

Santa Barbara Lawyer

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**In Memoriam: A Tribute to Homer Gordon Sheffield, Jr. /
The Incredible Donors of the Gift of Time / A Lasting Peace in
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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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On the Cover

Homer Gordon Sheffield, Jr.

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Santa Barbara County Bar Association President's Message

BY ERIC BERG

I have a client with a very successful business located outside of Santa Barbara. We have enjoyed a good relationship over the years. Last year I filed a case on the client's behalf in another jurisdiction. At the time I believed the case had merit, but as I did more investigation I realized I was wrong. I presented the client with my conclusion that they should dismiss the case, and was met with both bewilderment and anger. Not only did the client insist that the case not be dismissed, but they insisted that we get even more aggressive with discovery in order to "make them suffer."

All of us encounter challenging clients. When we do, it is easy in theory to know what the right response is, but often not so easy in practice. Especially when we have a strong and difficult personality on the other side of the table.

Our Bar Association has accomplished many things that we can take great pride in. One of the things at the top of my personal list is the fact that our Bar, in conjunction with our Court, was prescient enough fifteen years ago to provide me with clear direction as to my particular ethical quandary.

In January 2007, the Santa Barbara Superior Court, in conjunction with the Bar Association, adopted a statement of the policies applicable to all proceedings pending before the Santa Barbara Superior Court. Those policies have been codified as part of the Superior Court's Local Rules of Practice, and can be found at *Appendix 5—Guideline for Attorneys Practicing Before the Santa Barbara County Superior Courts*.

Among the principals set forth in the Guideline is the following:

"A lawyer must work to advance the lawful and legitimate interest of his or her client. This duty includes an obligation not to act abusively or discourteously."

And this—

"A lawyer should not behave offensively, derogatorily or discourteously even when his or her client so desires. If necessary, a lawyer should advise a client that he or she will not engage in such conduct, even if directed."



Eric Berg

This Guideline helped inform my decision to take steps to formally withdraw from representation of the client. What I am struck by is that while it is one thing to generally agree with the maxim that lawyers should behave in a civil manner, it is quite another to show that you mean what you say by codifying these principles into binding local rules of practice and procedure. If you have not reviewed them, or if it has been a while, they are easily accessible on the Court's website.

To those of you who may conclude that this Guideline is "no big deal," and that everyone knows intuitively to behave this way, I leave you with the following for your consideration. On May 1, 2014, the California Supreme Court took what many now view as an historic step. On this date, the Court adopted Rule 9.4 of the California Rules of Court to supplement the attorney oath for new lawyers. The Rule states as follows: "In addition to the language required by Business and Professions Code section 6067, the oath to be taken by every person on admission to practice law is to conclude with the following: 'As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity.'"

In other words, it took the California Supreme Court over seven years to catch up with us. ■

The Incredible Donors of The Gift of Time

BY MICHELLE E. ROBERSON

Many of us lawyers bill by the tenth of an hour. Each six minutes is time so incredibly valuable that I am always impressed to see the number of hours lawyers volunteer to our community.

Last issue, we provided bios of our Board Members, but the number of hours that the group volunteers would astound you if we multiplied it by our respective hourly rates. Many of our members have been volunteers for many years, quietly stopping the clock each time they pick up the phone, attend a board meeting, or perform their duties for the various non-profits they devote time to.

By way of example, Jennifer Gillon Duffy is our President Elect for 2023 and has chaired almost every committee at the Santa Barbara County Bar Association. This includes interviewing potential candidates for our board to present nominations, gathering nominations for our annual awards ceremony, being the editor of this magazine, and on and on, as well as being a presenter for our Bench and Bar Conference twice. On top of this, she also volunteers for the Children's Creative Project (I Madonnari Italian Street-Painting Festival), Direct Relief International, and the Dream Foundation alongside board member and local attorney Mark DePaco—all while being a mother of four and a lawyer.

Each week, you can find her early on Saturday mornings in the Dream Foundation parking lot joined by other attorney volunteers: Megan Behrens, Kristen Blabey, Laura Collins, Jennifer Drury, Elizabeth O'Brien, Lindsay Shinn, and Mindy Wolfe, making bouquets for our community through the Flower Empower Program. She estimates having made over 7,500 bouquets to date with that program. Jennifer is most proud that her 18-year-old daughter,

Kira, was named Youth Volunteer of the Year for the Dream Foundation for 2020 based on hundreds of volunteer hours.

Multiplying a Sunday morning volunteer session by each lawyer's billable rate is an astonishing number. We lawyers definitely do good despite the—sometimes very funny—lawyer jokes.

We also have a Modest Means panel in our town, where seasoned attorneys



Michelle E. Roberson

As so many individuals find themselves strapped for time, barely seeing their family, juggling the demands of keeping a successful practice operating, it is increasingly impressive that lawyers still take the time to devote this precious resource of time to our community.

provide “low bono” services. This is when our Executive Director, the incredible Lida Sideris, along with legal assistant Christy Barkey, screen individuals that need assistance, but may not otherwise qualify for free legal services. These attorneys take on clients for a narrow purpose, deeply discount their retainer as well as their hourly rate. Frankly, they end up volunteering much of their time for their clients, and more, for their community, as it frees up many self-help service offerings that can then assist more people.

The Modest Means program did not suddenly appear. Approximately six years ago Lida took on the task to implement it after she heard of another organization having success with the program. She made numerous phone calls to get the right lawyers and enough interest. Lida, also a lawyer, is an enhancement to our legal community.

Many lawyers volunteer in a lot of non-legal ventures from their HOA (a thankless job for many) to kids' sports leagues; hours and hours of billable time going to services that make a true impact in our neighborhoods. This is on top of the pro bono work many lawyers do in varying practice areas. Just tonight I heard of fellow Director Brad Brown mention in passing a pro bono case he handled and when it got appealed, was able to tap into the Legal Aid services that also assisted, making a more robust contribution. Brad

Continued on page 12

A Tribute to Homer Gordon Sheffield, Jr.

By SCOTT B. CAMPBELL

Homer Gordon Sheffield, Jr. co-founder of Rogers, Sheffield & Campbell, died on August 24, 2021, at age 80.

Homer was a remarkable man.

Many readers of *Santa Barbara Lawyer* will remember Homer for his skills as an attorney.

Reflecting his legal acumen, Homer was often acknowledged as Santa Barbara's "Dean" of estate planning and tax law.

Attorneys and accountants that worked with Homer on complex matters will remember Homer for his pragmatism and problem solving. Homer had the ability to untangle the Gordian knots that so often lie at the intersections of transactions, life, and the Internal Revenue Code. He could see what needed to be done and do the legal work that accomplished his clients' goals. Homer could solve problems in those areas of law that few others could solve. He was a master of his craft.

Homer's clients will remember Homer for his sincere charm and grace. Homer took the time to plainly explain what needed to be done, how it would be done, and why it needed to be done. That said, it is fair to note that when charm and grace failed, Homer could and would make his points . . . *emphatically*. No one left a meeting without knowing Homer's position.

Homer's clients and staff will remember that Homer was a phenomenal worker. He produced massive amounts of very high-quality work. To the astonishment of this writer, no matter how much work he had, Homer's work *always* got done precisely when he promised his clients it would be done.

This unceasing and prodigious work output meant that Homer's assistants had to work hard to keep up with the demand. With a lesser boss, this relentless production

would have caused his staff to raise their hands in defeat and go off to more reasonable employers. Yet, none of his staff ever quit. To the contrary, they venerated Homer because of his kindness and patience.

Homer met Bill Rogers as first year students at Duke University School of Law in 1964 standing in an alphabetically arranged registration line – R comes just before S. Thus began a collaboration, friendship, and partnership that lasted more than 55 years. Both Bill and Homer headed to California after graduating from law school and worked for different firms. In 1973, Homer and Bill joined together and created what eventually became Rogers & Sheffield.

Homer managed the firm for 35 years.

Despite his towering reputation and keen intellect, Homer managed Rogers, Sheffield & Campbell without ego. He was a master of collaboration and a major reason the firm has stayed together for nearly 50 years.

Homer's humility and collaboration skill manifested



Scott B. Campbell



His long-time law partners, Bill Rogers on his right and Scott Campbell on his left. The three remained great friends for decades.

In Memoriam

themselves in countless ways beyond the firm and the practice of law. Many people in the community will remember Homer as a quiet philanthropist who privately supported many organizations. Among other causes and organizations, Homer either set up, served as a director or legal counsel, or donated to the following organizations: Christian Lawyers Association, Direct Relief International, Free Methodist Church of Santa Barbara, Friendship Center, Montecito Trails Foundation, Vietnam Veterans of America, Santa Barbara Symphony, and Santa Barbara Blues Society.

Finally, and most remarkably, the legions of Homer's friends who had the good fortune to go to any venue or event with the requisite combination of rock and roll music and Jack Daniels Whiskey will forever remember Homer on the dance floor. Homer could DANCE! When Homer got going, and trust me, Homer relished in the opportunity to get going, few could believe their eyes when they saw this polyester clad man usually wearing a tie not less than ten years out of fashion with a hip flask popping in and out of his rear pocket as if by magic, rockin' and rollin' on a dance floor with Travolta's flare, Swayze's moves, and Astaire's grace.

Homer was a remarkable man. ■

Scott Campbell was managing partner of Rogers, Sheffield & Campbell, LLP from 2008 to 2018 and President of the Santa Barbara County Bar Association in 2014.

Homer was a graduate of Duke University and the Duke School of Law where he received his JD in 1967. He was a proud member of the Phi Delta Theta fraternity and later the Phi Delta Phi legal fraternity. He is shown here on the far left cheerleading for one of Duke's athletic teams.



As a Navy Officer, Homer served on destroyers in the Pacific and Far East, and was awarded the Vietnam Service and National Defense Medals.

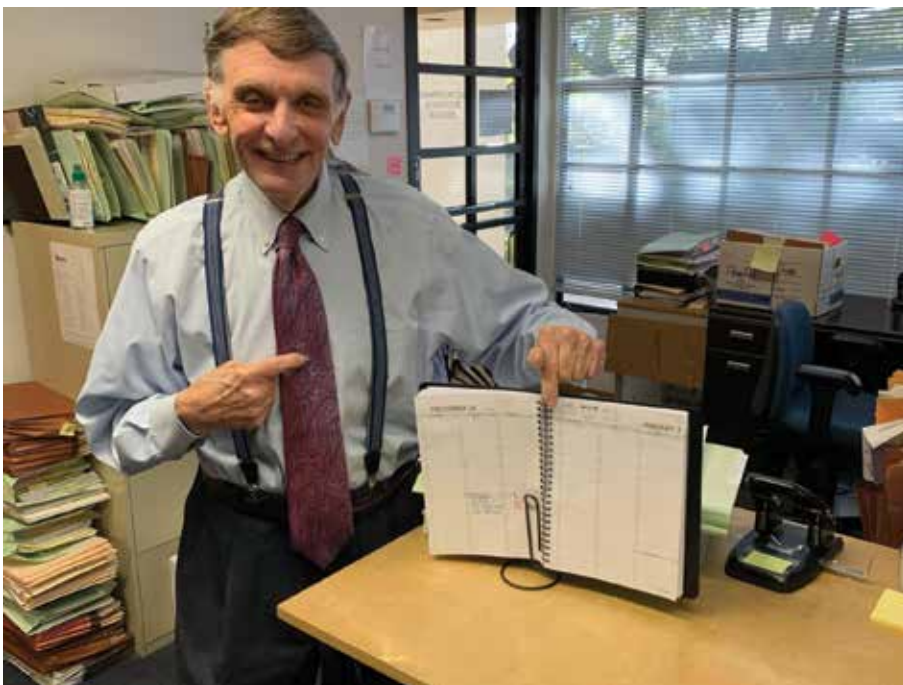




As a young attorney



Cutting the rug



Homer Gordon Sheffield, Jr.

Homer, always the gentleman, in his traditional tie and suspenders holding his calendar—reporting to his last official day of work—December 31, 2020. He continued to come into the office to wrap things up until August 2021.

Dear Editors:

My recent article (published in this bar journal), *The Further Expansion of – and Assertion of “Guardrails” to – California’s Notions of “Domestic Violence” in Family Law*, focused in part on the Court of Appeal’s July 27, 2021 Opinion in *In re Marriage of L.R. and K.A.*, which the Court of Appeal certified for publication. The Opinion reversed the trial court’s findings of domestic violence, holding that, “although demonstrating poor co-parenting, [the mother’s behavior] did not rise to the level of destroying father’s mental and emotional calm to constitute abuse within the meaning of the Domestic Violence Prevention Act”

Publication would have made the Opinion citable as binding precedent (with narrow exceptions, California Rules of Court, Rule 8.1115 provides that unpublished appellate opinions must not be cited or relied on by a court or a party in any other action). The Opinion’s opponents were concerned that it represented undue interference by the Appellate Court into the trial court’s subjective determination of facts and findings of “domestic violence” following an evidentiary trial. Its supporters, however, applauded the manner in which it addresses “... the systemic issue courts see regarding domestic violence restraining orders used as a tool for control against the opposing party, rather than actual protection as is intended.” The California Supreme Court received extensive lobbying both for and against publication.

On November 10, 2021, the Supreme Court opted to de-publish the Opinion and did not grant review. A prominent former Superior Court judge speculated that “... the de-publication was motivated by many factors, including the optics of reversing a trial court for granting a restraining order on [particular] facts — there is a reason we have a substantial evidence rule.” (The substantial evidence rule is a principle that a reviewing court should uphold a trial court’s ruling if it is supported by evidence on which the trial court could reasonably base its decision.) The upshot is that the Opinion may not be cited or relied on by a court or a party in any other action.

Sincerely,
Gregory W. Herring, CFLS



Gregory W. Herring

Roberson, *continued from page 8*

practices personal injury with decades of experience under his belt, yet there he is, doing pro bono work because somebody needed it.

As so many individuals find themselves strapped for time, barely seeing their family, juggling the demands of keeping a successful practice operating, it is increasingly impressive that lawyers still take the time to devote this precious resource of time to our community. While many will instead write a check—which is always appreciated and generous—those that devote the gift of their own time when it is such a scarce commodity need to be recognized more as they are, many times, the ones that don’t seek any recognition.

I challenge you to start recognizing the underground volunteers around you and, while you do, start thinking about an award you could nominate them for or otherwise recognize them to bring them some well-deserved joy. The Santa Barbara County Bar Association receives nominations for several awards, such as the Pro Bono Award, which would be an excellent opportunity to highlight our incredible donors of time. ■

Michelle E. Roberson is a first-generation Californian that was not quite on the right path in grade school, graduating high school with an abysmal 1.8 gpa. Notwithstanding, she was awarded the Alyce Marita Whitted Memorial Award at UCSB in recognition of endurance, persistence, and courage in the face of extraordinary challenges while in pursuit of an academic degree where she majored in Law and Society with an emphasis in Criminal Justice as well as Business Economics. She subsequently went to Rutgers Law where she earned her Juris Doctorate and practiced law in New Jersey and Pennsylvania before returning to California, practicing law locally, including providing low-bono services for the SBCBA Lawyer Referral Service Modest Means program. She now is the President/CEO of Sierra Property Group d/b/a Sierra Property Management.

DON'T MISS OUT!

Have you renewed your membership in the Santa Barbara County Bar Association? If not, this will be your last issue of the *Santa Barbara Lawyer* magazine. Please see page 28 for the 2022 renewal application.



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A Lasting Peace in Taiwan Requires Independence

BY PROFESSOR RONNIE R. GIPSON JR., JD

The United States has a complicated history with Taiwan. The United States' involvement with Taiwan stems from decisions made during World War II. In World War II, Japan, as a member of the Axis powers, was engaged in an expansionist drive to conquer significant parts of mainland China for raw materials and resources to feed its domestic economy.¹ To oppose the Japanese expansion, the United States supported the separate Chinese national groups (consisting of Chinese Nationalists and Communists) that joined together in their fight against the Japanese.² This support manifested in the United States allying itself with the Chinese Nationalist government led by Chiang Kai-Shek.³ However, as the war raged on the Chinese Communists gained large swaths of territory.⁴ In the aftermath of World War II, the peace between the Chinese factions ended. In the ensuing Chinese civil war, the Chinese Communist party, led by Mao Tse-tung, gained control of mainland China.⁵ Chiang Kai-Shek fled with his Nationalist supporters to Taiwan, or the Republic of China. Both leaders professed to be the true representative of the Chinese people.

Historical Background

Prior to 1979, the United States officially recognized Taiwan as the capital of the Republic of China based on the Sino-American Mutual Defense Treaty⁶. Pursuant to this treaty, the United States promised to come to the defense of Taiwan should another country, such as China, attempt to conquer it through an invasion.⁷ From 1955 to 1979, China understood that any military action that it took against Taiwanese independence would trigger an armed response from the United States. Therefore, during this period, Taiwan was protected from a Chinese invasion.

Then in 1979, President Jimmy Carter unilaterally nullified the Sino-American Mutual Defense Treaty.⁸ The move officially removed the United States' recognition of Taiwan's sovereignty as an independent country. The nullification of the treaty was done to strengthen economic ties with mainland China. In response, Congress moved swiftly

on this topic and passed the Taiwan Relations Act which guaranteed that the United States would safeguard the peace of the Taiwanese nation.⁹ Commenting on the action taken by Congress, then Senator Jacob Javits voiced the sentiment of many legislators when he said, "...the important point is that we must substantively protect our responsibility to Taiwan, and it is in our highest national interest to do so."¹⁰ While the language in the Taiwan Relations Act stopped short of guaranteeing an armed response, under the law, the United States would have to provide some form of assistance to Taiwan to preserve its sovereignty and peace if it were attacked (presumably by China).¹¹ Protection of Taiwan is a principle clearly enunciated in the legislative intent of the Taiwan Relations Act.

The current Taiwanese independence and protection situation is somewhat reminiscent of Poland's position in the late 1930s facing unbridled aggression from Nazi Germany. Great Britain and France promised to declare war if Germany attacked Poland. However, after Germany attacked Poland on September 1, 1939, neither Great Britain nor France deployed troops to Polish soil to rebuff the attack and restore Poland's sovereignty. The promise of assistance was an empty promise for which the Polish people paid dearly. History teaches us that an ambiguous policy of assistance will not stop naked aggression. From a diplomatic standpoint, a firmer stance and clearer policy in support of Taiwan independence and statehood is warranted.

Taiwan is an Independent State

In international law, a state is an independent and sovereign entity that has a defined territory; a permanent population; exists under the control of its own government; and that engages in formal relations with other such entities.¹² A territory that resembles a state must have sovereign independence. The territory cannot fall under the control of another state. As a result, a state in the international arena is equal before the law and entitled to the equal protection in the exercise of rights.¹³ A state is equally bound to fulfill its obligations. In the Nineteenth Century, scholarly thought developed the notion that the state can only be subjected to extraterritorial law by its own consent.



Professor Ronnie R. Gipson Jr., JD

Although Taiwan has not officially declared itself as a state, the nation and its corresponding government complies with all the required indicia to qualify as a state under accepted norms of international law. It is this de facto qualification as an independent state that causes China such angst. China is afraid that if Taiwan declares its independence, then the rest of the world will quickly recognize that declaration, a point from which any action by China to exert control and influence would flout international law.

“Under international law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.”¹⁴ The definition breaks down into criteria that lend credence to the recognition of Taiwanese sovereignty. First, sovereignty exists when government officials in one state are free from the control of government officials in other states.¹⁵ In the case of Taiwan, the territory has its own government that is elected by the people living in Taiwan. A good comparison to show that sovereignty exists is to compare Taiwan’s government to that of Hong Kong. While Hong Kong’s leaders are elected locally, Carrie Lam, the current leader of the Hong Kong government, answers to Chinese government officials. In contrast, in Taiwan, the government officials are also elected locally. However, the difference is that the government officials in Taiwan actively pursue policies and initiatives that contradict the policies and wishes of China.

The next criterion requires that within a specified area, the prescription and enforcement of legal rules are vested exclusively in the government of the territory.¹⁶ On this point, the elected government of Taiwan exercises control through its national government, police, and military over Taiwan’s geographically claimed land. The third criterion requires that government officials act freely to set policy absent control by another state. Evaluation of this criterion garners a lot of contention. Taiwan’s government repeatedly pursues policies that are designed to protect its sovereignty and independence. However, China maintains that Taiwan is an inherent part of China, and it is China that has the final say on decisions regarding Taiwan’s policies. However, this stance by China is further complicated by China’s stated policy of “One Country, Two Systems”.¹⁷ Through this policy, China granted the territory of Taiwan semi-autonomous status, keeping in mind that reunification of Taiwan with China was and is always the end goal. The result is that a strict constructionist reading of the government freely setting policy requirement mandates a conclusion that Taiwan satisfies this condition because Taiwan consistently pursues governmental agenda items

contrary to China’s wishes.

For the fourth criterion, in the international arena, a state gives up a portion of its sovereign authority by entering a treaty or participating in an international organization. International Law recognizes this cession of power and decision-making as a characteristic of an independent state through the exercise of its capacity to enter into international agreements and to become a member of international organizations.¹⁸ Taiwan has entered numerous treaties such as the General Agreement on the Application of Sanitary and Phytosanitary Measures¹⁹; the TRIPS Agreement²⁰, Biological Weapons Convention²¹; and the Agreement on Technical Barriers to Trade²². Taiwan also gained membership into the World Trade Organization.²³ Evaluation of this criterion on entering international agreements and organizations weighs in favor of characterizing Taiwan as a state.

The final criterion for sovereignty requires that a territory gain from relationships by getting access to new resources, legal opportunities, and increase its role in deciding issues that affect its national interests. To assess whether this condition is met, the following question must be answered in the affirmative: *Does the territory’s government get a seat at the table when decisions are made about the territory or the region?* Evaluation of this aspect of statehood weighs in favor of categorizing Taiwan as a state. Since 2002, Taiwan has taken affirmative measures to join international organizations as well as international agreements all while increasing its role in Asian-Pacific affairs. Recently, Taiwan formally applied for membership in the eleven member CPTPP. China, upon learning of Taiwan’s pending application, in an effort to block international recognition of Taiwan independence and sovereignty, submitted its own application to join the CPTPP ahead of Taiwan’s submission by only a few days.²⁴ The administration of the CPTPP allows any member to block the admission of a new prospective member with a veto of the application.²⁵ China’s move to block Taiwan’s entry into the CPTPP with either a veto, by itself as a new member, or through strong arm persuasion tactics directed at the current CPTPP members is not surprising considering the additional soft requirement needed for international statehood recognition.

Recognition in international law is the doctrine that represents formal acknowledgement by another state that an entity possesses the qualifications for statehood and implies a commitment to treat that entity as a state. It is significant to note that under international law, an entity that satisfies the requirements for statehood is a state whether its statehood is formally recognized by other states or not.²⁶ In essence, China is wielding its international economic influence in attempting to block Taiwan’s entry into the

CPTPP to deprive Taiwan of the status that it already holds by preventing other states from entering into formal trade agreements with Taiwan. Japan, the current chair of the CPTPP, welcomed and strongly backed Taiwan's application for membership into the trade pact to counter China's influence on trade in the region.²⁷ Initial polling of the CPTPP members show that in addition to Japan, New Zealand, Singapore, and Australia support Taiwan's admission. The state most likely to contest Taiwan admission is Malaysia. The remaining members, Canada, Mexico, Brunei, Chile, Peru, and Vietnam, have not expressed views on acceptance or rejecting Taiwan's application for admission.²⁸

Is Taiwan About to be Invaded by China?

China's actions recently serve as a testament to the need for not just promises but meaningful action by the United States to protect Taiwanese independence. In January 2019, the Chinese President, Xi Jinping, made a speech in which he unequivocally stated that China would use force if necessary to reunite Taiwan with mainland China.²⁹ China's actions prior to and after President Xi's speech support this aggressive stance and serve as a threat to the national security and peace of Taiwan. For instance, in 2018 China engaged in a series of acts against Taiwan rightfully perceived as confrontational. China sent fighters and bombers from its air force to violate Taiwanese airspace, which prompted Taiwan to scramble its jets in response.³⁰ In April 2018, China released footage of its army conducting a mock invasion of a Taiwanese village.³¹ Then in June 2018, the Chinese navy conducted military drills in the Taiwan Strait simulating an invasion of Taiwan.³² In August 2018, China issued a rebuke to the United States seeking to block Taiwanese President Tsai Ing-wen's visit to the National Air & Space Administration (NASA).³³

Actions in the last six months show an increase in aggressive and threatening acts from China toward Taiwan. On June 15, 2021, and on September 5, 2021, China again sent a large armada of aircraft into airspace adjacent to Taiwan, which prompted Taiwan to scramble fighter jets to observe and protect its airspace.³⁴ Recently, on September 26, 2021, in an ever-threatening move, China renewed its claim to Taiwan as an integral part of China and refused to recognize its independence and sovereignty.³⁵ On October 22, 2021, Taiwan's Ministry of Foreign Affairs convened a forum with the US Department of State to lobby for support and assistance on expanding Taiwan's participation at the United Nations and in other international fora.³⁶ The most shocking development to date occurred on October 28, 2021, when the presence of US troops in Taiwan serving as military advisers was revealed by Taiwan.³⁷ The danger of

all-out war over Taiwanese independence is stronger now than it has been in years.

China's overtly provocative acts have been accompanied by a diplomatic strategy in trade that has led many of Taiwan's allies to isolate and sever ties with the country to foment an economically prosperous relationship with China.³⁸ Collectively, President Xi's speeches, the provocative military moves, and the economic isolation send a clear message that China is pursuing a path designed to achieve repossession of Taiwan's territory and culture. With the proverbial noose tightening, Taiwan, especially after observing the sequence of events in Hong Kong³⁹, may be forced into the position of declaring independence from China to protect its sovereignty and democracy. The potential for disaster exists if the issue of Taiwanese independence is not handled with sound policy decisions, diplomacy, and forethought in lieu of a reaction to aggressive economic and military moves by China.

Since the passage of the Taiwan Relations Act, different U.S. administrations have taken different approaches to foreign policy with respect to Taiwan. Some administrations have directly provided Taiwan with the resources that it needs to mount a defensive posture against Chinese aggression. Other administrations pursued a more muted policy designed to appease mainland China wherein the United States did not supply significant military hardware. During the Trump Administration, there were advisers who favored providing big ticket military items such as fighters for an air force, armed drones, and smart mines. Those advisers faced pushback based on the former President's stated position of asking the United States' allies to increase their own spending on self-defense versus relying on costly military aid supplied by the United States at the expense of its taxpayers. In the end, the United States sold more than \$1.8 billion dollars worth of arms to Taiwan which was significantly more than previous administrations.⁴⁰

An examination of different administrations' policies towards Taiwan since President Carter's abandonment of the Sino-American Mutual Defense Treaty shows a record of inconsistent long-term policy toward Taiwanese independence and the scope of military aid provided by different United States Presidents. As a result, some forty years since abandonment of the Sino-American treaty, the US still does not have a clear policy on the scope of assistance to be rendered to Taiwan to protect its sovereignty and independence if the country were attacked as part of a reclamation effort by China. The inconsistency is a result of the sovereignty limbo that Taiwan has existed within since 1951. For decades, Taiwan branded itself as the capital of China when, in reality, Taiwan has been and continues

to be an independent state empowered and imbued with sovereignty and the right to decide its own affairs. China, as part of its One Country Two Systems policy, sees Taiwan as an extension and territory subject to its governance.

Examining the economic impact of an ambiguous assistance policy lends credence to the premise that a clearer stance is needed. In 2019, Taiwan's Gross Domestic product (GDP) was estimated at \$586.1 billion with a population of 24 million people.⁴¹ Trade between the United States and Taiwan in 2019, was estimated at \$103.9 billion with more than \$40 billion worth of trade exported from the US and more than \$60 billion worth of trade imported into the US from Taiwan.⁴² For the United States, Taiwan is the 13th largest goods export market.

Consider the negative ramifications to the global aviation industry if Taiwan loses its independence. For example, the aviation industry contributes \$2.7 trillion dollars to the world gross domestic product. China Airlines, the national airline of Taiwan, operates a fleet of aircraft that consists of 38 Airbus aircraft and 51 Boeing aircraft.⁴³ A major shift in the purchasing habits of Taiwan could significantly alter this segment of the economy to the detriment of the US and Europe. The Chinese Commercial Aviation Company (COMAC) is making significant inroads into carving away market share from Airbus and Boeing through its sales of recently certified commercial airliners to companies throughout Asia. If Taiwan were to be subsumed back into mainland China, then any future sales of commercial aircraft would likely be directed by the state towards COMAC. The US (Boeing) and Europe (Airbus) would lose out on billions of dollars in trade. These lost sales to China would result in significant job loss and a decline in economic activity within the aviation sector of both the United States and European countries. The impact of an unclear policy on Taiwan contains the potential to do great harm to global trade, including Taiwanese and American trade interests.

The failure of not having a clear foreign policy on how to support Taiwan in case of an independence declaration has the potential to subsume other issues, such as global trade and immigration, into the sphere of influence and decision making. Could Alaska, Hawaii, Washington, Oregon, and California handle a sudden mass migration of fleeing Taiwanese people seeking to escape Chinese communist rule or a senseless war?

Consider how two seemingly unrelated issues could be fused together to cause the United States to seriously consider agreeing to sacrifice Taiwan's independence. First, the US wants the Korean peninsula to be denuclearized. Is the US willing to forego safeguarding Taiwan independence in exchange for China's promise to reign in North Korea

to denuclearize and end the Korean War? Alternatively, is the US amenable to sacrificing Taiwanese independence in exchange for the cessation of Chinese construction on atolls in the South China Sea? Both moves would signify major shifts in the stability of the Asian-Pacific region. The removal of a nuclear threat combined with the absence of threat of war would enable South Korea to entertain the notion of reforming its compulsory military service and possibly recharge reunification talks. Alternatively, the cessation of Chinese build-ups in the South China Sea would serve to guarantee the security of open sea lanes for passage of international trade. One of the results would be reduction in global insurance rates for the maritime industry, which in turn would reduce costs for trade.

Navigating complicated and thorny issues in the realm of international law is fraught with difficulties on any given day. However, with Taiwan's independence, there is the real possibility that in a worst-case scenario with missteps in foreign policy; through inexperience and a failure to appreciate the consequences of certain actions, the situation could precipitate into one that draws American soldiers into direct, armed conflict with China. President Biden could work with Congress to create and then pursue a policy that supports Taiwan's declaration of its independence and then incentivizes China to recognize Taiwanese independence as a sovereign nation. Ignoring the problem is not going to make it go away, and kicking the proverbial can down the road is not going to make resolving the issue easier later.

To Achieve Lasting Peace Taiwan's Independence Must be Recognized Worldwide

While the signposts on Taiwan independence signify troubled waters ahead, what appears to be missing is a thoughtful long-term policy initiative supporting Taiwanese independence and recognizing statehood, along with clear-cut strategies to achieve those goals peacefully. Instead, the situation has been stoked to a higher level of fervor with the sale of arms to Taiwan in 2020; and the policy announced by the US State Department in 2021 encouraging federal government officials to embrace meeting with Taiwanese officials. China responded to both moves by increasing its military activities in the Taiwan Strait, increased incursions into Taiwan airspace, and amplified warnings to the United States not to give support to those in Taiwan who seek to declare formal independence.⁴⁴ Policy makers should not sit back and allow the situation to unfold on China's timeline without having a plan. Why not? Because the outcome will be one that sacrifices Taiwanese independence and sovereignty, which has been a fundamental part of the United States' foreign policy in Asia since 1949. ■

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Race Effects of Incarceration

BY ROBERT M. SANGER¹

Professor Bell Hooks, who died at the end of last year, famously said that American society is a capitalist, white supremacist patriarchy. This assessment is certainly not comfortable for any segment of American society—but it is supported by empirical data. Countless studies have documented the effects of wealth on decision-making in our society, especially after the Supreme Court’s decision in *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310. Countless other studies, historical and contemporary, have documented the adverse effects of racism in perpetuating supremacy of white Americans over people of Color. Mass incarceration has been documented as a factor in the dominance of the white economic power structure over people of Color.²

Readers may react adversely to this introduction. There has certainly been a desperate effort to deny the data or to overcome the truth with devices to perpetuate the effects of Hook’s assessment. However, lawyers are in a position to assess the actual data and deal with it accordingly. A week before this New Year, the American Medical Association published yet another study that starkly demonstrates the unfairness of the American obsession with mass incarceration. In this case, it documents that the ultimate unfairness—early death—is more likely for people incarcerated who are Black than for non-Blacks.

The JAMA Study

A group of public health experts, Benjamin J. Bovell-Ammon, MD, MPH, Ziming Xuan, ScD, SM, Michael K. Paasche-Orlow, MD, MA, MPH, and Marc R. LaRoche, MD, MPH, have evaluated data from the National Longitudinal Survey of Youth 1979 (“NLST79”) which tracked a cohort of youths who were ages 15 to 22 years in the calendar year 1979. This cohort was followed by way of surveys from 1979 through the end of the year 2018 (“NLSY79 cohort”). The authors of the study did a statistical analysis over the next three years resulting in an article just published on December 23, 2021 by the Journal of the American Medical Association, aptly titled, “Association of Incarceration

With Mortality by Race From a National Longitudinal Cohort Study.” (JAMA Network Open. 2021;4(12):e2133083. doi:10.1001/jamanetworkopen.2021.33083, “the JAMA Study”).

The JAMA Study, as with all meaningful statistical studies, had to meet rigorous criteria, including those set forth in the *Strengthening the Reporting of Observational Studies in Epidemiology* guidelines.³

The JAMA Study includes a comprehensive description of the cohort selection and the details of the NLSY79 data source, along with its potential limitations. The authors identified key variables in order to create a valid regression model resulting in a baseline comparison that corrected for the effects of non-incarceration factors in mortality. In other words, the JAMA Study was designed to isolate, best they could, the effects of incarceration on mortality, independent of other variables, such as poverty, education, and drug use.

The JAMA Study then compared the mortality rates of those exposed to incarceration based on race. Of ultimate significance was the comparison of non-Hispanic Black participants to other racial or ethnic groups (Black v. non-Black participants). The JAMA Study ultimately evaluated 7974 individuals in the NLSY79 cohort who were followed up for nearly four decades. The Study found that “experiencing incarceration in adulthood was associated with lower life expectancy for Black but not for non-Black participants.” Incarceration was associated with a 65% higher mortality rate among Black participants. Among non-Black participants, incarceration was not associated with mortality. These findings were consistent with other findings but stated that, “Because very few prior studies have examined the contribution of incarceration to any kind of racial health disparities, our study provides the most direct evidence to date, to our knowledge, on the association between mass incarceration and racial disparities in life expectancy.”

The Context

Mass incarceration has become a fact of life in the United States over the last fifty years. A “war on crime” was a manufactured political tool. The old political tactic of con-



Robert M. Sanger

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solidating power in the face of a real or imagined enemy was exploited, using crime stories, manipulated statistics and racial tropes. While fear of enemies, e.g., Wobblies or Communists, was always a political ploy, the current fear of crime and “criminals” started in earnest in the Nixon Administration and took on more life during the Reagan, Bush and Clinton eras. Senators Biden and Hillary Clinton were vigorous advocates for the faux war as was former president Trump and, to an extent, Obama. Along with the “war” came the militarization of the police, SWAT Teams, mandatory minimum sentences and enhancements, including gang allegations appended to charges against almost all members of certain communities.⁴

Incarceration became the paradigm of punishment over the last half century and putting Black men in prison became one of its most prominent consequences. The JAMA Study summarized established research and stated, “Serving time in prison during young adulthood is as common for Black men as college graduation is for White men.” This is true nationwide but studies have found an effect here locally.

On August 26, 2020, the Realignment Planning Workgroup with the Santa Barbara County Community Corrections Partnership (CCP) presented a “Preliminary Analysis on Racial and Ethnic Disparities” relating to the criminal legal system in Santa Barbara County. The conclusion of the Working Group was: “Black people are significantly overrepresented in both misdemeanor and felony arrests. Black people make up 1.9% of the adult population, but 7% of felony arrests and 5.5% of misdemeanor arrests.” Furthermore, there is a “significant overrepresentation of Hispanic and Black people in the Santa Barbara County Jail.”

The conclusions of the JAMA Study that “experiencing an incarceration in adulthood was associated with lower life expectancy for Black but not for non-Black participants” should give policymakers, legislators, judges, and prosecutors pause to ask, “What are we doing?” This is just one more empirical set of data that substantiates Bell Hooks’ aphorism. It does not go away by arguing that students should not be taught critical thinking or that white society should deny the history of race in this country or that we should look the other way while the brunt of police tactics falls on people of color, and mass incarceration means disproportionately incarcerating Black men. As the CCP presentation shows, it is happening here whether we like it or not. And as the JAMA Study shows, exposure to incarceration has a disproportionate effect on the actual lifespan of Black men over non-Black.

Conclusion

The late Judge Ed Bullard—former CHP Officer, former Deputy District Attorney and then Superior Court Judge—asked a question when a prosecutor urged prison for a defendant: “How are we not making the world a worse place by sending this man to prison?” It is a question that needs to be asked every time incarceration is considered as a punishment. The authors of the JAMA Study concluded, “Our study confirmed known racial disparities in rates of incarceration and life expectancy. Collectively, these data suggest that incarceration may be a key mediator of differential life expectancy between Black and non-Black populations in the US—a mediator that is a modifiable target for policy interventions.”

The fifty years of mass incarceration has made the world a worse place for individuals, their families and communities. Now we have one more set of data that demonstrates that institutional racism, whether consciously willed or not, is an empirically verifiable fact in our sentencing system. In addition to all else, exposure to incarceration results in increased morbidity based on race. Few people would embrace that as a desired consequence but, once we know it to be a fact, we cannot continue the practice of mass incarceration without intending that undesired consequence. A decision to perpetuate an even unintended system that results in early death based on race is a decision that diminishes each of us. ■

ENDNOTES

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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.
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Saturday, February 26 & Saturday, March 5, 2022

Request for attorney volunteers to score the competition

Every year, judges, commissioners, and attorneys, volunteer their time to make the Santa Barbara Mock Trial competition an exciting educational experience for our students.

Please support our local high school students by volunteering your time as a scorer on

Saturday, February 26 and/or Saturday, March 5, 2022.

An online scorers training will be provided.



To sign up or for more details: Pat Noronha, Santa Barbara County Education Office
pnoronha@sbceo.org · (805) 964-4711 x5289



Motions

Brownstein Hyatt Farber Schreck is pleased to announce the following elevations effective Jan. 1, 2022, in the Santa Barbara Office: **Jessica Diaz** and **Chris Guillen**.

Jessica Diaz is a member of the firm’s Natural Resources Department, serving as an environmental attorney with expertise in complex, niche water resources issues. She embraces challenging legal questions and guides clients through uncertain terrain in the areas of water supply and land use in California. She also has experience with large, high-stakes real estate transactions related to water and assisting institutional corporate clients with water projects.

A member of the firm’s Natural Resources Department, Chris Guillen brings combined experience in regulation and litigation, and acts as a trusted advisor on complex natural resources projects. His expertise spans the intersection of land use and water law, with a particular emphasis in the Sustainable Groundwater Management Act (SGMA) and the California Environmental Quality Act (CEQA). He relies on his unique experience to provide strategic counsel on all issues pertaining to water rights, including water-related litigation, water transactions, compliance with state regulations, and water right permitting issues.



Jessica Diaz



Chris Guillen

Keller Rohrback L.L.P. is proud to announce that **Matthew Preusch** has become a partner of the firm. Matthew Preusch practices out of Keller Rohrback’s Santa Barbara office in its Complex Litigation group.



Matthew Preusch

Matthew is passionate about protecting people and the environment. He represents fishers and other victims of the 2015 Refugio oil spill as class counsel, and he has helped initiate landmark consumer litigation related to Volkswagen’s “Clean Diesel” deceit and Wells Fargo’s unauthorized account scheme. When studies of moss samples in trees in Portland, Oregon identified several pollution “hotspots” in that city, he and others at Keller Rohrback launched cases on behalf of residents to hold the responsible manufacturers accountable, resulting in the largest environmental class action settlement in Oregon history. He represents victims of the massive Oregon Labor Day fires in ongoing litigation against the utility alleged to have started them. Working on behalf of government entities, including the State of Oregon, Matthew has investigated or is litigating claims related to PCB contamination and, on behalf of Santa Barbara County, the opioid epidemic.

Before joining Keller Rohrback, Matthew served as an honors attorney in the Oregon Department of Justice’s appellate and trial divisions and he was a judicial extern for the Hon. Michael W. Mosman in the District of Oregon during law school. Prior to his legal career, he spent 10 years as a journalist in the Pacific Northwest, covering regional and national news for *The Oregonian*, *The New York Times* and other publications.

* * *

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 material for consideration by the editorial deadline to our Motions editor, Mike Pasternak at pasterna@gmail.com.

Verdicts, Decisions & Settlements

Justin Kaufman v Virginia Bryant

DEPARTMENT 3, ANACAPA DIVISION

CASE NUMBER:	19CV03676
TYPE OF CASE:	MVA
TYPE OF PROCEEDING:	Jury
JUDGE:	Thomas Anderle
LENGTH OF TRIAL:	14 days
LENGTH OF DELIBERATIONS:	
DATE OF VERDICT OR DECISION:	November 19, 2021
PLAINTIFF:	JUSTIN KAUFMAN
PLAINTIFF'S COUNSEL:	Armineh Yousefian, Austin Ward, Adamson Adout
DEFENDANT:	VIRGINIA BRYANT
DEFENDANT'S COUNSEL:	Colette M. Asel, Mark Weiner & Associates
INSURANCE CARRIER:	State Farm
EXPERTS/TREATING DOCTORS:	Mohammad Atarod, Ph.D., Mark Awad, M.D., Benjamin Dirx, D.O., Bryan Goldberg, M.D., Thomas Jacques, M.D., Fen Liang, M.D. Joseph Lee, M.D., William Meller, M.D., Eric Millstein M.D. Vijay Gupta, Ph.D., Alan Moellenken, M.D., Rad Payman, M.D., Matthew Pifer, M.D.

OVERVIEW OF CASE: Intersection collision in which defendant failed to stop at a stop sign. Her 2007 Subaru struck the right side of plaintiff's 2012 Kia. Defendant admitted liability.

FACTS AND CONTENTIONS: Plaintiff alleged that defendant was the at-fault driver and that all of her medical care was reasonable as was the cost thereof.

Defendant admitted liability and that his negligence was a substantial factor in causing the accident and injury. Defendant disputed the reasonableness of some of the medical care and the reasonableness of the cost of the care.

SUMMARY OF CLAIMED DAMAGES: \$113,000 in medical expenses and \$125,000 in noneconomic damages.

SUMMARY OF SETTLEMENT DISCUSSIONS: Plaintiff made a \$250,000 998 demand.

RESULT: The jury awarded the plaintiff \$113,000 in economic damages and \$25,000 in noneconomic damages.

Aaron Mueller v City of Oceanside, Pacific Bell, The Fishel Co., Ben's Asphalt

SAN DIEGO SUPERIOR COURT

CASE NUMBER: 37-2018-00043090-CU-PO-NC
TYPE OF CASE: Bicycle Accident
TYPE OF PROCEEDING: Settlement
JUDGE: Blain K. Bowman
PLAINTIFF: Aaron Mueller
PLAINTIFF'S COUNSEL: Clark T. Stirling, Alison Bernal, Jordan Porter, Nye Stirling, Hale & Miller
DEFENDANT: See Above
DEFENDANT'S COUNSEL: Lane E. Webb and Shanna Marie Van Wagner of Lynberg & Watkins for Defendant Ben's Asphalt;
Jillisa L. O'Brien and Conor H. McElroy of the Law Office of Jillisa L. O'Brien for The Fishel Company
Deborah L. Nash for the City of Oceanside
Heidi M. Yoshioka and Sayuri C. Shikai of Nishimura & Watase for Pacific Bell Telephone Companies
INSURANCE CARRIERS: Ironshore Specialty Insurance Company and Hamilton Specialty Insurance Company for Ben's Asphalt
Arch Insurance Company and Navigators Insurance Company for The Fishel Company
CSAC Excess Insurance Authority for the City of Oceanside
Old Republic Insurance Company for Pacific Bell
PLAINTIFF'S RETAINED EXPERTS: Behnush B. Mortimer, Ph.D., CRC, CVE – Vocational Rehabilitation Specialist; Brad P. Avrit, PE – Civil Engineer
Doreen Casuto, RN, MRA, CRRN, CCM, CNLCP, CLCP – Rehabilitation Care Coordinator
Jeremy L. Bauer, Ph.D., CFPPh, CXLT – Forensic Biomechanist; Timonthy Lanny, M.A., ABD – Economist
Walter M. Strauser, M.D. –Physical Medicine and Rehabilitation Specialist and Psychiatrist
Mike Brown – General Contractor
John K. Howard – Bicyclist Standard of Care
DEFENDANTS' POOLED RETAINED EXPERTS
Dominick Addario, M.D. – Psychiatrist and Neurologist
Gerald P. Bretting, P.E. – Mechanical Engineer/Biomechanist
Dean C. Delis, Ph.D., ABPP/CN - Neuropsychologist
Gavin Huntly-Fenner, Ph.D. – Human Factors
Gregory A. Kaseno, CPA/ABV/CFE, CVA – Economist
Jonathan A. Schleimer, M.D. – Psychiatrist and Neurologist
Amy Suttion, Ph.D., M.A., BSN, RN, CRRN, CLCP – Life Care Planning
Tack Lam, MD, Ph.D. M.S. – Occupational Medicine and Civil Engineering (Biomechanics)
PACIFIC BELL AND FISHEL JOINT RETAINED EXPERTS
James L. St. Martin, P.E. – Civil Engineer specializing in Pavement Construction and Pavement Materials
Rock E. Miller, P.E. PTOE – Civil Engineer and Professional Traffic Engineer
Daniel K. Steussy, P.E. – Geotechnical and Civil Engineer
Gary Gsell – Municipal Infrastructure Consultant

BEN'S ASPHALT ADDITIONAL RETAINED EXPERT

Steven R. Marvin – Civil Engineer and Quality Engineer specializing in Pavement Consulting

OCEANSIDE ADDITIONAL RETAINED EXPERT

Brian Aanestad – General Contractor

In addition, the parties disclosed and deposed percipient expert witnesses, including five City of Oceanside past and present employees and consultants, and Plaintiff's two primary doctors.

OVERVIEW OF CASE: Plaintiff, 51 was riding his bicycle home from work on December 14, 2017 when he hit a pothole. He fell off his bicycle and suffered a severe traumatic brain injury. The pothole was on College Blvd. in Oceanside. The pothole was fully inside a utility trench owned by Pacific Bell which contracted with The Fishel Company in 2003 to build the trench. Fishel hired Ben's Asphalt as the asphalt subcontractor.

FACTS AND CONTENTIONS: Plaintiff claimed that the trench was negligently built, and that the City and Pacific Bell knew or should have known this and failed to make repairs.

Defendants cross-complained against each other for indemnity.

SUMMARY OF CLAIMED DAMAGES: Plaintiff spent several weeks in a coma before beginning in-patient brain injury rehabilitation. He spent 10 months in the hospital and rehabilitation center. He has cognitive and personality changes that require him to receive supervision and assistance. He has mobility impairment so he has to use a wheelchair. He has double vision, slurred speech and impaired swallowing.

\$2,664,632.83 in medical expenses;
\$5,188,443 in future medical expenses and
\$2,534,945 in past and future lost income.

SUMMARY OF SETTLEMENT DISCUSSIONS: The parties mediated the case with Judge Leo Papas and Robert Dobbins. Jude Earl Maas conducted a MSC that resulted in a \$16,000,000 settlement.

Santa Barbara Lawyer
SEEKS SETTLEMENTS, VERDICTS & DECISIONS

SBL encourages all SBCBA members to share notable non-confidential settlements, verdicts or decisions. The data is valuable to our membership. Please submit information to Victoria Lindenauer (Lindenauer_mediation@cox.net) or R.A. Carrington (ratc@cox.net).



Santa Barbara County Bar Association 2022 Membership Application

Member Name: _____

Check here if you do not want your name and office address disclosed to any buyer of Bar Assoc. mailing labels.

Check here if membership information is the same as last year. If so, the rest of the form may be left blank.

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Student Members	\$30
New Admittees (First Year Attorneys Only)	\$00
Affiliate Members (non-Attorney members only)	\$65
Non-Profit	\$65
Inactive/Retired	\$65
Total amount enclosed	\$____.____

AREAS OF INTEREST OR PRACTICE (check box as applicable)

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Mail completed form along with check to:

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February 2022



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 Chinese New Year	2 Groundhog Day	3	4	5
6	7 Constitution Day (Mexico)	8 Safer Internet Day	9	10	11 National Inventors' Day	12
13	14	15	16	17 Random Acts of Kindness Day	18	19
20	21 Presidents Day – Courts Closed	22 World Thinking Day	23	24	25	26
27	28					

The Santa Barbara Bar Association is a State Bar of California MCLE approved provider. Please visit www.sblaw.org to view SBCBA event details. Pricing discounted for current SBCBA members.

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Drury Pullen, A Prof. Law Corp, a family law firm in Santa Barbara, is seeking a family law associate with 5-10 years of significant family law/litigation experience and a current license to practice in the State of California. The candidate will take pride in high quality work and have strong legal research skills. Quality of life is an important part of our culture; remote work options and benefits available. Compensation is commensurate with skills, education and experience. Please submit a cover letter, resume and salary requirements via email to Susanna V. Pullen at spullen@drurypullenlaw.com and Jennifer E. Drury at jdrury@drurypullenlaw.com.

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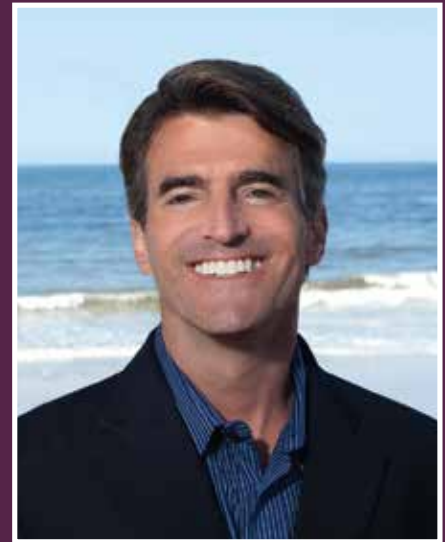
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