

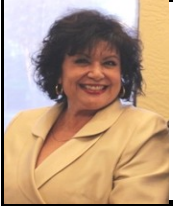
# Western San Bernardino County Bar Association

# BAR BULLETIN

Volume XVI Issue 8

www.wsbcbba.org

August 2016



## REMARKS FROM THE PRESIDENT'S DESK -

By: *Diane M. Hartog*

I attended the services for Tom Kendall at his church in Upland. There was quite a turnout, as the church was full. His mother and sister contributed to a biography of his life. It was sweet and touching. Tom had a very unique upbringing and had a wonderful spirit of adventure. He touched many lives and lived his faith.

+++ + + + +

It seems that race relations are worse now than ever before. The divide must stop.

But I must admit that I was getting tired of hearing about "Black lives matter". Don't we all matter? My thought was that if people of color say black lives matter, aren't they really saying two different things? Aren't they really saying that they believe that I think that black lives don't matter? And aren't they also saying that no one else matters?

In order to broaden my perspective, I decided to look into the background of the founders of this organization to get into their mindset.

Black Lives Matter was founded by Alicia Garza, Opal Tometi and Patrisse Cullors. Garza, in collaboration with Tometi and Cullors gave shape to the Black Lives Matter movement. Garza is credited as having inspired the slogan when after the acquittal of George Zimmerman she posted on Facebook: "Black people. I love you. I love us. Our lives matter, Black Lives Matter", which Cullors then shared with the hashtag #BlackLivesMatter. Garza's organizing of Black Lives Matter was spurred on by her witnessing the constant unchallenged or punished murder of innocent Black people by police and the gross racial disparities within the U.S. criminal justice system, in her opinion. She was also struck by the similarities of Trayvon Martin to her younger brother, feeling that it could have been him killed instead. Garza led the 2015 Freedom Ride to Ferguson, organized by Cullors and Darnell Moore that launched the building of Black Lives Matter chapters across the United States.

Patrisse Cullors was born in Los Angeles. Cullors further described her impetus for pushing for African American

Rights as stemming from her 10-year-old brother being "brutalized" while incarcerated in Los Angeles County jails.

Opal Tometi is a New York based Nigerian-American writer, strategist and community organizer and is currently at the helm of the country's leading Black organization for immigrant rights, the Black Alliance for Just Immigration founded in 2006.

During the course of my research, my daughter reminded me that in my younger day, I marched with Caesar Chavez, to bring awareness to the plight of the migrant farm worker. I also stumped for NOW for the passage of the ERA. I did this to bring awareness to movement.

As I thought about what was important to me, I realize that these three women have brought awareness to the problem of racial profiling and even stereotyping. While George Zimmerman was not a police officer, other Black individuals have died at the hands of police officers, seemingly for no reason other than the color of their skin.

On July 6, 2016, Philando Castile was fatally shot by Jeronimo Yanez, a St. Anthony, Minnesota police officer, after being pulled over in Falcon Heights, a suburb of St. Paul. Castile was driving a car with his girlfriend, Diamond Reynolds, and her four-year-old daughter, when he was pulled over by Yanez and another officer. According to Reynolds, after being asked for his license and registration, Castile told the officer he was licensed to carry a concealed weapon and had one in the car. Reynolds stated: "The officer said don't move. As he was putting his hands back up, the officer shot him in the arm four or five times?"

Diamond Reynolds live-streamed a video on Facebook

**Continued on page 3**

## Welcome New WSBBCBA Members

**Hon. Martha E. Bellinger (Ret.)**

**Carolina V. Cutler, Esq. - Cutler Legal, A Law Firm**

**Rodney J. Espinoza, Esq. - 4 Twenty Business Solutions, LLC**

**Mark Gonzales, Esq. - Gonzales Law Offices**

CONGRATULATIONS

*Western San Bernardino  
County Bar Association's  
2016-2017 Installation of  
Officers and Awards Ceremony  
Award Recipients*



October 6, 2016      5:30 p.m. - 8:30 p.m.  
DoubleTree by Hilton, Ontario CA 91764



*William Shapiro, Esq.  
Law Offices of William D. Shapiro  
2016-2017  
Jennifer Brooks Lawyer of the Year*



*Florentino "Tino" Garza  
2016-2017  
Lifetime Achievement Award*



*Claire Furness  
Executive Director  
San Bernardino County Bar Association  
2016-2017  
Legal Assistant of the Year*



### President’s Remarks

Continued from page 1

in the immediate aftermath of the shooting. It shows her interacting with the armed officer as a mortally injured Castile lay slumped over, moaning slightly and bleeding from his left arm and side. The Medical Examiner's office ruled Castile's death a homicide and said he had sustained multiple gunshot wounds. The office reported that Castile died at 9:37 p.m. CDT in the emergency room of the Hennepin County Medical Center, about 20 minutes after being shot.

Devaris Caine Rogers, was 22 years old, Black, shot in the head, by James Burns, a police officer out of Atlanta, Georgia and killed on June 22, 2016. Burns and two other officers, had responded to a call regarding suspicious activity at an apartment complex. Burns and two other officers saw Rogers as Rogers was attempting to leave in his Ford Fusion. Burns blocked Rogers path and shot one round through the passenger side of Rogers’ vehicle, hitting him in the head, despite having no information describing Rogers as a danger to himself or others, nor was he identified as the suspicious person. Burns was terminated from his position and is charged with felony murder, aggravated assault with a deadly weapon, and 2 counts of violation of oath by a police officer.

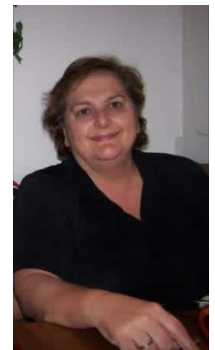
Alton Sterling, 37 years old and Black, was shot and killed on July 5<sup>th</sup> 2016, in Baton Rouge for selling CD’s on the street. He was armed with a weapon, had his hands in the air and told the police officers that he would hand them his weapon. He was tackled and pinned down by the officers and shot in the head and the back. According to witnesses, the gun was retrieved from Sterling’s pocket after he had been shot and killed.

These three examples are a small cross-section of the problem and exemplify the worst case scenario, death. According to Diamond Reynolds, Castile had been pulled over 49 times in 13 years, for various reasons, but mostly for fix it tickets or minor traffic violations.

After looking into the reasons for the Black Lives Matter movement, and the recent and horrifying deaths of the three young men highlighted in this article, I believe there is a reason to bring awareness to the problem. Mothers of young Black men have a reason to worry when their sons leave for the day that they may not return. As a mother, I would not want to worry or carry that burden, and therefore, I understand the basis for the movement.

I have definitely changed my perspective about this movement, and I believe that we need to talk about it, teach about it, and spread awareness of the problem. Black lives must matter. The color of our skin should have no bearing on how we perceive each other, and if we teach and practice awareness, my hope is that one day it won’t. My hope is that one day we can look past the color of one’s skin, their heritage and culture, and without stereotyping, just look at the person. Black lives must matter.

*The End*



Vivian Shallito was sworn in as an attorney on June 10, 1982. She had a successful Family Law practice in Covina. Vivian had several private family law cases and was appointed by the courts as Minor's Counsel on countless cases. She was a UCLA alum and a graduate of Western State University College of Law.

Vivian passed away suddenly on July 19, 2016.

Funeral arrangements and celebration of life information was not yet available as of the time of print.



Photo from Vivian Shallito’s Facebook page.

## DON'T FORGET ABOUT THE RESTITUTION HEARING

By Justin King



Situations arise where the culpable defendant does not have enough insurance coverage to fully compensate your client for their injuries, but, for whatever reason, it is nonetheless in your client's best interest to resolve the matter for the insurance coverage that is available. Any time you face this situation and your client's personal injury is predicated on some form of criminal conduct – i.e. drunk driving—it is important to keep the criminal restitution hearing in mind when fashioning your settlement agreement.

Except for crimes in violation of Penal Code §288 (lewd and lascivious acts) a victim restitution order cannot be used to compensate a victim for non-economic losses. However, a victim restitution order is specifically designed to fully compensate a victim for their economic losses, including lost wages, medical expenses, and numerous other items that are directly at issue in a civil action. (Penal Code §1202.4(a)(1)(f)(3). Further, unlike a civil judgement, a restitution obligation imposed as a condition of probation is not dischargeable in bankruptcy. (*Kelly v. Robinson* (1986) 479 U.S. 36, 50-53).

That said, at the restitution phase, the defendant is entitled to a credit for economic damage payments made in the civil proceeding and payments made to your client by the defendant's insurance carrier for economic damages in the civil matter will proportionally offset the defendant's restitution obligation. (*People v. Bernal* (2002) 101 Cal.App.4th 155, 165-168). To make more money available to your client by way of a restitution order, it is therefore important to fashion your civil settlement agreement in a way that specifies what amount of the civil settlement is being paid to compensate your client for economic damages and what amount is being paid to compensate your client for non-economic damages.

In *People v. Jennings* (2005) 128 Cal.App.4th 42, a case where the plaintiff was injured by a drunk driver, the civil settlement agreement specified that only 15 percent of the civil settlement was to compensate the plaintiff for medical expenses and the remaining 85 percent of the civil settlement was to compensate the plaintiff for pain and suffering damages. The *Jennings* Court specifically upheld the appropriateness of the trial court's reliance on the damage percentages set forth in the civil settlement agreement when ruling on the amount of offset the defendant was entitled to at the restitution hearing.

(*Jennings, supra*, at 58-59). Obviously, by attributing as much of the civil settlement as possible to non-economic damages, you are increasing the amount your client will be entitled to via a restitution order.

Like in a civil matter, by way of a restitution order your client is entitled to reimbursement of the amounts paid for his or her medical expenses. (*People v. Tuan Quong Duong* (2010) 180 Cal.App.4th 1533, 1539-1541). This includes future medical expenses. (*People v. Phelps* (1996) 41 Cal.App.4th 946, 949-951). Your client is also entitled lost wages and profits, including future lost wages. (Penal Code §1202.4(f)(3)(D)-(E); Also see *People v. Millard* (2009) 175 Cal.App.4th 7, 29-30). Your client is also entitled to repair and/or replacement costs for their damaged property and 10 percent per year in interest on these special damages from the date of loss or date of sentencing. (Penal Code §1202.4(f)(3)(A); Penal Code §§1202.4(f)(3)(G), 1214.5). If your civil case is a wrongful death case, the surviving spouse is entitled to a restitution order that compensates him or her for future economic losses attributable to their spouse's death. (*People v. Giordano* (2007) 42 Cal.4th 644). The above list of economic damages recoverable at a restitution hearing is not exhaustive, as Penal Code §1202.4(f)(3), the Code section that provides for these damages, states that the restitution damages include, but are not limit to, the above list.

By way of a restitution order, your client is also entitled to be reimbursed for the attorney fees and costs they incurred in the underlying personal injury action. (*People v. Santosh Kumar Maheshwari* (2003) 107 Cal.App.4th 1406, 1409-1411). That said, your client is only entitled to reimbursement of the attorney fees and costs that were incurred to recover economic damages, not non-economic damages. (Penal Code §1202.4(f)(3)(H)). Thus, an astute criminal defense lawyer can point to your carefully crafted civil settlement agreement where you have minimized the economic damages to a fraction of the settlement amount to argue that your fees and costs were to recover largely general damages. However, if you are settling the personal injury matter for less than its value due to insurance coverage constraints, you likely never got to the portion of your case preparation where you were hiring, consulting and deposing life care planners, vocational rehabilitation experts, economist and the like, all of whom would show the time and costs your office spent to recover economic damages. Therefore, if you are concerning yourself with the restitution hearing to begin with, there is likely no way of knowing what portion of your fees and costs were incurred to recover economic v.

Continued on page 6



**AUGUST GARDEN:** Just try and keep your plants alive. The local Farmer's Market scene is thriving. Plenty of fresh fruits and vegetables out there. You can grill squash, stone fruits, watermelon slices, you name it. Try out a veggie kabob with bell peppers, cherry tomatoes, onions, and a chile pepper. Make a salad of chopped lettuce, tomatoes, and red onions, finished with this month's recipe.

**AUGUST RECIPE: Green Goddess Dressing.**

Here is my take on a classic. See if your mom still has that Avocado Green, Burnt Orange, or Lemon Yellow chip and dip set....makes a fantastic dip and/or salad dressing, especially with a chilled seafood salad. Makes about two (2) cups. Combine and whisk in a mixing bowl the following:

- 1 Tbsp. Tarragon Vinegar
- 1 Tbsp. Lemon juice
- ½ cup sour cream
- 1 cup of Mayonnaise
- 4 anchovy fillets, finely minced (Please don't freak out, the anchovy will vanish into the mix and provides savory goodness)
- 1 clove of garlic, finely minced
- 1/4 cup finely chopped parsley
- 1/4 cup finely chopped scallions

Thoroughly blend and chill before serving. If you cannot find Tarragon vinegar, make your own. Heat a cup of white cider vinegar with a Tbsp. of dried Tarragon. Before it boils, shut down the heat and strain into a clean glass jar.

Buon Appetito! Tony Sears



## Memorial of Richard Hughes

Dear Friends, Family, and Colleagues of Richard Hughes,

You are invited to attend a memorial to celebrate the life of Richard Hughes. Please let me know if you would like to share a remembrance of Richard during the program. For those who cannot attend, but would like to share a remembrance, please email me your recollection, and I will make sure it is read during the program.

Date: **Thursday, AUGUST 25, 2016**

Time: 12:30 p.m.

Place: Neighborhood Unitarian Universalist Church  
301 N. Orange Grove Blvd  
Pasadena, CA 91103  
(626) 449-3470

Refreshments to follow.

Directions to the church are online at: <http://neighborhooduu.org/about/location-directions/> I know this should probably go without saying, but we've already experienced some problems. I am aware that a bogus email invitation to the memorial is circulating. Please ignore that email and do not click on any of the links as they could possibly spread malware to your computer. To help prevent email addresses and other information from being hijacked, do the following: Please do **NOT** post information about the memorial on Facebook or any other social media. If you send my invitation to someone who would like to attend, please do **NOT** click on the Forward button. Instead, please copy and paste the body of my message into a new email from your own address. Also, please put the email addresses of all those on your distribution in the Bcc field. Thank you!

The family requests that no flowers be sent. However, if you are so inclined, donations to The Michael J. Fox Foundation for Parkinson's Research would be greatly appreciated. Donations can be made online at: <https://www.michaeljfox.org>, or by mail to this address:

Donation Processing

The Michael J. Fox Foundation

P.O. Box 5014

Hagerstown, MD 21741-5014

Thank you to all who have been in touch with our family during this most difficult time. We appreciate your concern and loving condolences.

Carol Melon Email: [cmelton8@gmail.com](mailto:cmelton8@gmail.com)

## Don't Forget The Restitution Hearing Continued from page 4

non-economic damages. In *People v. Fulton* (2003) 109 Cal.App.4th 876 the court held that a victim is entitled to full reimbursement of attorney fees incurred to recover both economic and non-economic losses when the fees cannot be reasonably divided between recovery of economic and non-economic damages. (*People v. Fulton* (2003) 109 Cal.App.4th 876, 882-885). In *People v. Millard* (2009) 175 Cal.App.4th 7, the court held that the Lodestar method should be used to determine the fees that are reimbursable through a restitution order, even if the plaintiff's attorney was hired on a contingency fee basis. However, in *People v. Taylor* (2011) 197 Cal.App.4th 757, the court held that a victim is entitled to reimbursement of the contingency fee paid, as the purpose of restitution is to make the victim whole.

If you confront a situation where the restitution hearing can benefit your client, it is important to be proactive in your involvement with the hearing. A crime victim has a

right to have their attorney appear at the restitution hearing and to be heard through their attorney on the issue of restitution. (Cal. Const. art I, §28(b)(8), (c) (1)). Further, the victim's attorney has the right to present evidence and argument at the hearing. (*People v. Smith* (2011) 198 Cal.App.4th 415, 439-440). It is your responsibility to prepare the settlement agreement and provide it to the District Attorney so that he or she may rely upon it to maximize your client's recovery at the restitution hearing. However, you can do more than that. I have found that the District Attorney is more than receptive to your help and, as someone who specializes in criminal matters, may not always know exactly what was and was not recovered in the civil matter. As your client's counsel, you can walk the District Attorney through these things in order to increase your client's recovery.

*The End*

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lessons

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Friday, September 16, 2016  
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**Place: Home of Greg Flynn and  
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**Directions provided at RSVP**

**Please RSVP to WSBBCA**

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**Email: mail@wsbcbca.org**

**Facsimile: (909) 483-0553**

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Tele: (909) 483-0548 • Fax: (909) 483-0553 • Email: mail@wsbcbca.org**

# **ATTENTION ALL NON-WSBCBA ATTORNEYS FREE ATTORNEY MEMBERSHIP!**

**The Western San Bernardino County Bar Association is now running a promotion for all Attorneys who are not WSBCBA Members!**

**We are offering you FREE WSBCBA Membership for the rest of our 2016 Fiscal Year (until October 31, 2016).**

**You must be a first time member or a non-member attorney for at least five years.**

**Joining is easy. Fill out the application on our website at [www.wsbcbca.org](http://www.wsbcbca.org), go to “For Attorneys” then “Membership Applications”**

**Complete the WSBCBA application and hit send.**

**Or, you may call or email ([deva@wsbcbca.org](mailto:deva@wsbcbca.org)) our Executive Director, Deva Mora at (909) 483-0548 and ask for an application to be sent to you either by mail or email.**

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SBCBA

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Award

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**Garza**

Thursday Evening  
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5:00 p.m. - Social Gathering  
6:00 - 8:30 p.m. - Dinner & Program

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*Vice President*

**Matthew Taylor**  
*Secretary/Treasurer*

**Diane M. Hartog**  
*Imm. Past President*

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**Angelique Bonanno**  
**Thomas Dominick**  
**David Goldstein**  
**Randal Hannah**  
**Gilbert Holmes**

### Directors- at-Large:

**Justin King**  
**Dean McVay**  
**David H. Ricks**  
**Mitchell Roth**  
**Will Wooten**

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**President Diane M. Hartog**

**2016 - 2017**  
**Installation of Officers and Awards Ceremony**

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**Installation Dinner Registration**

- \$70.00 Individual     \$650.00 Table of 10     \$50.00 Law Students  
 \$85.00 if reservation is received after September 29, 2016

**Name:** \_\_\_\_\_  
(Please provide additional names and/or names of table guests below)

**Firm Name:** \_\_\_\_\_

**Payment Method:**  Check  Credit Card  Visa  MC  
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**Please Mark Your Meal Selection(s)**

Slow Roasted Tri Tip     Fire Roasted Chicken  
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**Attendee Names and Food Choice:**

_____	_____
_____	_____
_____	_____
_____	_____

Please return this RSVP no later than September 29, 2016 to  
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 WSBCBA • 8409 Utica Avenue, Rancho Cucamonga, California 91730  
 Tel.: (909) 483-0548 • Fax: (909) 483-0553  
 E-Mail: [mail@wsbcba.org](mailto:mail@wsbcba.org)

*NOTE: A \$50.00/\$70.00 fee will be charged for failure to show  
 or cancel reservation within 48 hours.*

<p><b>WSBCBA ROBERTA SHOUSE SCHOLARSHIP FUND DONATION FORM</b></p>
--

**YES, I/We** would like to donate to the *“Western San Bernardino County Bar Association Roberta Shouse Scholarship Fund.”* Please accept my contribution to this fund.

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PLEASE MAKE YOUR CHECK PAYABLE TO:

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Please designate:

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# NEWS BULLETIN

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**Bench Bar BBQ**  
**September 16, 2016**  
**Rancho Cucamonga**

**2016-2017 Installation of Officers**  
**Awards Ceremony**  
**October 6, 2016**  
**Ontario, CA**



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