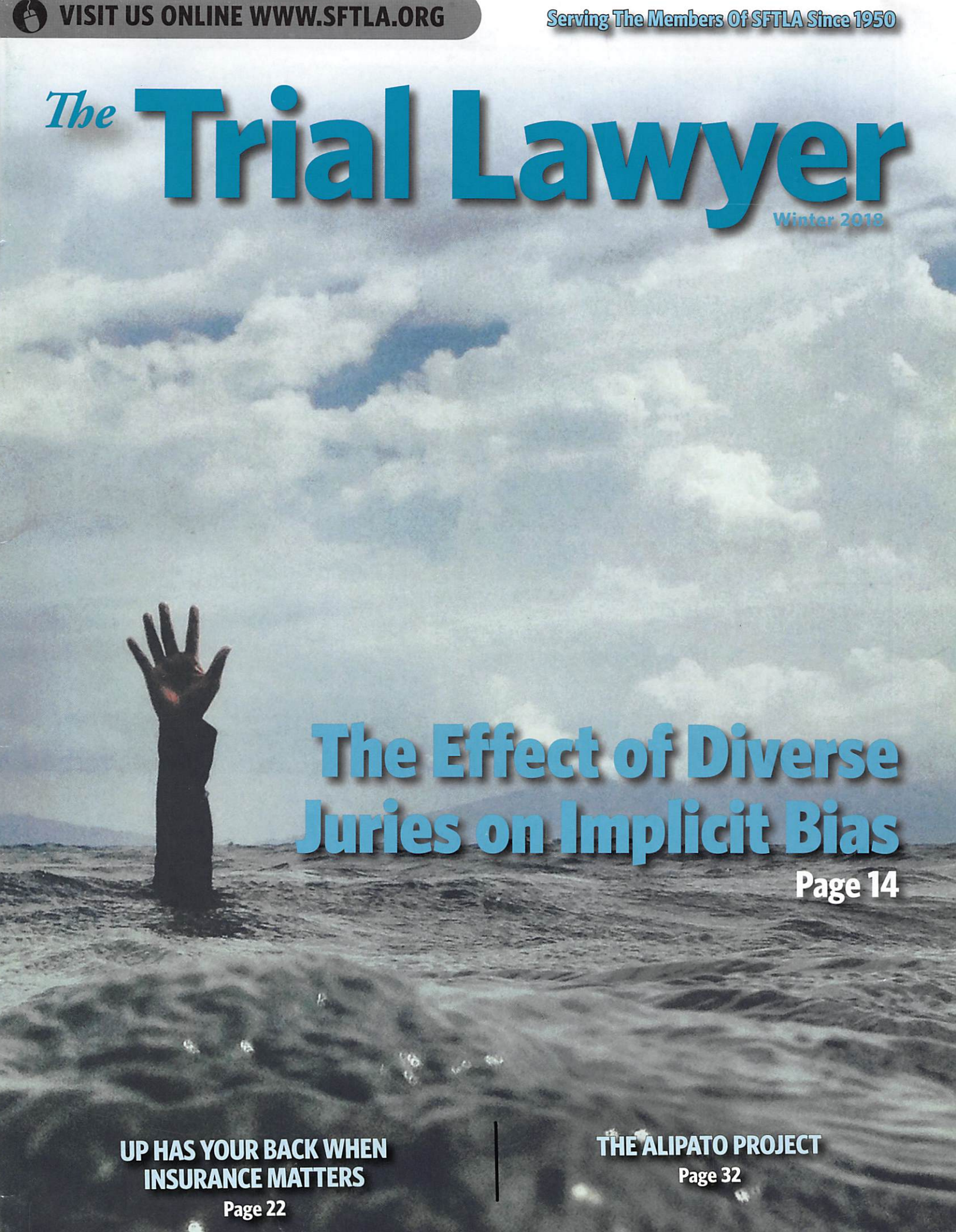


The Trial Lawyer

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The Alipato Project

by Tia Katrina Taruc-Myers

In 2012, I founded the Alipato Project, the first and only nonprofit 501(c)(3) organization to provide legal representation to resisters of domestic violence in tort actions against their batterers. At my very first appearance for a case management conference, the judge flipped through my CMC statement and asked, “Shouldn’t this be in family court?”

This sentiment, that domestic violence is a private matter and should be handled in family court, is pervasive and stems from a long history of patriarchy. Consider for example the doctrine of coverture, in which upon marriage, a woman’s legal rights and obligations were subsumed by those of her husband because a husband and wife were considered one person. Therefore, if a wife sued her husband, whatever she recovered from her husband would legally belong to him. I learned this history as a student at Berkeley Law, where my DV Law Seminar professor also lectured about the need for attorneys willing to take on domestic violence torts. That’s when I figured out what kind of lawyer I wanted to be: a domestic violence tort trial attorney.

As the founder and Executive Director of the Alipato Project, I established a pilot study from the ground up and managed the first five domestic violence tort actions to ever be litigated by a nonprofit organization in California. I won two cases, settled two cases, and I survived my first jury trial, which was 3 weeks long.

I am the only employee of the Alipato Project. Luckily, my clients benefit from the help of our volunteer attorneys, some of whom are members of the San Francisco Trial Lawyer’s Association! Glenn Katon, of Katon Law, for example is helping me on a case against former NFL player Ray

McDonald, who our client has sued for domestic violence, stalking, intentional infliction of emotional distress, and negligence. Recently, Glenn and I successfully opposed McDonald’s motion to transfer venue from Santa Cruz County to Santa Clara County.

For context, Code of Civil Procedure §395(a) provides as a general rule that the appropriate venue for an action is where the defendant resides. However, the same statute provides, as an exception to that general rule, that if the action is for injury to person or personal property, or for death from wrongful act or negligence, the Superior Court in the county where the injury occurs is also a proper venue.

Our client lived with her son in Santa Cruz County, where she endured McDonald’s stalking and harassment. McDonald asked the court to grant his motion to transfer venue because (1) he lived in Santa Clara County and (2) because no physical injury was alleged to have happened in Santa Cruz County. McDonald argued that “the Legislature used the phrase ‘injury to person’ in section 395 to refer only to injuries of a physical or bodily nature, and not to injuries to character or reputation.” (Carruth v. Superior Court (1978) 80 Cal.App.3d 215, 219.) Apparently, the court in Carruth held that the emotional injury alleged in a malicious

prosecution case was not an “injury to person” encompassed in §395(a).

Glenn and I argued that requiring a victim to sue their stalker in the stalker’s county simply because the stalker caused no physical harm yields a bizarre result. The court agreed, finding it “unlikely that the legislature would have intended for domestic violence victims and stalking victims to have to unnecessarily pursue their assailants in court proceedings in the alleged assailant’s county of residence rather than their own.”

The judge also noted that a “review of the provisions of the domestic violence and stalking statutes makes clear that the legislature, as an exercise of its police power, wanted to expand the rights and protections of persons subjected to domestic violence and stalking.” A big part of my job is spreading awareness about this underused remedy. To that end, the Alipato Project published a free domestic violence tort primer, hosts MCLE classes for lawyers interested in helping victims sue their abusers in civil court, and issues press releases, one of which gained enough traction for us to be covered on the front page of the East Bay Express. I have also sat on a panel at Yale Law School’s Rebellious Lawyering Conference, spoke with men at the San Quentin Prison’s Restorative

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Tia Katrina Taruc-Myers, runs the Alipato Project, the first and only nonprofit organization to represent resisters of domestic violence in tort actions against their batterers.

» *Closing Arguments continues from page 32*

Justice Symposium about accountability, and helped train San Francisco Women Against Rape's crisis counselors. We have even received awards from the Sustainable Economies Law Center and the Sui Generis Foundation of Berkeley!

My hope is that our work will drastically increase awareness about California's Civil Code Section 1708.6, which provides that a victim can sue for the tort of domestic violence if they suffered an injury resulting from "abuse" committed by a "spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship."⁸ "Abuse" is defined as it is defined in the California Penal Code: to "intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another."⁹ Under Civil Code Section 1708.6, a victim may recover general damages, special damages, punitive damages, costs, reasonable attorney's fees, and any other relief that the court deems proper.¹⁰

Many personal injury lawyers are surprised to learn that the statute of limitations for domestic violence is 3 years from the date of the last act of domestic violence by the abuser against the victim.¹¹ It's important to note that when calculating the SOL, the term "domestic violence" does not have the same meaning that is used in the domestic violence tort statute (Civil Code §1708.6). Instead, it uses the broader definition of "domestic violence" found in Section 6211 of the Family Code,¹² which includes behavior that is not typically considered to be abuse, such as "falsely personating" and "making annoying telephone calls."¹³ The California courts have also recognized a continuing tort theory to allow domestic violence victims to seek damages for all acts of domestic violence that occurred during the entire relationship, provided the victim proves a continuing course of abusive conduct.¹⁴

If any of this inspires you at all, please contact me at tia@alipatoproject.org! As a small nonprofit organization with an annual budget of less than \$50,000, you can imagine that we invite all of the help we can get! Volunteer. Donate. Spread the word! *Endnotes found on page 31* 

» *Verdicts continues from page 9*

Plaintiff Expert(s)

Phil Allman, Economist
Allman & Petersen Economics


Defense Expert(s)

Margot Ogus, Economist
Economic Solutions, Inc.

Carol Hyland Vocational Rehabilitation Consultant
Hyland and Associates 

» *Smoke Gets in Your Eyes continues from page 12*

companies who promised they'd be in good hands, or be good neighbors won't return their calls or offered them \$100 less a square foot than their neighbor across the street with the same policy.

So I urge each of you to pull out your policy and look it over. Don't rely on your agent to actually have given you a policy that covers you and your belongings. Put riders on your more expensive and precious things. And let's as a community of warriors, of Davids in a world dominated by Goliaths show compassion where we can. SFTLA has a long history of community involvement- one we continue today. I hope you will join us! 

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2882 SAND HILL ROAD|

Menlo Park, CA 94025

+1 650 234-5166

matthew.herrick@morganstanley.com


<http://fa.smithbarney.com/thewaisbeinherrickgroup>

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» *The Effect of Diverse Juries on Implicit Bias continues from page 17*

and perspective can lead them to find no discrimination even where the evidence clearly establishes more favorable treatment of whites/males, able-bodied people, etc. Their unconscious bias may lead them to hold the victim of discrimination responsible for his/her own bad treatment, letting the perpetrators off the hook.

It is important to uphold the value of a jury composed of a true cross section of the community. It is better for the parties (although it may not be better for people who have committed discrimination), it is better for the system, and it is better for the public's respect for the system. When bias is ignored and questioning of jurors is too limited, the likelihood of having a cross section of the community decide the case is significantly reduced. The validity of the verdict is affected, and attorneys are forced to rely on their own conscious and unconscious biases in the selection of the jury, resulting in faulty and unjust decision-making based on stereotypes. 

Endnotes Effect of Diverse Juries on Implicit Bias

- 1 See, Jonathan Lytle, The Role of Implicit Biases on Juror Decision-Making, Unpublished manuscript, (2012).
- 2 See, Samuel R. Sommers, On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations, 90 J. PERS. SOC. PSYCHOL., 597-612 (2006).
- 3 One juror later said he is half-black according to a Scripps newspaper article posted on-line 4/28/12.
- 4 Three of the defendant officers were acquitted and a fourth was acquitted of assault with a deadly weapon, but the jury was hung on the use of excessive force.
- 5 In recent times, some judges have developed instructions to the jury acknowledging the problem of implicit and asking the jury to be aware of these tendencies.
- 6 See: <https://www.insurance.ca.gov/0400-news/0100-press-releases/2017/release135-17.cfm> (insured loss from the October 2017 North Bay wildfires tops \$9.4 billion statewide, \$2.8 billion in Sonoma County, exceeding Oakland's \$1.7 billion).
- 7 See <http://uphelp.org/programs/advocacy-and-action>. (UP has developed case law, regulations, and legislation protecting policyholders from insurance company misconduct. UP works directly with consumers to inform its advocacy priorities).

Endnotes The Alipato Project

- 8 Cal. Penal Code § 13700(b).
- 9 Id. § 13700(a).
- 10 Cal. Civ. Code §1708.6(b)-(c)
- 11 Cal. Code. Civ. Proc. §340.15(a)(1)
- 12 Cal. Code. Civ. Proc. §340.15(b)
- 13 Cal. Fam. Code §6211, subd. (a) defines "domestic violence" as "abuse perpetrated against [a] spouse or former spouse. "Abuse" is defined as any of the following: (a) Intentionally or recklessly to cause or attempt to cause bodily injury. ¶ (b) Sexual assault. ¶ (c) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another. ¶ (d) To engage in any behavior that has been or could be enjoined pursuant to Section 6320. (Fam.Code §6203.)
- 14 See e.g., *Pugliese v. Superior Court* (2007) 146 Cal.App.4th 1444.



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