

Santa Barbara Lawyer

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Our Obligation as Lawyers to Defend Democracy

Inside: How to Prepare for a Rightsize Move / John Henry / New Beginnings: Housing the Unhoused and Looking for Mediators Like You



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Our Obligation as Lawyers to Defend Democracy

BY MITCHEL L. WINICK AND JACKIE GARDINA

Our democratic republic is approaching its 250th year anniversary which, unfortunately, makes it easy to take it for granted. However, it is not an overstatement to believe that democracy and the democratic process are currently under attack in our country. We are being confronted by one of the most polarized, divisive, and dangerous political and social periods in recent history. Over the past several years, we have witnessed increasingly hateful rhetoric by members of the public and even elected officials at the local, state, and national level. Physical confrontations at local school board meetings, city council sessions, and an armed mob attack on the nation's capital are urgent warnings that the rule of law and our democratic institutions are at risk.

As American lawyers, we consider the Constitution and respect for the rule of law to be the foundation of our democracy. This is such an important principle that, *as a condition of licensure*, we take an oath to support both our U.S. and state constitutions. If it has been a while since you took or administered the attorney's oath, in California, it is the following:

I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy, and integrity. California Attorney's Oath <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Attorneys-Oath>

As members of the legal profession and sworn officers of the court, there is no question that we have an important role to play in navigating our country and our communities through these challenging times. In this context, perhaps we should take a step back to consider whether, individually and collectively, we are adequately meeting our professional obligations to come to the defense of democracy, the rule of law, and the Constitution.



Mitchel L. Winick



Jackie Gardina

As attorneys, we have the professional, intellectual, and educational skills to define, discuss, and educate about the distinctions between legal vs. illegal behavior, honest vs. fraudulent allegations, and factual vs. false narratives.

In fact, we have taken an oath to do so.

If we remain silent when members of our profession, and in rare cases, members of the judiciary, intentionally abuse the justice system by pursuing lawsuits without legal foundation or fact, publicly advocate claims that they know have been judicially determined to be without legal basis, fail to recuse in cases that appear to have specific conflicts of interest, and act openly and publicly in violation of the attorney's oath . . .

If lawyers in elected office or serving in public or administrative positions of trust sit silently when presented with evidence of alleged fraud, illegal behavior, false filings or intentional non-filings of statutorily required public and financial disclosure information . . .

If we are not horrified and outraged to the point of feeling compelled to speak out in defense of democracy and the rule of law in the face of an illegal and violent mob attack on our center of democracy . . . the U.S. Capitol . . . that disrupted the peaceful, democratic transfer of power and caused our elected officials to literally flee from their Congressional duties in fear of injury or death . . .

. . . then as lawyers, law professors, and judges we are sitting idle when we have a professional and ethical obligation to act.

Can there be any doubt that we, as lawyers, have an obligation to—defend the process, participation in, and outcomes of free and fair elections—demand the timely investigation, judgement, and discipline of lawyers, judges, and elected officials who violate legal and ethical standards—and support equal access to justice and protection of our Constitutional rights, regardless of ideology, financial

ability, origin, or identity?

These are not issues that can be disregarded by the legal profession under the excuse that they are merely issues of partisan politics and not fundamental attacks against the rule of law. Abandonment of the rule of law cannot be dismissed as politics-as-usual in the face of violent insurrection and the mainstreaming of hate-based rhetoric within our political parties and in our public dialogue.

What weighs in the balance are the foundational Constitutional protections that define our democracy—freedom of speech, freedom of religion, freedom from discrimination, and freedom to participate in free and fair elections. History has taught us that the sustainability of these freedoms requires vigilance and a commitment to act when it is necessary to defend democracy and enforce the rule of law.

And that is the obligation that we have accepted as lawyers.

Although attribution of the quote, “all tyranny needs to gain a foothold is for people of good conscience to remain silent,” may be disputed (with apologies to Edmund Burke), the point is well made. Therefore, what steps should we be taking as lawyers to speak out in defense of democracy?

First and foremost, we need to identify more ways to actively and publicly work together . . . regardless of politics,

ideology, or identity . . . to be leaders in our communities speaking out against false, divisive, and hateful rhetoric. We need to accept responsibility to stand up to those who attack the most vulnerable in our communities and use our knowledge and ability, as required by our oath, to defend their rights and provide access to justice. Finally, we need to have zero tolerance for members of our profession who intentionally, openly, and repeatedly violate our professional ethics.

In this new year, let’s commit to work together as lawyers to remind all members of our community that democracy must not be taken for granted and that the rights, privileges, and freedoms that are guaranteed under the Constitution and protected by the rule of law are essential to another pledge that we each have taken as Americans . . . to be “one nation under God, indivisible, with liberty and justice for all”. ■

California Accredited Law School Deans Mitchel L. Winick (Monterey College of Law) and Jackie Gardina (The Colleges of Law) are cohosts of the new podcast SideBar (www.sidebarmedia.org) on the Legal Talk Network that discusses current challenges to our individual constitutional and civil rights. Comments are welcome at www.sidebarmedia.org/comments.

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How to Prepare for a Rightsize Move

BY KELLY KNIGHT

Selling a home (and buying a new one) is often a joyous occasion—your family has outgrown the home and you need an extra bedroom or two; you’re starting an exciting new job in a new location; or you’re finally able to acquire your dream home with more land and a pool. But if you’re like many people today considering rightsizing to a more manageable home space for retirement or moving to a senior living community, the task of selling your home (and dealing with a lifetime of possessions) can seem daunting and may be fraught with emotion.

A successful move and transition to a new lifestyle requires logistical, financial and emotional planning. As experts in this real estate space (we’ve helped 5 clients move into senior living communities in 2022 alone), we’ve pulled together some tips that can make selling your home and moving to a more manageable living arrangement easier.

Choose the Right Living Arrangement

Take time to consult with family, friends and/or trusted advisors to determine your *best* next living arrangement: Is it rightsizing to a single-level home with a more manageable yard? A lock-n-go condominium so you can travel without maintenance concerns? Or is a senior living community the right fit for you? This is often one of the most difficult decisions to make. Not only does your next living arrangement need to fit your financial circumstances, but it should also feel right and provide you with a positive lifestyle change.

Given today’s low housing inventory, it will likely take time to find the right property to meet your needs if you’re looking to downsize. If you’re considering a senior or assisted living arrangement, be sure to tour several different communities and visit often (have a meal if possible!) before making a deposit. Many senior living communities in our area have long wait lists, so you can never start the process too early. Most deposits are refundable should you have a change of plans. Remember, it’s best to make a transitional move while you can enjoy the amenities and benefits of your new lifestyle, instead of waiting until you *have* to make a move.

Consult with your Financial, Tax and Legal Advisors

Many homeowners need to sell their home prior to transitioning to another living arrangement. If you’ve owned your current home for a while, be sure to consult with your financial planner and accountant to understand the potential tax consequences of selling the home, especially capital gains. Your trusted advisor can also help you create a short-and-long term financial plan and budget based on your new living arrangement.



Kelly Knight

Work with an Experienced Real Estate Agent

Rightsizing your home is exciting, but it can also be quite stressful (just like any other major life transition). The best way to stay positive is to work with experts who have the experience to support you and guide you through the process. Working with a real estate professional who has experience assisting homeowners through financial and lifestyle transitions is a must.

An experienced real estate agent will (1) determine your home’s value so you can make an informed decision regarding your next living arrangement, (2) identify items to repair or replace prior to selling, (3) establish a timetable to make your move as stress-free as possible, and (4) plan, coordinate and handle all of the logistics from listing to closing to moving. Most experienced real estate agents have a list of trusted vendors and professionals to assist not only with the sale of your home, but with the move to your next living arrangement.

Hire a Professional Organizer

Before selling your home, it is wise to spend time rightsizing your possessions. A professional organizer can help you sort through your belongings to determine which items are suitable for your new home space and which items should be gifted, sold or donated. By using a floor plan of your new space, a professional organizer can help you visualize where your furniture and cherished possessions will fit and prevent you from taking too many large pieces with you.

Once your home has sold, a professional organizer will help label and pack your belongings efficiently and deliberately to make the transition as seamless as possible. Many

Feature

organizers will also set up your new living arrangement for you, which can be invaluable. If you are able to move before selling your home, a professional organizer can help with the move out process by working in tandem with your real estate agent and a staging consultant so that your home presents well to the public.

Create a Workable Moving Schedule

Be sure to create a moving schedule that keeps overwhelm at a minimum. The packing and decision-making process takes time, so be sure your support team listens to you and understands your needs.

Don't Ignore your Emotions

Rightsizing your home space or moving to a senior living community is exciting, but it can also be intimidating. No matter how prepared you are, you will likely have a mix of emotions going into the move. Talking about your

concerns with family, friends and your support team can help alleviate some of the stress and anxiety. Above all else, be patient with the process.

Bottom Line: Selling your home and transitioning to a new living space and lifestyle can feel overwhelming, but with the right planning, it doesn't have to be. An experienced team of trusted advisors and professionals can help you sell your home quickly and with ease, so you can focus on enjoying your next life chapter in a living space that is just right for you. ■

Kelly Knight is a former practicing attorney and Associate Broker with Village Properties Realtors. She is the founder of Knight Real Estate Group and specializes customized real estate services for families and estates during periods of transition, such as rightsizing for senior living, probate proceedings, trust administration and distribution, and marriage dissolution.

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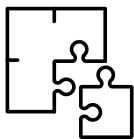
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New Beginnings Housing the Unhoused and Looking for Mediators Like You

BY MICHELLE E. ROBERSON

It is June 2020. Everybody is fearful of what the pandemic means for them. Some are having groceries delivered waiting a few hours before carefully wiping down their food and bringing it into the safety of their sanitized 500 sqft home that shares three common walls with longtime neighbors they barely see now in downtown Santa Barbara.

On this particular day, my office gets the first of a series of calls starting around 11:30 a.m. that a well-liked neighbor is in the courtyard of a multistory apartment complex making the rest of the community feel unsafe by “acting aggressively,” whatever that means.

We, the landlord, must do something immediately or they will call the police.

Normally, our response would be to agree with the tenants to call the police, but something was off and while we love our officers in blue, a call to the police for a person we know to have a shaky non-violent history given a second chance at housing, did not seem right.

Let me back up and unpack a few things here. I write this from the broker/landlord’s perspective. I also am a lawyer and my first sentence is crucial: it is June 2020. The court system was shut down for all unlawful detainers unless it endangered health and safety. Yelling in a courtyard does not get us there, but do we wait for it to?

Then the next part regarding a second chance at housing. With this tenant, I did not know his rich history but was aware that he was supported through a non-profit organization, New Beginnings. This organization provides housing assistance services to the homeless and low-income individuals and families throughout Santa Barbara County. There are so many reasons that people find themselves unhoused and while we hear the drum banged about the rents being “too damn high,” there are oh so many reasons individuals become unhoused.

This is why New Beginnings’ offerings of psychological counseling in conjunction with their Safe Parking Shelter and Rapid Rehousing Program, the Supportive Services for Veteran Families Program, and the Life Skills Parenting and

Education Program is a huge blessing for the 2,000 people they serve each year. Working with the owner of this particular property, we were happy to be able to serve this veteran who had been successfully working in the community and rebuilt his life. He was ready to move out on his own from a community housing environment to a studio apartment downtown with the support of his social worker and voucher.



Michelle E. Roberson

Back to this June 2020 day. I hopped in my car and drove down to the property. To do what, exactly? I’m not sure. But, I knew I was not going to ask one of my employees to put themselves in harms’ way and I was not quite sure what the scenario was. But I was armed with my phone and his social worker’s number that I dialed on the way down. Voicemail message left.

I always tell people that I’m a landlord, I’m not a trained mental health worker. This is true. I am, however, a trained mediator and I never realized how much I tap into that toolbox.

As I arrived, I encountered somebody in what I can only describe as deep distress (again, I am not a diagnostician by any means). He was yelling with the shirt he had on waiving in the air. I approached him with my hands up, my phone in my back pocket and all other belongings left in my car parked several feet away from him. I introduced myself and asked him if I could approach and to let me know when I got too close as I wanted to hear what he had to say.

He started sobbing. I’m 5’2” and I was dwarfed by his over 6’ stature as he cried about all the memories that tumbled out of him. The loss of his son, the war; he pounded on his heart explaining to me how it hurt. His tears, sweat, and saliva sprinkled on my face as he asked if he could grab my hand so I could touch his tattoo that he got in memory of the people he lost in between many non-sequiturs I tried to keep track of.

This person was hurting and something was not working out. He shared with me that he was hearing voices at night in his new studio apartment that would not allow him to sleep. Was it the lack of sleep that finally took its toll? Did he have a relapse related to drug or alcohol use?

Frankly, none of that was my business. At this very mo-

ment my business was whether he was a danger to himself or others. I did not feel I was in danger, but when he asked if he could grab something from his apartment, I did feel he was a danger to himself and grabbed my cell phone to finally call 911 for medical help.

He actually grabbed a banana as I reached for my phone, so I relaxed and we sat quietly on the ground of the courtyard when his social worker came by asking how it was going, his smile only visible by the crinkle of his eyes above his mask—I recall this because I remember thinking he was a bigger pro than I was who literally only brought a phone to the situation.

The rest of the building, they felt they were in danger and I cannot say I blame them. It was an unpredictable situation. I could see some of them peeking through their blinds and that's okay too. But what about them? Is it fair to them to feel uncomfortable in their own homes where they have a right to quiet enjoyment?

I figured it was time for me to leave, but asked his social worker to call me afterwards because we did have a big “now what?” discussion to have. I could not in good faith let something like this continue for the sake of the rest of the building and, what if I'm wrong? Plus, what if the tenant really is not adjusting to living alone?

On its face, these sound like easy questions. But let's look at it legally from the landlord's perspective first. Owner would need to hire a lawyer. Serve a 3-day based on the nuisance. Prevail in court after getting witnesses who peeked through the blinds (do we really think they would go to court?), then get the Sheriff to execute on the writ. All of this if the clerk would even allow the unlawful detainer filing which a declaration had to be attached showing that this endangered health and safety.

Landlords are also human; do we really want this person who had a breakdown have an even harder time getting new housing going down this eviction path? Yes, landlords are the bad guys in every story but let's be real: landlords are in the business of housing people, not unhousing them.

New Beginning's social worker came back to me pretty quickly with a proposal. They were sorry. They thought our new tenant was ready to be more independent (we all did), but he was really lonely and was actually thriving in community housing. He had a mental breakdown and was getting the medical attention he needed. They found a spot for him to return to, not the studio. They would cover the rent in the studio until we found a new tenant, would that be okay?

Um, yes of course. Geez, now I could sleep at night again.

Not everybody has a situation that could have an immediate resolution easily identified and resolved like my

lived experience above. Social workers are not always 30 minutes from a crisis situation. Tenants are not always amenable to simply up and move. Landlords not amenable to not just post notice or have cops called immediately to create records.

This is why New Beginnings Supportive Services for Veteran Families (SSVF) is launching a Legal Services Pilot Project and they are looking for mediators like you to join their panel to help resolve landlord/tenant disputes that would avoid evictions to be a win/win situation for everybody involved. This is a **paid** service and selection into the program would be an extremely rewarding experience.

A detailed summary of the program follows. Be sure to reach out to New Beginnings Executive Director Kristine Schwarz at kschwarz@sbnbcc.org or SSVF Program Manager, Victor Virgen at vvirgen@sbnbcc.org or 805-963-7777 with any questions. ■

Michelle E. Roberson is CEO of Sierra Property Group, Inc. and Sierra Support Services, Inc. She also advises and consults on matters related to owning and renting real property. She is appointed to the City of Santa Barbara's Rental Housing Mediation Board where she serves as the Vice Chair resolving disputes between landlords and tenants.

Summary of New Beginnings' Supportive Services for Veteran Families (SSVF) Legal Services Pilot Project

This is a new project being piloted by New Beginnings and supported through the agency's Supportive Services for Veteran Families Program (SSVF). The overall goal of the pilot project is to provide legal mediation services when there is a problem with a veteran tenancy which regular avenues for dispute resolution haven't resolved. The ideal end goal is to preserve the veteran's tenancy. In addition, we hope that this service will allow both the veteran tenant and the landlord to avoid costly eviction proceedings, while also benefiting the community by preserving affordable rental units and ultimately preventing homelessness.

SSVF eligible veterans and/or their landlords/property managers may request the service.

The point of contact for the project will be the New Beginnings SSVF Program Coordinator.

If the veteran not currently a client, SSVF program eligibility must be determined for prevention prior to engaging in the services.

In order for participation in the pilot project, both parties must agree to the process in writing.

Once eligibility is confirmed and both parties have agreed to the process, the Program Coordinator will randomly assign a legal representative (mediator) from the project panel to take on the case. If there is a conflict, the case will be assigned to the next randomly chosen legal representative (mediator) on the panel.

The mediator will be given the contact info for both parties and will meet individually with each party to determine what the reason is for potential eviction, what, if anything has been done to address the situation, and what each party would like to see accomplished in order for the veteran to maintain tenancy and the situation to be resolved.

The goals in order will be:

1. Veteran retains current housing
2. Decision is made to end tenancy without eviction; reasonable amount of time is negotiated for SSVF staff to find new housing for the veteran so that the veteran is not returned to homelessness.
3. SSVF places a new veteran into the vacated unit, thus maintaining the landlord relationship and the affordable unit.

The mediator will advise the SSVF Program Coordinator about what is needed to maintain veteran tenancy, e.g., payment of arrears, ongoing case management, etc., and SSVF will advise how the program is able to support the dispute resolution. Financial funds are available for the payment of arrears and other types of housing-related assistance and according to SSVF rules and regulations for the disbursement of financial assistance funding.

SSVF will provide case management support to the veteran upon enrollment including but not limited to support during the case conferencing, case management for basic housing retention needs, assistance with benefits, etc.

SSVF will also be available to provide education and information to the landlord/property manager about the SSVF Program and act as a liaison to the landlord/property manager as is customary with the program activities currently.

If the veteran tenancy cannot be maintained and a solution to the dispute cannot be agreed upon, then SSVF staff would work to relocate the veteran and as stated above, request a reasonable amount of time to do so given the tight local housing market.

Lawyers on the panel will be paid on a “low bono” basis at \$250.00 per hour.

Pilot Project will commence once the mediator panel is in place.

New Beginnings is currently accepting resumes for the panel. Resumes should be sent to hr@sbnbcc.org. Ideal

candidates will have experience working in landlord/tenant negotiations, in the nonprofit sector, with veterans, in mediation, and/or with the housing insecure.

New Beginnings four core agency programs provide essential services to the most vulnerable Santa Barbara County populations. These programs include:

The Donald J. Willfong Community Counseling Clinic provides low-cost counseling and psychological assessments by 25 masters and doctoral-level volunteer counselors supervised by 7 volunteer masters and doctoral-level licensed clinicians. This program serves 225 low-income, English and Spanish-speaking individuals, groups, couples, families and youth monthly and provides over 4,000 counseling hours each year. We are a Medi-Cal provider and have a sliding scale, with our average fee being \$13 per counseling hour. The clinic also provides HIPAA-compliant telehealth services and contracts mental health services to community partners.

The Safe Parking Shelter and Rapid Rehousing Program provides safe overnight shelter for vehicular homeless persons countywide. New Beginnings has run the program since 2004 and has grown it to become the leading vehicular homeless program in the country. The program provides rapid rehousing, case management, housing navigation, housing retention services and financial assistance to Safe Parking clients and people referred through Coordinated Entry to transition them into and help them to maintain secure housing.

The Life Skills Parenting Education Program provides a series of psychoeducational classes and hands-on parenting skills, mindfulness strategies, and overall life skills to low-income families and individuals, veterans, and disadvantaged youth.

The Supportive Services for Veteran Families (SSVF) Program provides short-term case management and temporary financial assistance to low-income veteran individuals and families living in or transitioning to permanent housing in both North and South counties. Our veteran program is CARF accredited.

We also provide contracted supportive housing retention services for the Housing Authority of the City of Santa Barbara’s all veteran permanent supportive housing complex at Johnson Court.

Questions may be directed to: New Beginnings Executive Director Kristine Schwarz at kschwarz@sbnbcc.org or SSVF Program Manager, Victor Virgen at vvirgen@sbnbcc.org or 805-963-7777. ■



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John Henry

BY ROBERT M. SANGER

January 1, 2023 was the one hundred sixtieth anniversary of the Emancipation Proclamation, signed by President Abraham Lincoln on September 22, 1862 and effectuated by further Proclamation on January 1, 1863. It was written in the spirit of the Declaration of Independence. The Proclamation applied to ten of the eleven states (or parts of those states in the case of Louisiana and Virginia) that were in rebellion. Thereafter, the Thirteenth Amendment to the United States Constitution was ratified on December 6, 1865, purporting to end slavery in the nation as a whole. Yet the Amendment has an exception. In 2022, the California State Legislature proposed an amendment to the California constitution called the “End Slavery in California Act” designed to remove that exception in this state. Nonetheless, on November 30, 2022, the bill was allowed to die after unanimous passage by the State Senate but a failure in the House to gain the necessary two thirds majority.

This failed legislation is about involuntary servitude—the enslavement of human beings—based on forced labor without adequate compensation. The measure needs to be revived and placed on the ballot for the purpose of amending the state constitution—and, if it were not so messy, a federal measure should be advanced for an amendment to the United States Constitution. Why? A couple of stories and a constitutional analysis follow.

John Henry

The story of John Henry—the little baby, the hammer and the piece of steel—has been transformed into a story of human strength mismatched against the power of the machine. It is a story of the largest, strongest railroad laborer beating the machine—he “sunk her fourteen feet and the steam drill only made nine.” In the popular version of the folk song, it was about the inevitable subjugation of human labor to the machine: John Henry hammered himself to death. He was buried in the sand, “And every locomotive come roarin’ by says, ‘There lies a steel-driving man, there lies that steel driving man.’”

Folk singers like Pete Seeger, Woody Guthrie and Johnny Cash established the legend of John Henry as a modern

standard that romanticized the struggle of the laborers who suffered oppression and indignities in an era of impersonalized mechanization and capitalist exploitation. The giant, impressive, muscular John Henry stood there on behalf of all laborers who, if they did not rise up, would inevitably, suffer defeat as John Henry did, the day he “let his hammer fall.”



Robert M. Sanger

Scholarly research into the life of the real John Henry suggests a different story with a different meaning—although so much time has passed, the full truth will never be known. A remarkable book, *STEEL DRIVIN’ MAN: JOHN HENRY, THE UNTOLD STORY OF AN AMERICAN LEGEND*, (Oxford, 2006), was written by Scott Reynolds Nelson, Professor of History at the University of Georgia. Nelson did meticulous research finding that “John Wm. Henry” had been born and lived in New Jersey but had come to Virginia, probably at age 18, as a laborer to assist Union troops behind the lines in 1865 as the Civil War was coming to an end. He was 5 feet, one and a quarter inch tall and “Complexion: Black.” The next year, at the age of 19, Mr. Henry was a member of the free and just freed Black community beginning to establish itself in Virginia. He was arrested, along with thousands of others, in a desperate effort by whites to retain control of Black labor. Mr. Henry was convicted of “housebreaking and larceny.” He was sentenced to the penitentiary on November 16, 1866.

John Henry’s crime was improbable—even if the facts were true, it was unlikely that it would have qualified as a felony. But Mr. Henry was given ten years in prison whereupon, as a convicted felon, he became a part of the convict lease economy making young Black men available as cheap labor to the former white aristocracy of the South and to white industrialists from the North. Mr. Henry was leased to C.R. Mason who was a labor contractor to the Chesapeake & Ohio Railroad.

Evidence indicates that he was probably transported as an involuntary laborer to the Lewis Tunnel project where steam drills and laborers worked side by side. The laborers and the steam engines drilled hole by hole in the rock to insert the explosive charges that would dislodge the mountain so that a tunnel could be constructed. Various earlier versions of the folk song also support this interpretation.

While working during his involuntary servitude, Mr. Henry became ill and was returned to the Virginia Penitentiary known as the “white house.” He was no longer of use to the railroad due to his health. He died in that prison where some 25% of all the Black people incarcerated there or leased from there died while in custody. Mr. Henry was most likely buried outside the walls in the sandy unmarked cemetery for incarcerated Black people. The remains of these Black laborers have been located by modern archeologists—Mr. Henry and the others came to rest just above the railroad tracks.

John Henry laid down his hammer before he died, not because he hammered himself to death in a fight against the machine. He laid down his hammer because he was a victim of slave labor under the guise of convict leasing. But for the song, his death would have been unrecognized. “They took John Henry to the white house and buried him in the sand.”

The versions of the song in the late 1800’s and early 1900’s were not so much about mechanization as they were about the white nationalist transformation of Black slavery into

Black convict leasing. The remains of the Black incarcerated people who died in custody and who were interred in that sand cemetery—probably including the bones of Mr. Henry—are now in the possession of the Smithsonian Institute.

The problem was and is that convict leasing and exploitation of people convicted of crimes has continued. Technically, the blatant leasing of convicted persons to private companies ended in the 1920’s as the excesses of white nationalism and the ascendance of the Ku Klux Klan were confronted—at least on a superficial level and, of course, only temporarily. Alabama was the last state to statutorily abandon the practice in 1928. However, the involuntary servitude of people incarcerated, disproportionately people of color, continued long after. It continues today with forced labor in state run and sometimes privately run prisons.

Another Story


In 1955, in Virginia—where any Black person over 90 had probably been born into slavery and most other Black people had to only go back a couple generations to find a

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relative who was enslaved—a large overweight white man in a sheriff's uniform with a wide brimmed hat came to sit on the small knoll in front of a family home. He brought his own wooden chair. He had a gun belt and rested a large shotgun on his not inconsiderable stomach. He had placed the chair under a shade tree where he could look down at the semi-rural road below.

A second grader and his younger brother had looked out the breezeway of the house and saw the sheriff there. It was a bit frightening, the big gun and all, but also intriguing. Below, alongside the road, was a group of Black men all in a line. They were working hard in the hot sun using picks, hoes, and shovels to clear out the drainage ditches next to the gravel road. They were wearing iconic black and white striped overalls. They all had ankle irons and were connected to each other by heavy chains.

The sheriff saw the boys and told them not to get near those men—using a racist term. The sheriff seemed very relaxed and based on his reclining posture and his girth, it did not seem likely that he would be able to spring into action. The sheriff then, making a slight but ominous gesture toward his shotgun, said, “but, you boys don't be getting in between them and me.” Just then, the boys' mother told the boys to get back into the house.

This was Virginia and the year after *Brown v. Board of Education I*—the same year as “all deliberate speed” *Brown II*—and years before segregation would even begin to end. Yet, this was shocking seen through the lens of the second grader whose father, a man of few words, had admonished his sons about racism and, in particular, segregation, saying, “Boys. That's wrong.”

When they got into the house the second grader asked his mother, when she offered the sheriff a glass of lemonade that she did not offer lemonade to the workers. They were doing what seemed like incredibly hard work in the hot sun. She just said, “You boys stay in the house, you don't know what those men did to get in trouble.” This did not sit well with a kid who had been told racism and segregation was wrong.

Please forgive this autobiographical reference—I was the second grader. We came to California in 1958, when I was in fifth grade. It all seemed so much better until we saw the bracero camps with the high fences topped with concertina wire just off Fifth Street in Oxnard. Another version of incarcerated labor -- but that is a story for another day. The point being, witnessing the exploitation of incarcerated people, especially based on race or ethnicity, was deeply troubling. I was merely an observer, and one from a position of privilege. I was not a victim and cannot imagine what it was really like for John Wm. Henry, the

men on the chain gang, or the men in the bracero camp. It was all disturbingly wrong. It is hard to believe a version of it persists today. But it does.

The Status of Involuntary Servitude Today

The Thirteenth Amendment to the United States Constitution states concisely, “Neither slavery nor involuntary servitude, *except as a punishment for crime* whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” The California Constitution, Art. I, section 6, states, even more concisely, “Slavery is prohibited. *Involuntary servitude is prohibited except to punish crime.*” Thus, both federal and state constitutions created an exception to the clear language of the Emancipation Proclamation to allow involuntary servitude as punishment for crime. Since then, enforced labor of prisoners has been upheld by the United States Supreme Court in *Hurtado v. United States* (1973) 410 U.S. 578. The California Supreme Court, in *Moss v. Superior Court* (1998) 17 Cal. 4th 396, has interpreted Article I, section 6, of the state constitution to mirror the interpretation of the Thirteenth Amendment: force labor of prisoners is not unconstitutional. As a corollary, the courts have held that there is no right to wages for work in prison. See, *Serra v. Lappin*, 600 F.3d 1191 (9th Cir. 2010).

Based on that constitutional analysis, California Penal Code section 2700 requires “every able-bodied prisoner” to work as prescribed by the rules and regulations of the California Department of Corrections and Rehabilitation (CDCR). The regulations of the CDCR, set forth in the California Code of Regulations, Title 15, state that “Incarcerated individuals cannot refuse a job assignment” and may be disciplined for refusing to show up for work. (15 CCR§ 3040, subd. (a).) Furthermore, pay is set by an Institutional Inmate Pay Committee resulting in current wages starting at eight cents an hour for laborers and more for semi-skilled, technicians, specialty skilled up to the highest for inmate supervisors of 32 to 37 cents per hour. About 58,000 incarcerated individuals are currently assigned to these jobs. Conservation (Fire) Camp inmates can receive \$1.45 to \$3.90 per day and, while working during an actual wildfire, one dollar per hour. There are approximately 1700 of these incarcerated individuals. The California Prison Industry (CALPIA), which provides goods and services to governmental entities, pays from 35 cents an hour to the highest rate of \$1 per hour. CALPIA employs about 7000 incarcerated individuals.

Of course, the state prison and county jails are disproportionately populated with the poor, people of color, and marginalized individuals. The facilities are also overcrowded

Criminal Justice

with people who are serving lengthy sentences which, due to mandatory minimums, consecutive enhancements and “three strikes” laws, relegate them to decades or a lifetime of enforced labor. Many of these prisoners, consigned by law to involuntary servitude unless and until released, will die in custody. The benefits of their labor remain largely within the prison system, but this imposes involuntary servitude on tens of thousands of incarcerated individuals year in and year out with only token compensation.

There is no good reason why the state cannot pay reasonable wages for labor provided. It will cost more but the benefit to society and to the individuals incarcerated would offset that cost. Individuals could put money in savings, support their families and make restitution. Their rate of pay could also be adjusted to deduct the reasonable cost of room and board but still compensate them for their labor. It could be done. More importantly, it is the right thing to do.

The Joint Venture Program Model

There actually is one program in California that approximates a model of fair compensation for convict labor. The Joint Venture Program was established by the voters in 1990 under Proposition 139. It is not mandatory and simply allows authorities to enter into joint ventures with public entities and businesses. Ironically, although it is similar to convict leasing since the benefits go to joint venturers outside of the prison, it is both voluntary and accords the laborers with some dignity in the workplace.

In those cases, according to the Joint Venture Program website (<https://jointventureprogram.calpia.ca.gov/workers-wages/>), the incarcerated individual would be paid wages (minimum wage or better) similar to outside wages for the same job. Up to 60% of the net wages after taxes wages are diverted to room and board, to restitution for victims or victims’ programs, and to child or family support. Twenty percent of the net wages would go to a mandatory savings account for the incarcerated individual so that he or she is building something for life after prison. A similar amount would go on the books for personal use while incarcerated.

This Joint Venture program model might survive a challenge against involuntary servitude. It is a form of convict lease but, with appropriate safeguards, it also seems workable. There are provisions to avoid competition for existing jobs in the community. The companies joining the ventures must be planning expansion, have a deficient labor pool, be starting a new enterprise, be repatriating an operation from offshore, or be relocating from another state. In other words, the incarcerated laborers should not be displacing existing jobs.

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The compensation for the Joint Venture Program is borne by the joint venture partners—as it should be since they are creating marketable goods and services with the convict labor. Nevertheless, this Joint Venture Program experiment, conducted for over 30 years of the Program’s existence, has only six joint venture partnerships and employs only 23 incarcerated individuals statewide.

Apparently, there is no concern that the tens of thousands of internal prison jobs—the jobs through CALPIA or the Conservation Camp jobs—are displacing existing jobs. Of course, they are since the labor to provide goods and services to the prisons and other governmental entities would otherwise be subject to labor from the incarcerated community workforce. But there is no logical argument to use involuntary servitude fill these jobs rather than compensating the laborers, incarcerated or otherwise, fairly for their labor. The Joint Venture Program provides a model that seems to be workable and could be implemented across the board. It would cost money to pay a fair price for the incarcerated persons’ labor. But, whether it is a profitable venture really does not matter. Involuntary servitude, a form of slavery, is wrong and should be outlawed in this country and this state. If it is eliminated, prison administrators will find a way to adjust.

Conclusion

Most importantly, we should not allow a practice to

persist which violates the spirit of the Declaration of Independence and the express wording of the Emancipation Proclamation. The exception for convict labor was a concession to former slaveholding interests and industrialists at the end of the Civil War. It is dehumanizing and, unfortunately, devolves disproportionately, to paraphrase the *Fifteenth* Amendment, on people of color and previous condition of servitude. When the new version of “End Slavery in California Act” is introduced, probably next session for inclusion on the 2024 ballot, it deserves broad and strong support. ■

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. Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is a Professor of Law and Forensic Science at the Santa Barbara College of Law. Mr. Sanger is an Associate Member of the Council of Forensic Science Educators (COFSE). He is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers’ organization.

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Motions

The law firm of **Ghitterman, Ghitterman & Feld** is pleased to congratulate **Alicia Liera Rodriguez** on becoming the newest partner with GG&F.

While Alicia has spent her career relentlessly fighting on behalf of her clients in the courtroom, her experiences fighting against injustice began much earlier in life. Alicia found employment at the firm that shared her beliefs and aligned with her values: Ghitterman, Ghitterman & Feld. Beginning as a caseworker, Alicia's hard work in the classroom and on behalf of her clients led to her advancement through many stages all the way to this latest achievement.

Alicia has spent her career at GG&F protecting the rights of workers who are facing similar challenges that her family faced. In addition to her legal efforts in the courtroom, she is also passionate about educating immigrant families of their rights through presentations to the United Farm Workers, California Rural Legal Assistance, Central California Legal Services and other similar organizations. With her new partner role, Alicia has made it her goal to continue to "make a difference" every day.

Ghitterman, Ghitterman & Feld is also pleased to announce that **Tania Fiedorek** has joined the firm and will practice out of their Santa Barbara office. Tania is originally from England and worked as an Assistant District Attorney in Manhattan where she gained substantial experience prosecuting a wide variety of criminal offenses from pre-arrest investigation to trial. Tania moved to the west coast before being admitted to the California State Bar. She joined Ghitterman, Ghitterman & Feld where she uses her litigation skills to provide dedicated and persistent advocacy for clients. The firm is pleased to be adding an attorney with such extensive experience, passion for helping clients, and motivation to join in their mission.

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Price, Postel & Parma LLP is pleased to announce that **Cameron Goodman** has become a partner of the firm. Mr.

Goodman's practice focuses on all aspects of business, real estate, land use and environmental matters, representing individuals, families, businesses, nonprofits and public agencies. He counsels his clients in forming and operating legal entities, negotiating and structuring real estate transactions, and navigating complex land use entitlement and environmental compliance matters. Mr. Goodman lives in Santa Barbara with his wife and two young children.



Cameron Goodman

Mullen & Henzell L.L.P. is proud to announce that **Morgan Davis Barnwell** and **Brian Daly** have become partners of the firm.

Morgan Davis Barnwell is a partner in the firm's Estate Planning Group. Her practice includes estate and income tax planning for high-net-worth individuals and their families, including planning for liquidity events, wealth transfer planning, and charitable planning. She holds an advanced law degree in taxation (LL.M.) and assists clients with a range of tax issues in the context of estate planning and trust administration. Morgan's commitment to the community and her approachable style makes her ideally suited for clients with multi generational estate planning and business succession goals.



Morgan Davis Barnwell

Brian Daly is a partner in the firm's Labor & Employment group. Brian's practice is exclusively dedicated to representing employers. He represents and defends employers in a wide variety of civil litigation matters, including wrongful termination, harassment and



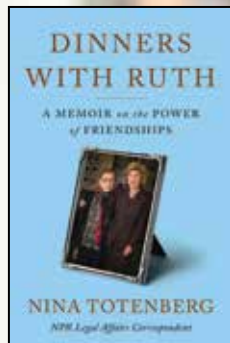
Brian Daly

discrimination, retaliation, and wage and hour matters, with a special emphasis on class action and representative (PAGA) actions. Brian also represents employers before various administrative agencies including the Labor Commissioner, the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, and the Agricultural Labor Relations Board.

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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 21
for the 2022 renewal application.

CONTRACT ATTORNEY AVAILABLE

Contract Attorney Available for Legal Research/Writing Freelance attorney in Oxnard available to provide legal research and writing services to other attorneys on a project-by-project basis. Former judicial law clerk to federal judge in San Diego for three years. Licensed in California. For more information, please visit www.meghandohoney.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.

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.

LITIGATION ASSOCIATE POSITION

Emerge Law Group is seeking an associate attorney for its litigation practice at its new Santa Barbara, California office. EmERGE is a boutique law firm with offices in California, Oregon, New York and New Jersey. The firm is highly regarded nationwide for its work in cutting-edge industries, including cannabis and psychedelics. EmERGE's Santa Barbara-based shareholder also has a national practice and reputation in intellectual property litigation and in tech and media litigation involving important and challenging First Amendment issues.

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.

Qualified candidates must possess a minimum of 3 years of litigation experience; strong analytical, research and writing skills; a stable work history and strong references; thorough working knowledge of federal and California state rules of civil procedure; and experience working on high-stakes or complex civil matters. We offer a competitive compensation and benefits package. Interested applicants should send a resume and cover letter via email to tim@emergelawgroup.com

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 for our consideration.

EDUCATION LAW ATTORNEY

Griffith & Thornburgh LLP is a well-respected mid-size firm in downtown Santa Barbara with an active and growing education law practice. We represent public school districts, a community college, and a local county education office on the Central Coast and seek an attorney to join our thriving and collegial practice. Our team of education law attorneys is committed to working collaboratively and in a supportive environment to provide the best quality representation. Qualified candidates will have three to five years of experience, including the below qualifications:

- 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.

Send resume and cover letter to Felicita Torres at torres@g-tlaw.com. Visit us online for more information www.g-tlaw.com.

MULLEN & HENZELL HIRING

- **BUSINESS & REAL ESTATE ASSOCIATE:** Join our business and real estate group. Our transactional practice includes real estate acquisition, development, financing, syndication, and leasing, land use, business and nonprofit formation and operation, business acquisitions, and general corporate and contract matters.
- **LABOR & EMPLOYMENT ASSOCIATE:** Join our labor and employment practice. Work on employment contract disputes, wage and hour, wrongful termination, discrimination, harassment and litigation matters.
- **ESTATE PLANNING ASSOCIATE:** Join our estate and wealth planning department. Work on sophisticated estate plans, conservatorships, post death probate and trust administrations.

Hiring associates for our Santa Barbara office, with an option to work in Ventura or Solvang offices if you reside near those communities. Must be current member CA Bar. Send resume and cover letter to Jared Green at Recruit@mullenlaw.com (re BD, LE or EP position). Visit us online for more information: www.mullenlaw.com.

ESTATE PLANNING ASSOCIATE SOUGHT

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 or Kristen Blabey, at kblabey@ppplaw.com.

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.

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.

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).



Professional office building in downtown Santa Barbara with individual offices available for lease on a gross basis ranging from \$500 to \$1,500 per month. Fully furnished options are available.

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Please contact **Jeanette Hudgens**
Cell 805.729.2603



SBCBA SECTION HEADS

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Peter Muzinich (805) 966-2440
pmuzinich@gmail.com

Cindy Brittain (323) 648-4657
cbrittain@karlinpeebles.com

February

2023



Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2 Groundhog Day	3	4
5	6	7 Nina Totenberg "Dinners with Ruth: The Power of Friendships" at the Granada Theatre	8	9 SBCBF Presents: "2022 Legal Community Appreciation Award"	10	11
12	13	14 Valentine's Day	15 SBCBA Diversity, Equity & Inclusion Task Force and VCDBA: "Unity Mixer"	16	17	18
19	20 President's Day	21	22	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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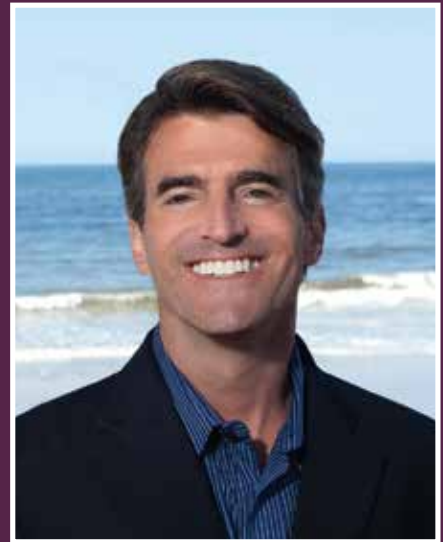
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