

# *Santa Barbara* Lawyer

Official Publication of the Santa Barbara County Bar Association  
January 2023 • Issue 604



## **SBCBA President's Message from Jennifer Duffy**

*Inside: Meet the 2023 Bar Association Board of Directors, Its New Executive Director, and Its Legal Assistant / Annual Dinner 2022 Memories / Juror Racism*





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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.*

# Santa Barbara Lawyer

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## On the Cover

Santa Barbara County Bar Association President Jennifer Duffy and family; Milo Krueger, Megan Duffy, Tom Krueger, Kira Duffy, and Eli Krueger. Photo by Rhonda Lee Johnson Photography.

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## President's Message

BY JENNIFER DUFFY

**M**y name is Jennifer ("Jenn") Duffy, and I am looking forward to being the President of the Santa Barbara County Bar Association ("SBCBA") Board of Directors for 2023. I grew up in Santa Barbara and am a proud alumna of Roosevelt School, Santa Barbara Junior High, and Santa Barbara High School, Class of 1989. Go, Dons! I have served on the SBCBA Board since 2016.

2023 looks to be the first normal year since 2019 for the SBCBA. Our first event is the 2023 Bench and Bar Conference, to be held on Friday, January 27, 2023. The full-day virtual conference will offer six hours of continuing legal education credit, including the specialty credits of legal ethics, competence, and elimination of bias, and will be followed by an in-person happy hour mixer at the University Club. The keynote speaker is Hector Villagra, Executive Director at the American Civil Liberties Union of Southern California. The SBCBA offers this Conference every January to help our membership complete their MCLE requirements for the February 1<sup>st</sup> submission deadline with the State Bar.

Other events in 2023 will include the Past-Presidents' Luncheon in the spring, the annual BBQ in the summer, the Court of Appeal (Second District) Justices' Reception and the Golf & Tennis Tournaments, both in the fall, and the Annual Dinner in the winter. There will be many virtual and in-person MCLE opportunities as well, as we continue to reconnect after being apart for so long. I hope you will participate in the opportunities that the organization provides for our community.

During her tenure as President in 2020 and 2021, Eliza-

beth Diaz created our Diversity and Inclusion Task Force. Elizabeth's goal was for the SBCBA to become more inclusive and to seek out attorneys with diverse backgrounds to be involved with, and included in, the organization. She has left an indelible mark on the SBCBA with this now-well-established Task Force. Teresa Martinez is taking over as Chair for 2023, and the SBCBA's focus on diversity and inclusion will continue to expand and bring new people, perspectives, and ideas to the table. We are each better when learning from all. If you are interested in being part of this Task Force, please contact Marietta Jablonka at (805) 569-5511.

The SBCBA will also continue to run the Lawyer Referral Service, a program that refers Santa Barbara County residents who have legal issues to experienced lawyers for assistance.

Last year, the SBCBA's long-term and beloved Executive Director Lida Sideris retired. After an extensive search led by last year's President, Eric Berg, we have been thrilled to have Marietta Jablonka as our new Executive Director. I have enjoyed getting to know Marietta over these past months and look forward to continuing to work closely with her throughout the year.

I also wish to thank specifically Eric Berg for leading this organization in 2022. Eric is an understated, humble, and



*Jennifer Duffy, SBCBA President*

*Continued on page 28*

***The SBCBA would like to thank the sponsors of this year's Annual Dinner.  
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# Meet the 2023 Bar Association Board of Directors, Its New Executive Director, and Its Legal Assistant

## 2023 OFFICERS

### *Jennifer Gillon Duffy,* *President*

Jenn grew up in Santa Barbara and has been in practice here since 1999. She specializes in family law (Certified Family Law Specialist since 2015) and employment law matters. She attended UCLA and then the University of San Francisco School of Law, where she was Editor-in-Chief of the USF Law Review and a Judicial Extern to the California Supreme Court for The Honorable Joyce Luther Kennard. Jenn is a passionate community volunteer, paying it forward in appreciation of the people who have helped her on her own journey. She is a sustaining member of the Santa Barbara Chapter of the National Charity League, in which she was an active member for the past ten years with her teenagers, recently completed six years on the board of Storyteller Children's Center, and she was Dream Foundation's Volunteer of the Year in 2018 for her work over the past decade with its Flower Empower Program every Saturday morning. She estimates that she has made over 7,500 bouquets during that time that have been delivered to people in our community. She is the Group Leader of the Santa Barbara 3 group of ProVisors, a national networking organization, having been a member for over 10 years. She has been listed in "Who's Who in Professional Services" by the Pacific Coast



*Jennifer Duffy*

Business Times for the past eight years and was in the "Top 50 Women in Business" of that publication for 2017, 2018, and 2019. Jenn was recently named in the "Top 50 Women Leaders in the Law for 2022" (nationally) by the Women We Admire publication. Jenn is a founding partner of the Santa Barbara office of the international firm Rimôn Law, having previously been a partner with Fell Marking.

### *Stephen K. Dunkle,* *President Elect*

Stephen K. Dunkle is a partner at the law firm of Sanger Swysen & Dunkle. He is a graduate of Pomona College and received his law degree from the University of Southern California Gould School of Law. His practice includes representing defendants accused of crimes in trials and appeals in state and federal court. He is an Appellate Law Specialist, certified by the State Bar of California Board of Legal Specialization. He is the secretary of the board of California Attorneys for Criminal Justice (CACJ) and the chair of CACJ's Amicus Committee. He is a member of the National Association of Criminal Defense Lawyers and California Appellate Defense Counsel. Mr. Dunkle's career highlights include being part of the team of attorneys who successfully defended Michael Jackson and being one of the leaders of a group of criminal defense attorneys who volunteered their time to defeat a proposed gang injunction in Santa Barbara.



*Stephen K. Dunkle*

### *Erin R. Parks, Secretary*

Erin R. Parks is a transactional attorney and a civil litigator focusing on California Employment Law, Estate Planning, Immigration, Probate, Trust Administration & Litigation.

Erin's passion for fighting for the progression of women's rights is borne out by her longstanding membership in Santa Barbara Women Lawyers ("SBWL"), service as a past SBWL board member, and continuing SBWL mentoring committee member. Erin is also committed to protecting the legal rights of California workers through her affiliation with the California Employment Lawyers Association. Erin also has great compassion for United States immigrants seeking legal



residency and naturalization, undocumented individuals, and preventing human trafficking.

Erin is a native of the San Francisco Peninsula where she attended Santa Clara University Law School. Erin practices global citizenship as an avid traveler and volunteer for sustainable humanity. She is immensely proud of her daughter who is an amazing person, artist, and aspiring architect in her last year at the University of California, Berkeley.



*Erin Parkes*

### **Michelle Roberson, Chief Financial Officer**

Michelle is a former complex civil litigator that now acts an advisor and legal consultant on select matters. She is the President/CEO of Sierra Property Group, Inc. that manages real estate assets from Carpinteria to Goleta where she acts as its inhouse counsel. She also is an officer in other companies including, but not limited to, Environmental-Safety Consultants that helps businesses get OSHA/EPA compliant.



*Michelle E. Roberson*

In 2018, Michelle was originally appointed by City Council to the Santa Barbara Rental Housing Mediation Board where she serves as the Vice Chair providing mediation services to resolve rental housing disputes out of court. Prior to this, she was a board member of Santa Barbara Women Lawyers, Santa Barbara Women Lawyers Foundation, and her local PTA where she helped raised thousands for the public school her two daughters, Reese (10) and Elliot (6), attend. She provides various seminars and lectures on housing matters for both private and non-profit organizations in both English and Spanish, including the most recent workshop on Tenant Rights and Responsibilities at Housing Santa Barbara Day.

Michelle grew up in Los Angeles and earned her undergraduate degree in Business Economics and Law & Society with an emphasis in Criminal Justice from the University of California, Santa Barbara where she received the Alyce Marita Whitted Memorial Award in recognition of endurance, persistence, and courage in the face of extraordinary challenges while in pursuit of an academic degree. She attended Rutgers Law – Camden and litigated cases in New Jersey and Pennsylvania before returning to California to start her own practice.

### **Eric Berg, Past President**

Eric is the founding partner of Berg Law Group, a civil litigation firm focusing on business, real estate and trust and estates disputes throughout the Central Coast. Prior to founding his firm, Eric was Chair of the litigation department of Hatch & Parent and served as a litigation shareholder with Hatch & Parent's successor, Brownstein Hyatt Farber Schreck. He is a member of the American Board of Trial Advocates, an invitation-only national trial lawyer association, and serves as an Arbitrator for the American Arbitration Association.



*Eric Berg, Past President*

Active in the community, in addition to serving as Past President of the Bar, Eric is the former Board Chair of the Anti-Defamation League, Central Coast Chapter, and the incoming President of the Jewish Federation of Greater Santa Barbara.

Eric received his undergraduate degree from the University of California San Diego, where he was selected to serve as Student Commencement Speaker, and his law degree from the University of Southern California Law Center.

## 2023 DIRECTORS

### **Bradford Brown, Santa Barbara Lawyer Magazine Editor**

Bradford D. Brown performed his undergraduate work at Lewis & Clark College. He earned his law degree from Southwestern University School of Law in Los Angeles in

1992, and soon thereafter established his practice in Santa Barbara which is limited to representing plaintiffs in personal injury actions. In September 2014, Mr. Brown's client was awarded the largest jury verdict in Santa Barbara County that year in *Reese v. Mingramm*. Mr. Brown is also a Director on the Board of the Santa Barbara County Bar Association. Bradford enjoys spending time with his family and is an avid cyclist, skier, boater, golfer, and tennis player.



*Bradford Brown*

a member of SBCBA's Diversity and Inclusion Taskforce Committee, Ian holds leadership positions at the Main-Begg Farmhouse (a nonprofit located in Goleta) and the Ventura County Barristers. Ian also participated in UCSB's inaugural pre-law mentorship program. In his free time, Ian enjoys spending time with his family, surfing, playing volleyball, traveling and watching Los Angeles Lakers basketball.



*Ian Elsenheimer*

***Raymond Chandler, Assistant Santa Barbara Lawyer Magazine Editor***

Born, New York City, 1946.

BA Philosophy, SUNY Stony Brook, 1968.

BSRN, SUNY Stony Brook, 1975.

JD, Santa Barbara College of Law, 2000.

Practicing attorney, Santa Barbara, 2001 to present.



*Raymond Chandler*

***Thomas Foley, Bench and Bar Conference January 2024, Diversity and Inclusion Task Force member***

Thomas Foley graduated from Loyola University in 1972, and from the University of Notre Dame Law School in 1975. While at Notre Dame, he was an Associate Editor of the Notre Dame Law Review.



*Thomas Foley*

After being admitted to the California State Bar in 1975, he practiced law in Los Angeles, before moving to Santa Barbara in 1976, where he worked as an associate attorney for Zajic & Kremser. In 1978 he joined Goux, Romasanta & Cappello as an associate where he later became a partner. Thereafter he became a partner at Cappello & Foley, which subsequently became Cappello, Foley & Bezek. In 1996, with Peter Bezek and Frances Komoroske, they formed Foley, Bezek & Komoroske, which later became Foley Bezek Behle & Curtis LP where he continues to practice law, focusing on business litigation including class actions. He has been a member of the Santa Barbara County Bar Association since 1978.

***Ian Elsenheimer, Awards and Board Development, Diversity and Inclusion Taskforce member***

Ian Elsenheimer is a transactional attorney who practices in Ferguson Case Orr Paterson's business transactions, intellectual property, public agency, real estate and land use, and taxation practice groups.

Ian received his undergraduate degree from UCSB and his juris doctorate from USC's Gould School of Law. While at USC, Ian obtained graduate certificates in both business law and technology and entrepreneurship.

In addition to serving on the SBCBA Board and as

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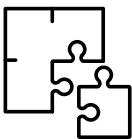




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**Taylor Fuller, MCLE Coordinator**

Born and raised in Santa Barbara County, Taylor is a graduate of Cabrillo High School in Lompoc. At San Diego State University, she earned her Bachelor of Arts degree in Political Science with a minor in Sociology.

Taylor returned to Santa Barbara County for law school, where she attended the (then-named) Santa Barbara College of Law. She earned the Witkin Awards for outstanding academic achievements in Community Property and Criminal Law courses.

Taylor practices family law, representing clients in divorce, legal separation, support, parentage, and custody proceedings in Santa Barbara County and throughout the 805.

During her spare time, Taylor enjoys being outdoors, visiting Jalama Beach or Lake Nacimiento.



Taylor Fuller

**Angela Greenspan, Events**

Angela Greenspan is an Associate Attorney with Fauver, Large, Archbald & Spray LLP. She was formerly an Associate Attorney with Thyne Taylor Fox Howard, LLP. Angela is licensed to practice law in California and is a licensed California Real Estate Agent. She serves clients in the area of business law and estate planning. She is also the co-founder of [schoolofbookkeeping.com](http://schoolofbookkeeping.com).



Angela Greenspan

As an attorney, Angela supports business owners in establishing a well-protected business and understands how to navigate the unexpected challenges which arise when a client faces litigation. As a business owner, Angela has

insights into business operations to understand the real-world challenges that arise as a business owner and the importance of a secure business foundation. Angela has successfully represented business clients in litigation and settlement negotiations to obtain favorable settlements.

Angela offers strategic legal consulting to business owners. She is highly adept at providing astute legal counsel to guide clients through the process of forming LLCs, Partnerships, and Corporations. To further help clients meet their goals, she offers assistance in forming business entities, drafting agreements, contracts, and other general business documents. Angela uses an integrated approach to consider how a business's legal, insurance, financial, and tax aspects interact and work together to create a strong foundation.

In her free time, Angela enjoys spending time with family and friends, hiking, beach walks, yoga, traveling, and playing with her black Labrador, Taco.

**Richard Lloyd, Events, Bench & Bar Conference Assistant**

Richard is an associate attorney with Cappello & Noël LLP. He attended the Santa Barbara Colleges of Law while working as a paralegal and became an associate upon passing the California State Bar exam in 2020. Since being admitted, he has worked on a variety of matters, including commercial business and landowner property disputes; high-value personal injury and wrongful death actions, and recently settled a lawsuit against the City of Santa Barbara related to the wrongful denial of a lease assignment request. Richard continues to represent a number of homeowners affected by the Thomas Fire and mudslides, as well as dozens of oil workers and businesses seeking compensation arising out of the 2015 Plains oil spill. Prior to moving to California, Richard spent several years in the City of London advising clients, negotiating legal fees, and conducting detailed assessments on a variety of costs matters, including multi-jurisdictional commercial litigation, high profile defamation cases and complex clinical negligence claims.



Richard Lloyd

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***Teresa Martinez,  
Diversity and  
Inclusion Task Force  
Lead***

Teresa M. Martinez is a Senior Deputy County Counsel with the County of Santa Barbara Office of County Counsel. In this role, Teresa advises various County departments and handles civil litigation. Prior to joining the County, Teresa was an associate attorney at Buynak Fauver Archbald & Spray where she advised businesses and entrepreneurs on all aspects of starting and running a business, and practiced estate planning and civil litigation. Teresa started her legal career with the Legal Services Corporation, California Rural Legal Assistance, where she was the Directing Attorney of the Santa Barbara office and represented clients in housing, employment, education, and civil rights matters. Teresa attended UCLA and then the University of Cincinnati College of Law. She has served on the Santa Barbara County Bar Association Board since 2020 and will serve as the Chair of the Bar Association's Diversity, Equity and Inclusion Task Force in 2023.



*Teresa Martinez*

***Matthew Moore,  
Events, Diversity  
and Inclusion Task  
Force member***

Matt Moore is a native of Santa Barbara. He attended Santa Barbara High School, UCSB, and the then-named Santa Barbara College of Law. He has worked exclusively in family law, first as a legal assistant and paralegal in 2007, and as an attorney since his admission to the bar in 2009. Matt is a Certified Family Law Specialist and an MC3 Certified Mediator.



*Matthew Moore*

Before his legal career began, Matt spent 15 years in customer-service-oriented small business management. His real-world experience lends itself to a calm, patient, and pragmatic approach to family law issues that serves his clients well.

Matt became a lawyer to help people. In keeping with his pro-family philosophy, Matt's practice has moved away from family law litigation and into alternate dispute resolution. Matt now works primarily as a mediator and collaborative practitioner as the principal of Moore Family Law and Mediation in Santa Barbara. In 2021, Matt began serving as the head of the ADR Section of the bar association.

Matt is the father of two young children, co-parenting with a married lesbian couple in a three-parent arrangement.

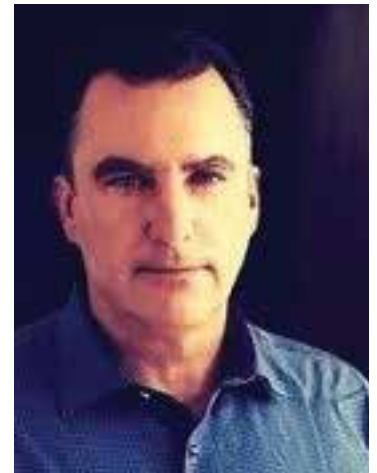
***David Tappeiner,  
Assistant to Board  
Officers***

David Tappeiner was born and raised in Santa Barbara. He earned his bachelor's degree in 1997 at UCSB, after which he moved to Colorado with his wife and daughter where his wife's parents were living. While there, he attended the University of Denver College of Law, receiving his law degree in 2000 and was a member of the Denver University Law Review from 1998-2000.

David practiced law in Denver, Colorado from 2000-2006 and returned to Santa Barbara in 2006 after receiving an offer to join the law firm of Fell, Marking, Abkin, Montgomery, Granet & Raney, LLP, becoming a partner there in 2008. In 2020, David finally acted upon his desire to start his own law firm with his friend and colleague, Mark A. DePaco. Mark and David founded DT Law Partners, LLP in August 2020.

David focuses his practice on estate and trusts and all matters related thereto, which includes preparation of moderate to complex estate planning documents, trust and estate administration, conservatorships, and trust and probate litigation.

David is admitted to both the State Bar of California (2006) and State Bar of Colorado (2000), is a member of the State Bar of California Trusts and Estates division, and is



*David Tappeiner*



certified as a Legal Specialist in Estate Planning, Trusts, & Probate by the California State Bar. David has an AV rating (preeminent) with Martindale-Hubbell and is a member of the Santa Barbara Estate Planning Council. David is also admitted to the United States Tax Court and the Federal District Court for the 10th Circuit. David has also routinely given lectures for NBI, Lorman, and others on various estate and trust topics.

David is passionate about his family, especially his three amazing children. He also enjoys coaching youth soccer, having coached for almost 20 years, and he currently coaches at Dos Pueblos High School. David has served on the board for CALM and currently serves on the local boards for AYSO, the YMCA, and the Santa Barbara Bar Association.

### **Ryan Zick, Bench and Bar Relations**

Ryan Zick joined Price, Postel & Parma LLP in 2018 as a litigation associate attorney. Ryan's practice includes real estate disputes, eminent domain, construction litigation, commercial/business litigation and insolvency/creditor's rights. Prior to joining Price, Postel & Parma, Ryan served for two years as a judicial law clerk to the Hon. Peter H. Carroll, United States Bankruptcy Judge for the Central District of California.

Ryan received his bachelor of science degree in political science from Arizona State University, and his juris doctorate from the Santa Barbara College of Law. Ryan also recently received his master of business administration from the College of William and Mary, Raymond A. Mason School of Business.

Ryan has served on the Board of Directors for the Family Service Agency of Santa Barbara County since 2019. He lives in Carpinteria with his wife and two sons.



*Ryan Zick*

## STAFF

### **Marietta Jablonka, Executive Director**

Marietta Jablonka became the Executive Director of SBCBA in 2022. She received her law degree from the Santa Barbara and Ventura Colleges of law in 2015. She started legal work as a law student at the firm of Lynn & O'Brien, followed by being a Senior Paralegal and Office Manager at Thyne Taylor Fox Howard LLP (formerly The Law Offices of John J. Thyne III).

Marietta is currently an Instructor of Ethics and Case Management for the UCSB PaCE paralegal Certificate Program, where she also serves as an advisory board member. Marietta previously served on the Paralegal Association Board. She recently became a Board Member of the Breast Cancer Resource Center.

A native to Washington DC, Marietta has lived in Santa Barbara for the past 25 years and never wants to leave California. She enjoys spending time with her son (a native Santa Barbarian), and playing pickleball.



*Marietta Jablonka*

### **Christy Barkey, Legal Assistant**

Christy Barkey was born in November 1997 in the small town of Ojai, CA. She is currently enrolled at Santa Barbara City College studying Administration of Justice with an emphasis on criminology, with plans to further study criminal justice at a CSU. She started her career at the Santa Barbara County Bar Association as the Legal Assistant in May 2019 and has worked there since whilst pursuing her degree. Outside of the office, she enjoys relaxing with a good mystery novel and baking homemade treats and desserts for her family. ■



*Christy Barkey*



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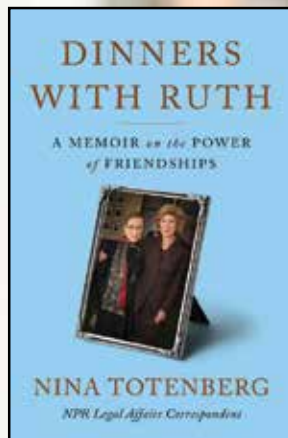


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# Juror Racism

BY ROBERT M. SANGER

Racial bias among prospective jurors is something that has confronted most criminal defense lawyers – in fact, most trial lawyers in general. Racism is not always overt. Much racism is implicit and may escape detection by counsel without careful inquiry. Some racism is not even perceptible to the biased prospective juror him or herself. Of course, racism might be used to advantage by one party or the other to ultimately tipping the scales based on the perceived race of a party, a witness or a particular interest group. Historically, exclusion of Black prospective jurors has been used to unfairly convict Black defendants but exclusion of other outgroups<sup>1</sup> can be just as unfair.

In recent years considerable progress has been made among scholars in identifying and categorizing cognitive biases, including racial bias. Some of this scholarship has focused on racial bias in the criminal justice system and, some, specifically oriented to racial bias among jurors. Concurrently, there has increasing awareness that through the jury selection process, lawyers -- in particular, prosecutors -- have been exploiting racial prejudice by eliminating members of particular racial groups from participation in the trial. Legislation, particularly in California, has been enacted to reduce exclusions based on race in jury selection.

We do not want to have racially biased jurors and we do not want to have lawyers excluding jurors for racist reasons. This all seems to be about the same thing – eliminating racism from the jury trial system. However, while it all involves potential racial bias ultimately affecting the jury verdicts, the procedural remedies are at odds with each other. This *Criminal Justice* column will look at the interplay and potential conflicts between the effort to detect and avoid racist attitudes among prospective jurors through *voir dire* and the effort to avoid racial discrimination in the use of peremptory challenges through a new racial justice statute.

## Racism and the Jury

Both overt and implicit racial bias among people in general is well documented. The criteria for jury eligibility do not dilute the cross-section of people with these overt and implied biases when they are selected for jury service. Thus, it is likely in any jury venire that there will be a great deal of

racial bias of one form or another that is dispersed among the various potential jurors. The last 12 jurors standing, of course, will become the actual triers of fact which, in criminal cases, will decide the liberty or even the life of the individual accused. Racial bias among jurors can have a devastating effect generally and on a case-by-case basis.



Robert M. Sanger

A study released in the last few months for the National Registry of Exonerations<sup>2</sup> places this problem in the broader context. *RACE AND WRONGFUL CONVICTIONS IN THE UNITED STATES 2022*, edited by Professor Sam Gross (September 23, 2022, hereinafter, “*National Registry of Exonerations Report*”), concluded that,

“Black people are 13.6% of the American population but 53% of the 3,200 exonerations listed in the National Registry of Exonerations as of August, 2022. Judging from exonerations, innocent Black Americans are seven times more likely than white Americans to be falsely convicted of serious crimes.”

This disparity in the number of exonerations based on an analysis of race is *prima facie* evidence of racial bias and is so significant that it cannot be ignored. The wrongful conviction of any particular individual may be based on one or more of several variables, including police investigations, charging decisions, higher assault and homicide rates in the Black community, difficulties of cross-racial identification, prosecutorial misconduct and judicial misconduct.<sup>3</sup> However, with the rare exceptions of a guilty plea or jury waiver by an innocent person in lieu of trial, these wrongful convictions of innocent Black people had to pass through the decision-making process of a jury. A jury of 12 people heard the evidence and found each such innocent Black person guilty beyond a reasonable doubt – of a crime that person did not commit.

One of the means to make racism less of an influence in the jury decision-making process is to effectively challenge jurors who harbor overt or implicit racial biases. Another new study, just published in the *Gonzaga Law Review*, goes through the history of racism in the jury system and the existing mechanics of jury selection (hereinafter, the “*Levinson Study*”<sup>4</sup>). This study, whose authors have credentials in law



and psychology, goes on to discuss the legal and psychological aspects of racism and how to identify attitudes relating to race among jurors. The authors eventually propose particular juror questionnaires to make these identifications for the purpose of exercising challenges at trial.

In their survey of the literature, as well as based on their own work, the *Levinson Study* authors provide a reasonable taxonomy of racial attitudes. Of course, like all taxonomies of human behavior, the categories are arbitrary, subject to change over time, not mutually exclusive (the human mind is dynamic) and may be misleading. In addition, placing a complex human being and their behavior in a diagnostic box is inherently unreliable since human thought and behavior are better characterized as points on parallel and intersecting continua that transcend any individual box or boxes. Nevertheless, the taxonomy of the *Levinson Study* provides a working basis for thinking about selection of jurors.

The five categories are as follows: 1) overt racists (including dominative racism and symbolic racism) or people who patently demonstrate bias toward racial outgroups; 2) aversive racists or those who harbor implicit racial bias; 3) passive bystanders or people who are not overtly or aversively racist but fail to take affirmative action in response

to racist behavior in others; 4) internalized racists or people who are performatively non-racist but harbor implicit biases of which they may not be aware; and 5) racial justice allies or people who not only think and perform in a non-racist fashion but who implicitly and expressly act in an anti-racist fashion. If the goal is to empanel a non-racist jury, jurors from the fifth category are preferred over the first four. Remaining prospective jurors should be tolerated, if they cannot be excused, in descending order.

There are various psychological tests that can be administered to uncover racial attitudes.<sup>5</sup> One of the popular tests is the IAT which is often used in corporate or organizational settings with people who are usually confident that they are not racist or otherwise biased. To the chagrin of the test takers, most people are found to demonstrate some significant biases. The point of the exercise is to educate the test takers who are exhibiting implicit biases with the goal of improving their decision-making skills and interpersonal relationships. Of course, the overtly racists, particularly the dominative racists, are unlikely to benefit. Any epiphany on the part of the rest of the test takers may still require a lengthy reflection process.

As a practical matter, these psychological tests cannot

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be given to potential jurors, at least in the system we now have. There is neither time nor resources. Nor would there be an opportunity to explore the results of the tests with the potential jurors or to achieve therapeutic effects. However, the tests administered in clinical settings do demonstrate that there is an empirical basis for the general framework of the proposed racial attitude taxonomy. If juror questionnaires could be developed to approximate the results of formal testing, they could be used to score jurors for potential exclusion. If a juror exhibits overt bias during *voir dire*, the juror can be excused for cause. However, most jurors harboring a bias -- even if they acknowledge it -- can be "rehabilitated" through questioning by the court or counsel to the point that they would say, "I can be fair to both sides." With that magic mantra, most trial judges will deny a cause challenge. Those jurors who survive cause and who demonstrate bias -- even though they also say that they can be fair -- should be subject to a peremptory challenge.

The *Levinson Study* recommends sample *voir dire* questions that can be presented by way of questionnaires or questioning in court. Basic views of the jurors can be explored by asking the prospective jurors if they agree or disagree with statements like, "Having a lot of Black or other friends of color means that you are not racist" or "People of certain races and ethnicities are genetically more intelligent than others." Open ended questions can also lead other interesting answers, such as, "What kinds of things have you done to eliminate racism in your own thinking and actions?" All of this can be subject to follow up questioning.

An interesting example of less obviously loaded questions is, "What does the word "lucky" mean to you? Describe the most significant ways in which you experienced luckiness in your life." Standing alone this question and most answers to it will not be dispositive, however, answers can provide interesting insights. According to the *Levinson Study*, "Racial justice allies will be able to discuss the relationship between luck and privilege. Racists will be more likely to exaggerate the proportion of positive life events which are influenced by their own hard work and preparation." The answers would be read by clinicians in light of the answers to the other questions.

The use of such questionnaires, or more subtle questioning during *voir dire*, might help counsel to detect racial attitudes that can support challenges for cause or the use of peremptory challenges. There is no doubt that racism in the jury is a causative factor in wrongful convictions as demonstrated by the *National Registry of Exonerations Report*. The problem is that such questions and any challenges based on questions relating to racial bias or racial alliance may be restricted, and some prohibited, in California.

### **Racial Discrimination in Selecting Juries in California**

Empirical research establishes that racial discrimination has existed historically in the selection jurors in California. In June of 2020, the Berkeley Law Death Penalty Clinic, under the supervision of Professor Elizabeth Semel, published its report, *WHITEWASHING THE JURY BOX: HOW CALIFORNIA PERPETUATES THE DISCRIMINATORY EXCLUSION OF BLACK AND LATINX JURORS* (hereinafter, "*Whitewashing Report*"). The Report went through the history of the efforts to prevent counsel, primarily prosecutors, from striking prospective jurors based on race. These efforts culminated in the landmark California Supreme Court case of *People v. Wheeler* 22 Cal. 3d 258 (1978) and the United States Supreme Court case of *Batson v. Kentucky* 476 U.S. 79 (1986). The *Whitewashing Report* reviewed the literature establishing the fact that unfair use of jury challenges contributes to racist results. The ultimate finding of *Whitewashing Report* was that, "Many decades after Wheeler and Batson were decided, California prosecutors' use of peremptory challenges to exclude African Americans and Latinx citizens from juries is still pervasive." The report went on to make recommendations to avoid this continuing prosecutorial practice and its pernicious racist effects on jury trials.

Concurrently, while this *Whitewashing Report* was being developed, the California legislature enacted Assembly Bill 3070 of the 2019-2020 Session, which was signed into law by the Governor on September 30, 2020. The preamble to the bill's addition of Code of Civil Procedure section 231.7, governing jury selection, was not codified but is still the law. It states in part:

"The Legislature finds that peremptory challenges are frequently used in criminal cases to exclude potential jurors from serving based on their race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups, and that exclusion from jury service has disproportionately harmed African Americans, Latinos, and other people of color. . . . In particular, the Legislature finds that requiring proof of intentional bias renders the procedure ineffective and that many of the reasons routinely advanced to justify the exclusion of jurors from protected groups are in fact associated with stereotypes about those groups or otherwise based on unlawful discrimination."

The intent of the legislators is laudatory. The new law seeks to combat "both conscious and unconscious bias in the use of peremptory challenges." Of course, 231.7 applies, as do *Batson* and *Wheeler*, to both prosecution and defense.



## Criminal Justice

In fact, as of January 1, 2026, the new law applies to all jury trials, civil and criminal.<sup>6</sup> So, basically, any counsel representing anyone in a jury trial can trigger the remedies in 231.7. Jurors cannot be excluded “on the basis of the prospective juror’s race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or the perceived membership of the prospective juror in any of those groups.” That is the good news.

The not so good news is that the prohibition against exclusion could be turned against counsel who is attempting to identify implicit bias with regard to a particular juror. This governs counsel for the defense, as well as the prosecution. For instance, posing of questions on *voir dire* for the purpose of uncovering such implicit biases could run afoul of 237.1 if they are not posed to all jurors. The use of a peremptories can be challenged if counsel “asked different questions of the potential juror against whom the peremptory challenge was used in contrast to questions asked of other jurors from different perceived cognizable groups about the same topic or whether the party phrased those questions differently.” (CCP 237.1(d)(3)(C)(iii).) Blanket juror questionnaires can be helpful but it would be hard to discover the more subtle biases described in the *Levinson Study* on a juror-by-juror basis without asking some individual jurors more probing questions than others.

In addition, any reason given to support a peremptory challenge may be rejected if it is “disproportionately associated with a race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation, or perceived membership in any of those groups.” This is meant to avoid removing jurors for racist reasons but could be construed against counsel who believes that a person has racial bias based on the juror’s own ingroup race, gender, ethnic orientation or group membership. Cynically, a prosecutor could object to challenging a white juror based on his overt affiliation with his white race.

The shield against racist peremptory challenges to unfairly exclude Black jurors could, for instance, be used to prohibit the fair exclusion of white jurors who harbor implicit bias against Blacks. Section 237.1 should not be turned into a racist sword but counsel will have to be aware of the details of the section in making and supporting challenges where racial bias is suspected so that both the letter and the intent of the statute are realized.

### Conclusion

Racism among jurors can result in conviction, incarceration and even death of the innocent as demonstrated by

*Continued on page 28*

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| Joint Session<br>10:10 AM to 11:15 AM<br>1 hour MCLE         | <b>Elimination of Bias</b><br>Vida Thomas<br><i>** Expected to qualify for elimination of bias credit</i>           |
| Breakout Session 1<br>11:20 AM to 12:25 PM<br>1 hour MCLE    | <b>Cryptocurrency</b><br>Veronica Reynolds  |
| 12:25 PM to 1:00 PM  | <b>Lunch Break</b>  |
| Joint Session<br>1:00 PM to 2:05 PM<br>1 hour MCLE           | <b>Keynote Presentation</b><br>Hector Villagra<br>Director of ACLU - SoCal  |
| Breakout Session 2<br>2:10 PM to 3:15 PM<br>1 hour MCLE      | <b>Family Law Panel</b><br>Renee M. Fairbanks   |
| Joint Session<br>3:20 PM to 4:25 PM<br>1 hour MCLE<br>Ethics | <b>Judge's Session**</b><br>TBD<br><i>**Expected to qualify for an ethics credit</i>                                |
|  | <b>Civil Rights and Racial Discrimination in Birth/Reproductive Care</b><br>Danielle De Smeth<br>Elise Cossart-Daly |
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## SBCBA President's Message

Duffy, *continued from page 7*

kind human, with seasoned perspective and an inclusive leadership style. I have appreciated the opportunity to be on the Board under his leadership.

For as long as I can remember, philanthropy has been a part of my life. When I was young, my mom was in the Junior League, and I remember helping out with the Rummage Sale at Earl Warren Showgrounds every year as a kid with my own honorary apron. As I grew older, my mom and I were in the Santa Barbara Chapter of the National Charity League (“NCL”), which is a mother-daughter service organization for teen girls in seventh through 12 grades. From 2012 to 2022, I was in NCL with my two daughters and my one nonbinary teen, coming full circle, and collectively, the four of us contributed over 3,000 hours of hands-on volunteering in our community during those 10 years. With the final high school graduation of these three amazing people this past June, I sunsetted from NCL in 2022. I still continue to volunteer weekly with the Flower Empower program of Dream Foundation, now often with my husband and 16-year-old son.

I believe it is so important, as attorneys, that we give back to the community we are so fortunate to call home. Giving back makes us better people while we help others. It also allows us to pay it forward in appreciation of those who helped us in our own journeys.

The attorneys on the Board are exceptional people who want to make a difference. I look forward to working this year with the Board’s officers, directors, and delegates to make the year a success. You can read about this year’s Board members beginning on page eight of this magazine.

As we proceed through 2023, I ask each of you to consider writing an article (on any topic) for this publication. We also appreciate our advertisers and welcome additional advertisements that would be of interest to our readers. If you are interested in serving as a member of the Board, our bylaws allow us to add two more members, and we would welcome committed, philanthropic attorneys to be on the Board. Please think about serving in this role.

As the page turns to 2023, a blank canvas awaits. Let’s, each of us, take time this year to give back. ■

*Jennifer Gillon Duffy is a founding partner of the Santa Barbara office of Rimôn Law, an international firm. She is a Certified Family Law Specialist, focusing on family law and employment law matters, and has been in practice in Santa Barbara since 1999. Jenn thinks that, having been divorced in 2006 when her kids were very young, lived most custody schedules over 16 years, and having been a blended family for the past 10 years, gives her a unique perspective for her family law clients.*

## Criminal Justice

Sanger, *continued from page 23*

the *National Registry of Exonerations Report* and the scholarship cited therein. There may be ways to uncover implicit racism for the purpose of exercising cause and peremptory challenges as discussed in the *Levinson Study*. We also know that deliberate exclusion of racial groups can lead to unrepresentative juries which may result in racist results as set forth in the *Whitewash Report*. And, it should be more difficult for counsel to unfairly exclude jurors based on reasons associated with racial, ethnic or other suspect identification as a result of the new Code of Civil Procedure section 237.1.

Ironically, that same code section may make it more difficult to identify and excuse jurors based on implicit bias. Skillful knowledge and use of the new procedures will be necessary to prevent counsel from excluding jurors for racist reasons while also allowing counsel to discover and excuse racist jurors. Lawyers concerned about racial justice in general and the prevention of racial prejudice in their individual cases, will do well to study not only the scholarly literature but the nuances of the new code section. ■

*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 49 years. 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.*

### ENDNOTES

- 1 “Race” is a social construct and there is no genetic or phenotypic basis to define identity with a race. People can, of course, self-identify which is also arbitrary but, at least, a matter of choice. Ingroups and out groups are also not scientific and not necessarily correlated with race. They are also subject to change from one time to another. However, both race (primarily here to refer to the perceived identity of others) and ingroup/outgroup will be used generally and colloquially as they are in much of the literature.
- 2 The National Registry of Exonerations is a project of the University of California Irvine -- Newkirk Center for Science & Society, the University of Michigan Law School, and Michigan State University College of Law. Professor Sam Gross is currently at the University of Michigan and previously was on the faculty of Stanford and Yale.
- 3 Another study from a decade ago broke down possible variables based on empirical research at the time, Jerry Kang, et al., “Implicit Bias in the Court Room,” 59 UCLA L. REV. 1124 (2012).
- 4 Ariana R. Levinson, Sonya Faber, Dana Strauss, Sophia Gran-Ruaz, Amy Bartlett, Maria Macaluso & Monnica T. Williams, Challenging Jurors’ Racism, 57 GONZ. L. REV. 365 (2021).
- 5 Those tests include, the Color-Blind Racial Attitudes Scale (CoBRAS), the Symbolic Racism Scale 2000 (SR2K), the Modern Racism Scale (MRS), the Multigroup Ethnic Identity Measure (MEIM-12), the Black-White Implicit Association Test (BW-IAT), and the Interpersonal Racial Allyship Scale (IRAS).
- 6 See, subsection (k) of the version effective January 1, 2022 and subsection (i) of the version operative January 1, 2026.



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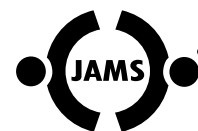
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Overview: The FCOP Trust & Estate Group's primary focus is to assist individual clients and families in attaining their wealth transfer and estate planning objectives. Our attorneys provide integrated income and transfer tax advice grounded in current and projected changes in federal and state laws affecting our clients' planning. Our hybrid virtual and in-house capabilities allow us to provide clients with expert counsel in the venue, online or in person, they prefer.

Knowledge: 3+ years law firm experience in Estates, Trust, Tax and Wealth Planning for high net worth individuals and families, estate administration, business succession, charitable planning, and taxation issues.

Extensive experience in drafting complex estate planning documents and support documents including spreadsheets, diagrams and presentations.

LL.M. in Tax or Certified Specialist designation a plus.

If you are interested in the position and meet the requirements, please send resume with salary requirements to: [sbarron@fcoplaw.com](mailto:sbarron@fcoplaw.com).

## 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 [kcallahan@hdlaw.com](mailto:kcallahan@hdlaw.com).

## LITIGATION ASSOCIATE POSITION

Rogers, Sheffield and Campbell, LLP, a Santa Barbara-based law firm, seeks to hire an associate attorney to bolster its busy litigation practice. Ideal candidates will have: (i) 3-5 years of experience, including experience dealing with landlord-tenant disputes and other real estate matters, (ii) excellent academic credentials and interpersonal skills, and (iii) graduated from a top-tier law school. Candidates must be licensed to practice law in California. Interested

candidates should send their resume and cover letter to [Reception@rogerssheffield.com](mailto:Reception@rogerssheffield.com).

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Emerge is a friendly, collaborative team of hard-working attorneys and legal professionals. This full-time position is perfect for someone who is highly skilled but wants to break out of the big firm grind, wants to take on intellectually challenging rather than routine litigation work, and wants a flexible work schedule. Each of our cases is unique and presents new issues. The ability to write strong, persuasive motions and other papers in the state and federal trial and appellate courts is crucial. Our new litigation associate will get hands-on opportunities in court and will be able to hone their oral advocacy and writing skills. We are open to considering applicants who prefer to work less than full-time and desire to work remotely.

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## BUYNAK LAW FIRM SEEKS ASSOCIATE ATTORNEY

Buynak Law Firm has the opportunity to associate an attorney for this coming year into our established transactional practice in the business, real estate and tax/estate planning areas, with offices in Santa Barbara and Solvang. We function as general counsel to business and families for their local and U.S. operations. A successful candidate must have experience and a sincere interest in our core practice areas in serving clients and in client development, with a proactive work ethic and ability to blend physically with



our team and systems at our Brinkerhoff office. Send your proposal to [dhall@buynaklaw.com](mailto:dhall@buynaklaw.com) for our consideration.

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### EDUCATION LAW ATTORNEY

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- Excellent analytical, writing, research, and communication skills. Flexibility, initiative, and willingness to work on a broad variety of legal matters arising in representing public entities
- Public entity representation experience preferred
- Admission to the California State Bar.

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Price, Postel & Parma LLP, a long-standing law firm in Santa Barbara with roots dating back to 1852, is seeking an associate attorney with superior credentials to practice in our trusts and estates department. We are looking for a candidate with 3-7 years of significant experience in the area of trusts and estates. This is a full-time position in our Santa Barbara office. Candidates must be a member of the California State Bar. The ideal candidate will have experience drafting revocable trusts, irrevocable trusts, wills and all other estate planning documents, in addition to experience working on post-death trust administrations, probates, and conservatorships. LL.M in Taxation or other significant tax background is preferred. The law partners in the trust and estates department walk alongside associates and guide them through all levels of estate planning, beginning with straightforward estate plans and working up to highly complex estate planning and trust administration matters. Our trust and estates team includes highly trained paralegals and legal assistants well versed in this area of law. If you are a qualified trusts and estates attorney interested in working in downtown Santa Barbara, please submit your resume to Ian Fisher, at [ifisher@ppplaw.com](mailto:ifisher@ppplaw.com) or Kristen Blabey, at [kblabey@ppplaw.com](mailto:kblabey@ppplaw.com).

# 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.

For more information on classified advertising rates or to submit a classified ad, contact Marietta Jablonka, SBCBA Executive Director, at (805) 569-5511 or [sblawdirector@gmail.com](mailto:sblawdirector@gmail.com).



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jeppesenlaw@gmail.com

### Intellectual Property

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ckopitzke@socalip.com

### Real Property/Land Use

Joe Billings (805) 963-8611  
jbillings@aklaw.net

### Taxation

Peter Muzinich (805) 966-2440  
pmuzinich@gmail.com  
Cindy Brittain (323) 648-4657  
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# January

## 2023



| Sunday              | Monday                           | Tuesday | Wednesday | Thursday | Friday  | Saturday |
|---------------------|----------------------------------|---------|-----------|----------|---|----------|
| 1<br>New Year's Day | 2                                | 3       | 4         | 5        | 6   | 7        |
| 8                   | 9                                | 10      | 11        | 12       | 13  | 14       |
| 15                  | 16<br>Martin Luther King Jr. Day | 17      | 18        | 19       | 20  | 21       |
| 22                  | 23                               | 24      | 25        | 26       | 27<br>The SBCBA Presents <b>MCLE</b> :<br>2023 Virtual Bench & Bar Conference | 28       |
| 29                  | 30                               | 31      |           |          |   |          |

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



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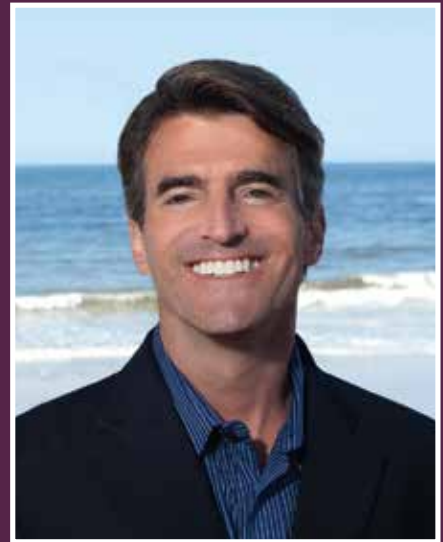
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