

FIRST DISTRICT APPELLATE PROJECT'S ANNUAL

**APPELLATE REPRESENTATION
TRAINING SEMINAR**

FRIDAY, FEBRUARY 8, 2019

- 6.0 hours of MCLE, including 1.0 hour on competence issues
- Appellate and criminal specialization credits available
- Criminal and dependency breakout sessions
- Continental breakfast and lunch provided

FDAP Seminar Coordinators:

Staff Attorneys Shannon Chase,
Louise Collari & Jeremy Price

Milton Marks Conference Center
Appellate Courts Building,
350 McAllister Street, San Francisco.

(Space generously provided by
the Judicial Council of California)

**Dependency Breakout Sessions Co-Sponsored by
the Central California Appellate Program and the Sixth District Appellate Program.**



SEMINAR AGENDA

8:15 – 8:45	<i>Registration</i>		
	Breakout sessions		
8:45 – 9:45	Recent Legal Developments in Substantive Criminal Law and Appellate Practice Nat Miller and Deborah Rodriguez	or	Making a Prima Facie Case in Dependency Claims of Error Patrick McKenna
9:45 – 9:50	<i>5 Min. break to switch rooms</i>		
9:50 – 10:50	Perspectives from the Bench Hon. Alison M. Tucher		
10:50 – 11:00	<i>Break</i>		
	Breakout sessions		
11:00 – 12:00	California Supreme Court Practice J. Bradley O’Connell	or	Habeas Petitions in Dependency Cases Leslie Barry, Jonathan Grossman, and James Haworth
12:00 – 1:00	<i>Lunch</i>		
	Breakout sessions		
1:00 – 2:00	Batson/Wheeler: Prying Relief Out of the State and Federal Courts Elisabeth Semel	or	Current Issues and Issue Spotting in Dependency Cases Caitlin Christian, Hassan Gorguinpour, and Melissa Nappan
2:00 – 2:05	<i>5 Min. break to switch rooms</i>		
2:05 – 3:05	Effective Oral Argument Preparation and Presentation Richard Braucher, Stephanie Clarke, Louise Collari, and Matthew Siroka		
3:05 – 3:20	<i>Break</i>		
3:20 – 4:20	Substance Abuse in the Legal Profession: Prevention, Detection, and Treatment David Mann		

SEMINAR SPEAKERS

Hon. Alison M. Tucher was confirmed as an Associate Justice of the Calif. Court of Appeal, First District, Division 4 in August, 2018. Justice Tucher earned a J.D. from Stanford University in 1992. After law school, she worked as a law clerk for Justice David A. Souter on the U.S. Supreme Court and Judge William A. Norris on the Ninth Circuit. She then spent three years trying criminal cases as a Deputy D.A. in Santa Clara County.

In 1998, Justice Tucher joined Morrison & Foerster LLP, where she handled a variety of intellectual property and commercial cases in trial courts, appellate courts, and private arbitrations. She also maintained an active pro bono docket, including several post-conviction criminal cases, and taught and lectured in law schools, including a Stanford class on trade secrets.

In 2013, Governor Brown appointed Justice Tucher to the Alameda County Superior Court. There, she worked in family law and criminal court assignments.

Richard Braucher has been a staff attorney at FDAP since 1998. He also serves on the board of the Pacific Juvenile Defender Center and has been a member of its Amicus Committee since 2006, moderating monthly teleconferences, writing amicus briefs and training materials. He was appellate counsel in *In re Elias V.* (2015) 237 Cal.App.4th 568, a seminal juvenile case which held that the Reid Techniques commonly used by law enforcement rendered Elias' confession involuntary. Richard has been a leader in training appellate attorneys handling delinquency appeals and is an expert in Eighth Amendment sentencing issues for youth in adult court. For more than a decade, Richard has joined juvenile justice activists, lawyers, and justice-involved youth and their families in drafting, advocating for, and implementing youth justice reform legislation.

Stephanie Clarke began her legal career with the State of Connecticut Office of the Public Defender, where she handled both trials and appeals. Upon moving to San Francisco, she spent two years in civil practice before joining FDAP as a staff attorney in 1991. She later joined the Office of the State Public Defender where she represented death row clients on appeal from their capital convictions until returning to FDAP in 2003. She has handled several California Supreme Court cases, maintains her own Court of Appeal caseload, and endeavors to review, approve, and send on panel attorney compensation claims as promptly as possible.

Leslie A. Barry graduated magna cum laude from Whittier Law School in 2000. During law school, she was a judicial extern for Justice Sheila Prell Sonenshine and was on Law Review and the Moot Court Honors Board, through which she competed in the Mardi Gras Invitational. Leslie joined the panel at ADI in 2001 and is currently on the panels at SDAP, FDAP, CAP-LA and ADI. Among her notable cases are *In re Z.G.* (2016) 5 Cal.App.5th 705, *In re A.R.* (2015) 235 Cal.App.4th 1102, *In re J.D.* (2013) 219 Cal.App.4th 1379, *In re S.R.* (2009) 173 Cal.App.4th 864, *In re William B.* (2008) 163 Cal.App.4th 1220, *In re V.F.* (2007) 157 Cal.App.4th 962 and *In re H.G.* (2006) 146 Cal.App.4th 1.

Caitlin Christian is currently a panel attorney for CCAP and CAP-LA. She began accepting appointments in 2011 and now works exclusively on dependency cases. She holds a B.A. from the California State University, Monterey Bay, and a J.D. from McGeorge School of Law.

Louise Collari graduated from Santa Clara University School of Law in 1991. Louise began working for FDAP as a panel attorney representing parents in juvenile dependency appeals in October 2007. She joined SDAP's panel in 2010. In March 2017 she joined FDAP as a staff attorney. Most recently, Louise successfully argued *In re I.C.* (2018) 4 Cal.5th 869 in the California Supreme Court. In a unanimous decision, the Supreme Court overturned jurisdictional findings which were based solely on the hearsay statements of a truth incompetent non-testifying minor.

SEMINAR SPEAKERS

Hassan Gorguinpour has served as a panel attorney on all five of the state appellate projects. He began receiving appointments in dependency appeals in 2009 and eventually expanded his practice to both appointed dependency and criminal appeals. In June 2017, he joined CCAP as a staff attorney, handling a similar mix of cases. He was recently hired by the Sacramento Office of the State Public Defender. He holds a B.A. from the University of California, Berkeley, and a J.D. from Georgetown University.

James Haworth received his B.A. in English at UCLA in 1975, and his J.D. at Hastings College of the Law in 1980. He travelled extensively in Europe and Asia before and after law school. Once settled in San Francisco, he opened a small law office and did trial work in juvenile and dependency law. He joined the original Appellate Conflicts program in San Jose under Philip Pennypacker, and has been a member of the SDAP panel since its origination. James moved his law practice to his hometown of Santa Cruz in 2008. He presently specializes in appellate, insolvency, real estate, and estate planning law.

Patrick McKenna is a 2010 graduate of the University of San Diego School of Law. During law school, he spent one year as a law clerk with Appellate Defenders, Inc. (ADI). Following graduation, he worked as a research clerk at the Santa Clara County Public Defenders Office. After being admitted to the State Bar, he moved into private practice, working as an attorney at Nolan, Armstrong & Barton, LLP in Palo Alto and as a panel attorney for both ADI and SDAP. He began working as a staff attorney with SDAP in June 2012.

Jonathan Grossman is a graduate of Hastings College of Law. Jonathan worked as a Deputy Public Defender in San Joaquin County and joined SDAP in 1999. His cases that have led to published decisions include *People v. Rivera* (2015) 233 Cal.App.4th 1085, *People v. Crandell* (2007) 40 Cal.4th 1301, and *Juan H. v. Allen* (9th Cir. 2005) 408 F.3d 1262. He is a co-author of three chapters in CEB books: "Writs in California State Courts" and "Felony Appeals" in California Criminal Law Procedure and Practice, as well as "Federal Habeas Corpus: Overview" in Appeals and Writs in Criminal Cases.

David Mann is a graduate of Ohio State University and Stanford Law School. He served as a Deputy Public Defender in San Francisco before becoming a solo criminal defense practitioner. After 12 years of practice, substance abuse-related issues caused him to resign from the bar with disciplinary charges pending. Following a relentless battle with addiction which included numerous hospitalizations and periods of living on the streets, he succeeded in getting clean and sober in 1998. Since then he has worked, among other things, as a cab driver, a private investigator, a paralegal, and a drug and alcohol rehabilitation counselor. He presently serves as the Northern California Consultant to The Other Bar, a statewide organization of recovering attorneys, judges, and law students. In this capacity, he spends his time providing outreach and education to the legal community, and assisting attorneys as they struggle with substance abuse and related challenges that threaten their ability and/or eligibility to practice law

Nathaniel Miller graduated from Berkeley Law in 2014. From 2014 to 2016, Nat clerked for Judge William H. Orrick in the United States District Court for the Northern District of California. Between 2017 and 2018, Nat worked as a deputy public defender in San Francisco and Tulare Counties. He joined FDAP as an associate staff attorney in 2018.

SEMINAR SPEAKERS

Melissa Nappan has been a CCAP staff attorney for 24 years. Her current CCAP assignment is devoted entirely to assisted and independent dependency cases. Prior to joining CCAP she served as a legislative advocate for CACJ, provided legal advice and assistance to Assembly members on the Public Safety Committee, was with the Office of the State Public Defender, and was with the Tulare County Public Defender's Office. She holds a B.A. from Antioch College in Yellow Springs, Ohio, and a J.D. from the University of San Francisco School of Law.

Deborah Rodriguez is a 2017 graduate of the University of California, Hastings College of the Law. While in law school, she was a member of the Women's Law Journal and nationally-ranked Moot Court team. She also participated in the Hastings Appellate Project, where she represented an indigent noncitizen before the Ninth Circuit Court of Appeals, and interned with the Federal Public Defender. She began working as an associate staff attorney with FDAP in March 2018.

Matthew Siroka has been trying to win criminal cases for the last 14 years, and occasionally succeeding. He has handled over 200 appeals and post-conviction matters in state and federal courts, and has 7 published opinions, 3 of which he apologizes for. He was a staff attorney at FDAP for two years until the lure of paying for his own health insurance proved irresistible. He has a large collection of jazz albums, as well as writings from helpful clients.

Assistant Director J. Bradley O'Connell joined FDAP in 1986, as one of its original staff attorneys. Brad has litigated appeals and authored articles on a range of issues, including homicide, jury instructions, enhancements, and habeas corpus. He has argued before the U.S. and California Supreme Courts, including: *Hedgpeth v. Pulido* (2008) 555 U.S. 57 (erroneous theories of liability), *People v. Randle* (2005) 35 Cal.4th 987 (imperfect defense of others), *People v. Buza* (2018) 4 Cal.5th 658 (DNA arrestee searches), and *People v. Duvall* (1994) 9 Cal.4th 464 (state habeas standards). He previously co-taught Post-Conviction Remedies at UC-Hastings.

Elisabeth Semel has been on the faculty at the University of California, Berkeley, School of Law since 2001, when she became the first director of its Death Penalty Clinic. In that capacity, Semel represents clients facing capital punishment, primarily in the South. She and her students also wrote amicus curiae briefs that were filed in the U.S. Supreme Court in several notable death penalty cases, including *Miller-El v. Cockrell*, *Miller-El v. Dretke*, and *Snyder v. Louisiana* (all dealing with race discrimination in jury selection).

Semel has been a criminal defense attorney since her admission to practice in California in 1975. She began as a deputy public defender in Solano County and was next a staff and supervising attorney at Defenders, Inc. of San Diego, a community-based non-profit that represented indigent defendants in state court. Semel entered private practice in San Diego in 1980, and formed the firm of Semel & Feldman in 1983, where she defended clients in state and federal courts with an emphasis on representation at the trial level, including homicides and capital cases. In 1997, Semel left private practice to become the director of the American Bar Association Death Penalty Representation Project in Washington, D.C.

Semel has served on the Board of Directors of the National Association of Criminal Defense Lawyers and is a past president of the California Attorneys for Criminal Justice. In addition to authoring numerous articles about criminal defense practice, beginning in 2003, Semel's annotated summaries of *Batson* cases have been posted electronically and included in various criminal defense publications. She is the author of *Batson and the Discriminatory Use of Peremptory Challenges in the 21st Century*, a chapter in *Jurywork: Systematic Techniques* (West, 2018-19).

DETAILS

Registration Dates:

- Registration for Court of Appeal Appointed Counsel Panel Attorneys is now open
- Registration for Non-Panel Attorneys will open on January 11, 2019
- Registration Deadline: Friday, January 25, 2019

Registration fees:

- ❖ \$70 for Court of Appeal Panel Attorneys, government attorneys, non-profit attorneys, and attorneys in practice 0-5 years
- ❖ \$35 for law students
- ❖ \$125 for attorneys in practice more than 5 years

Note: registration is *not* open to attorneys affiliated with prosecutorial agencies, including County Counsel offices.

Register on the FDAP website at http://www.fdap.org/FDAP_Seminar_2019.shtml

Because of the greater processing time required for checks, payment will be by credit card or PayPal.

Cancellation Policy:

Refunds, less a \$10 processing fee, will be sent for those cancellations received by 5 p.m. on February 1, 2019. Cancellations received after that date are not eligible for a refund.

Seminar Materials:

The seminar materials will be available in electronic format only. The electronic materials will be made available for downloading no less than one week prior to the seminar, which should allow time for printing if you wish to bring them to the seminar. (You will receive an email with a link when the materials are ready to download.)