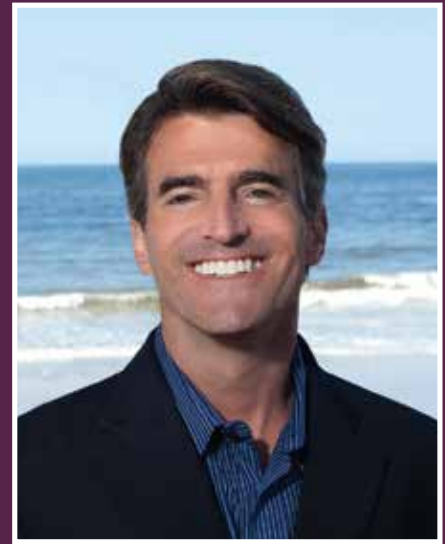
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