EDITOR'S INTRODUCTION

Bail, Volunteering and Singing

MAR 06, 2018

BY ROBERT ROSBOROUGH

In last year's Criminal Justice issue of the Marin Lawyer, Anna Pletcher made the case for the reform of the money bail system in California. That reform has now arrived, if not exactly from the expected source. As many of our readers already know (not least from a lead headline in the Chronicle), a California appellate court declared the existing system of money bail unconstitutional. Charlie Dresow reports on the recently final bail decision In Re Humphrey and gives us a preliminary sense of what implementing it will look like while noting that legislative action (not to mention funding) is still very much needed.

Speaking of court funding, Presiding Judge Paul Haakenson reports on the state of the Marin court, noting that the court continues to function well even after years of funding cuts in large part because of the creativity and dedication of the court employees and Marin lawyers in developing and staffing a wide array of volunteer programs. (Take a moment now to sign up for the annual pro bono appreciation lunch (https://marinbar.org/events/?type=event&id=171) here on March 28th, where you can thank all of these volunteers.) You might be surprised at the variety of volunteer programs; their sheer number might help convince you that they need your help. Judge Haakenson also notes the challenges ahead for the court while stating his determination to implement a new case management system during his tenure. And while any given annual Mock Trail Competition's effects on the court may be years down the road in the form of future outstanding lawyers, the positive effects of this tremendous volunteer effort on all of the competitors are immediate. Be sure to read MCBA board member (and San Rafael High attorney coach) Anna Pletcher's report on this year's competition.

I would like to thank our guest editor this month, Christian Martinez, for a diverse selection of content (including a non-profit profile for all of you mariners out there.) As part of our cybersecurity theme this year, Samik Bhattacharyya gives us an overview of upcoming European Union requirements for

protecting client data. In case you were thinking this is not relevant to you, even a tiny family-conflict mediator and estate planner like me is subject to the regulations because of clients who live in Europe and I'm sure plenty of other Marin lawyers are too. And Terrance Evans discusses the differences in various settlement approaches, including mediation, and points out that while mediation is confidential, mandatory settlement conferences are not.

Finally, where else can you read about a long-time Marin lawyer and Democratic politico playing a billionaire Republican industrialist? Check out our profile of Greg Brockbank and his upcoming portrayal of Daddy Warbucks.

As always, don't hesitate to contact me about content you'd like to see in the Marin Lawyer or with feedback on the content you've seen or if you'd like to create some content yourself!

PRESIDENT'S MESSAGE

Adhering to the MCBA Mission

MAR 06, 2018

BY THOMAS S. BROWN

Continuing our theme this year of adhering to the Marin County Bar Association's Mission Statement of encouraging and supporting bar association members, I wanted to remind you all that the MCBA sections provide meaningful and practical continuing legal education on a wide variety of topics to our membership. Our sections include ADR, Barristers, Business Law, Construction Law, Criminal Law, Diversity, Family Law, Intellectual Property, Labor and Employment Law, Probate and Estate Planning, Real Property, and Tax. This month the ADR Section has a meeting on the challenges of mediating inheritance disputes, the Family Law Section is providing an interactive panel on the role and appointment order of parenting coordinators, our Labor and Employment Section is presenting on age discrimination in the workforce and the Real Property Section is sponsoring a panel on significant recent developments in California real property law. Please make every effort to attend these and other section meetings in the coming months. Your active involvement in our sections further promotes one of the three legs of the MCBA's Mission Statement, which is to involve, encourage and support bar association members.

Attending our monthly general membership luncheons is another way to stay involved. Following January's riveting report on free speech on campus by Dan Moguluf, Vice Chancellor and Director of Communications at UC Berkeley, those members who attended February's membership meeting were privileged to hear Professor Gerald Uelmen's thoughts on whether a trial is a search for the truth, or perhaps something a bit "grayer." Professor Uelmen's engaging talk about his career in the law—in particular some of the tactical decisions made by the defense team in the People v. O.J. Simpson trial—was especially informative and inspiring to the litigators in the audience. It was a special treat to have Professor Uelmen address the membership and we owe a special thanks to Program Co-Chair Tom McInerney, one of Professor Uelmen's former students at Santa Clara Law School, for coordinating the talk. Looking forward to this month, we are honored to invite all members to attend the

Annual Pro Bono Luncheon on March 28.

For those of you who attended the annual mock trial championship in early February, you witnessed legal advocacy in its finest form. This event is one of the highlights of our legal community and features some of the very best of our local high school students. I observed several different competitions and was very impressed by the poise, arguments and testimony from all of the students. Deputy Public Defender Pedro Oliveros, one of the judges presiding over a competition between Tamalpais High School and Marin Catholic High School, noted that the presentations were equal to or superior to those of the law school interns he supervises and the practicing attorneys he works with on a daily basis. Based on the arguments and presentations I observed, I agree with Pedro and I actually picked up a couple pointers that I intend to weave into a trial that I am beginning this month. A special thanks to all of our judges and coaches who participated in the program.

In closing, I would like to comment briefly on the recent tragedy at Marjory Stoneman Douglas High School in Parkland, Florida. It is extremely difficult to process how and why such violent acts continue to occur, especially on our nation's high school and college campuses. Unfortunately, this could happen anywhere and distressingly does happen in far too many places and it is critical to support each other wherever it happens. Putting aside the challenging legal and political issues raised by this event and the other tragic school shootings that have preceded the Parkland massacre, the MCBA extends its deepest sympathies to the victims, survivors and families impacted by school shootings. For those of you who wish to provide support to the victims, there are several different options. The Broward Education Foundation established a GoFundMe account that can be found at this (https://www.gofundme.com/stonemandouglasvictimsfund) link. In addition, you can offer support services for the Marjory Stoneman Douglas community (http://browardschools.com/wesupport) here. Please continue to keep the Marjory Stoneman Douglas community and all other communities affected by these horrific events in your thoughts and prayers.

FEBRUARY MEMBER LUNCH

Is a Trial a Search for the Truth?

MAR 14, 2018

BY CHRISTIAN MARTINEZ

“White may be gray
Black may be gray
When things are gray they can go either way
Painting things gray can pay”
- Gerald F. Uelmen

Professor Gerald F. Uelmen, Dean Emeritus of Santa Clara Law and member of the 1995 O.J. Simpson “Dream Team,” gave Jonnie Cochran, Jr. perhaps the most famous one-liner uttered in any modern trial: “If it doesn’t fit, you must acquit.” Since Mr. Simpson’s acquittal, Prof. Uelmen has authored two books, the most recent reflecting on lessons from a “life in the law.” At MCBA’s February membership luncheon, recently retired Prof. Uelmen shared some of those reflections and specifically addressed the question: Is a trial a search for the truth?

His short answer: No. Rather, a trial is the competition of two versions of the truth. He stated that a guilty verdict does not establish the truth of the prosecution’s case nor does exoneration establish the truth of the defendant’s. What then is a trial? According to Uelmen, it is the quest for “an acceptable level of certainty” about what happened.

In the O.J. Simpson proceedings, Uelmen highlighted that the same events produced two seemingly contradictory results. The state was unable to punish the defendant in the criminal case but the victims were able to obtain monetary compensation in the civil case. “That does not mean either decision was wrong,” Uelmen said. “It reflects different levels of certainty. Because we value liberty more than property, we have a higher level of certainty.” In the criminal context, the burden of proof is high

and rests on the government. However, “where only money is at stake, proof by a preponderance is sufficient.” Hence Uelmen’s conclusion that trials and the adversarial process are a search for a particular level of certainty, not truth; certainty can be quantified, truth cannot.

Uelmen cited the trial of Galileo and Nicolas Malebranche’s, “The Search for Truth” to illustrate that these philosophical questions are not new and grow out of a distrust of the state. Uelmen commented that distrust of the state is hardly obsolete: the Bill of Rights itself demonstrates continuing suspicion of the power of government, which is also clearly part of the current political climate.

Professor Uelmen shared that he was never troubled to be on both sides of the table, and the ability to assume both roles is essential to the success of the adversarial process. He noted that he never had to represent somebody he knew was guilty, but regardless a lawyer is obligated to give the same defense to a client he or she believes is guilty as one believed innocent. Uelmen noted that the law has two bright lines, however: counsel cannot participate in perjury or withhold certain evidence.

Uelmen used an obligatory anecdote from the O.J. Simpson case to give an insider’s illustration of the role the truth vs. certainty. It became public that Mr. Simpson had bought a knife prior to the murders and there was extensive media coverage that it could be the murder weapon. While the prosecution did not find the knife, they planned to use its purchase as evidence. Uelmen found the knife in Mr. Simpson’s home and brought it to Judge Ito, who appointed a special master to oversee its testing. It was not the murder weapon. Judge Ito ordered the results disclosed to the prosecution to avoid an ambush at trial and the purchase of the knife was never mentioned again. Uelmen noted that Judge Ito’s order was “probably wise.”

In concluding his remarks, Uelmen lamented that our criminal justice system is still fraught with problems, such as mistaken identification, false confessions, and lab errors. DNA evidence has exonerated hundreds of people, many on death row. He noted that most disturbing is the racial disparity in those exonerated.

In response to a question from MCBA board member Tim Nardell, Uelmen stated that he would like to see the justice system become more rehabilitative and to take more of a restorative justice approach, which he has seen work well. Past President Randy Wallace asked what grade Professor Uelmen would

give the California Evidence Code in contributing to the search for truth or at least certainty. Uelmen noted that after teaching evidence for forty-five years, he is a great fan of the California Evidence Code, more so than the Federal code and laments the trend towards the Federal code. When pressed, he said he would give it a B+, hoping it continues to be improved upon, and noting that as a professor, he did not give many As.

The State of the Court

FEB 17, 2018

BY JUDGE PAUL M. HAAKENSON

Well, here we are, two months into my two-year sentence, I mean term, as Presiding Judge, and no disasters have befallen the court yet. I trust the transition from Judge Simmons to Yours Truly has appeared seamless from the perspective of the bar: The courthouse is still open; the wheels of justice are churning as rapidly as ever; and Judge Howard is still the Golden Child with daily accolades streaming in. Tom Brown's installation as the 71st MCBA President was a tremendous success. The food was exquisite; the speakers were inspiring; and most importantly, my jokes were (seemingly) hilarious.

The present mood on the courthouse steps appears genuinely positive and optimistic—and for good reason. On the statewide level, the Governor's initial budget proposal is not as bleak as in the recent past, with the Judicial Branch receiving some much-needed love and attention. At the local level, rumor has it that Marin County Superior Court will finally join the 21st Century and update its case management system. E-filing and many other bells and whistles available through modern technology may soon be implemented. (Indeed, such implementation appears at the top of my list of goals.) Finally, you have undoubtedly noticed that the court is running at full-capacity with twelve judges—more than ever before.

Here in back halls of the hall of justice, the mood is equally positive. The courthouse staff is happy; morale is high, and the court is proudly serving as a model, on several fronts, for superior courts statewide. But don't take my word for it. This was the message recently delivered to the Judicial Council by the Honorable James Humes, Presiding Justice of the First District Court of Appeal, Division One. Justice Humes visited us late last year. He closely examined our processes, infrastructure, and functionality, and reported his findings to the Judicial Council. Justice Humes told the Council that he "could not have been more delighted or inspired from [his] visit," and that courts statewide "can

all learn from some of the collaborative and creative ways [the court has] gone about continuing to provide services in spite of a shrinking budget." (1)

This is where you, the thoughtful, benevolent, and hard-working members of the local bar, come in. As Justice Humes recognized, the court is working as well as it is because of our fantastic relationship and partnership with the local bar. Yes, in our meeting with Justice Humes, we gave you all the credit, and deservedly so. While many courts across the state are closing their doors to the public, furloughing employees, reducing self-help hours, postponing decisions, continuing trials, and ultimately delaying justice, Marin is trailblazing innovative programs to promote efficiency and assure timely access to justice (Justice Humes' observations.)

We are able to do so only because of your help. Over the past year, your contributions have been remarkable. Scores of lawyers collectively volunteered hundreds, if not thousands of hours. Unrepresented litigants in unlawful detainer cases, civil harassment restraining order hearings, and family law proceedings enjoyed the benefit of your volunteer services week after week. Almost daily, skilled mediators devoted hours upon hours to our mandatory settlement conferences, resolving cases that remained at impasse through the eve of trial. The Marin County Bar Association's modest means mediation program produced countless settlements. Legal Aid of Marin provided desperately needed legal services to indigent litigants in cases large and small, despite Legal Aid's shrinking budget. Our Community Court at St. Vincent's Dining Hall and Youth Court run by the YMCA diverted scores of youthful and underprivileged misdemeanants from the criminal justice system. The discovery facilitator program relieved the civil department of countless time-consuming and taxing law and motion matters. The family law bar selflessly dedicated time, energy and expertise to conducting weekly bench-bar settlement conferences. The civil bench-bar committee was re-established and is working toward developing a demurrer facilitation program. The District Attorney, Public Defender, and Probation Department worked together to increase the efficiencies in our criminal departments and specialty courts. The list goes on. Your efforts have been instrumental in increasing the court's efficiencies, lowering our numbers, and unclogging the system. Our success in these challenging times reflects upon our local bar association and volunteers selflessly assisting the court in administering justice. To the extent we are successful, we owe big thanks to you.

And now, at risk of breaking tradition by honestly reporting on the "State of the Court," I will share

some of the difficult realities we face. Despite the positive news recited above, our financial struggles here in Marin County will continue to mount. The Governor's promising proposed budget (even if it survives the May Revise and the usual last-minute revisions) will not result in a single additional penny for the Marin County Superior Court. We have been dubbed a "donor" court (a term with such negative connotation, the Judicial Council has terminated its use). Nevertheless, we are viewed as being adequately funded, and responsible for giving up funding in deference to other courts with greater struggles. The question for us is limited to five words: "How much will we lose?" Although we have suffered consecutive budget cuts of approximately $500,000 each year for the past four years, our allocation from the judicial branch simply will not include any new money. Period. The roughly $2,000,000 cut from our annual budget reflects a substantial percentage of our total yearly funds. We are truly operating at the skeletal level. As Justice Humes noted, "fewer resources have led to impressive innovations, but the court is near the breaking point."

In addition to ever-increasing costs of doing business, mounting obligations stemming from rapidly changing legislation, and meeting our payroll (which is about 85% of our total budget), our new case management system is estimated to cost the court approximately $6 million when all is told. Since all courts in California are prohibited from saving more than 1% of our total budget in reserves each year, we have no savings from which to draw. Funding a new case management system while also meeting our operational needs will be a daunting task. However, with the help of our enthusiastic and tireless Court Executive Officer James Kim, together with our innovative Chief Information Officer Adam Creiglow, and dedicated Chief Operations Officer Janet Minkiewicz, as well as the Court's Leadership Team and staff we are moving forward with our plan (more aptly described as a pipe dream for now) to implement a new case management system during my term as Presiding Judge. To achieve this goal, we must continue to innovate, streamline, and organize our work to maximize efficiencies.

Thus, my pitch to you. We need your continued support, energy, innovative ideas, and volunteerism. We could not function without you. We appreciate your work. Every day, every hour you squeeze from your own schedule and donate to us is greatly appreciated. With your continued efforts, I will remain optimistic that in two years, when I surrender my post to our next presiding judge, we will be running as a well-oiled machine, with a new, functioning case management system. In the meantime, I will be looking forward to the annual judges' luncheon held at the end of the year, at which time I can report upon our successes (in addition to Judge Howard's continued popularity, of course).

(1) A video recording of Justice Humes' report may be viewed online (http://jcc.granicus.com/MediaPlayer.php?view_id=1&clip_id=583) here, commencing at the 1:26:13 mark.

Distinguishing Mediation from Other Types of Settlement Discussions in California

FEB 27, 2018

BY TERRANCE J. EVANS

When considering various alternative dispute resolution options, mediation is a popular choice. However, the distinction between mediation, settlement conferences, and ordinary settlement negotiations can be confusing. This article examines applicable California rules in order to shed some light on what distinguishes mediation from other types of settlement negotiations.

What Qualifies as a Mediation in California?

1. Mediation Defined

As an initial matter, it is important to understand what qualifies as a mediation in California. The Evidence Code defines mediation as a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement. Cal. Evid. Code section 1115(a). The California Supreme Court described mediation as the next step beyond direct negotiations and is an alternative to "unnecessarily costly, time-consuming, and complex" court proceedings. Foxgate Homeowners' Ass'n, Inc. v. Bramalea Calif., Inc., (2001) 26 Cal. 4th 1 at 14. See also T.J. Evans, M.C. Holden, and K.E. Mast., Advance Mediation Advocacy for Insurance Coverage Cases ("AMAICC"), ABA ICLC Seminar Publication (2018).

Upon reviewing the comments to section 1115, it becomes clear that what qualifies as a mediation is determined by "the nature of a proceeding, not its label," and that a proceeding might qualify as a mediation for purposes of the Evidence Code's confidentiality protections "even though it is denominated differently." See Rebecca Callahan, Mediation Confidentiality: For California Litigants,

Why Should Mediation Confidentiality be a Function of the Court in Which the Litigation is Pending?, 12 Pepperdine Disp. Res. L.J. 63 (2012); AMAICC at pp. 1-20.

2. Distinguishing A Mediation from a Mandatory Settlement Conference

It is critical that an attorney understand the difference between a mediation and a mandatory settlement conference. Although courts and practitioners sometimes use these terms interchangeably, these are very different alternative dispute resolution ("ADR") procedures with vastly different confidentiality rules. Evidence Code section 1117(b)(2) provides that the confidentiality protections afforded to communications in mediation do not apply to communications during a mandatory settlement conference convened pursuant to rule 3.1380 of the California Rules of Court.

The first step in distinguishing a mediation from a mandatory settlement conference is determining whether or not a court has ordered the ADR process. The analysis will change depending on who initiated the ADR process. AMAICC at pp. 1-20.

Second, if a court has not ordered the ADR process, and instead the process is the result of an agreement between the parties, the parties are not participating in a mandatory settlement conference. Only a court can order the parties to participate in a mandatory settlement conference; it cannot be self-imposed. AMAICC at pp. 1-20.

Third, if a court has ordered the ADR process, you must carefully review the court order to determine whether or not the court has simply ordered the parties to participate in mediation or whether the court has specifically ordered the parties to participate in a mandatory settlement conference convened pursuant to rule 3.1380 of the California Rules of Court. AMAICC at pp. 1-20.

Finally, it almost goes without saying that if the court has ordered the parties to participate in a mandatory settlement conference convened pursuant to rule 3.1380 of the California Rules of Court, the parties are participating in a mandatory settlement conference and not a mediation. Conversely, if the court has ordered the parties to participate in mediation, the question of whether or not the parties are actually participating in mediation depends on whether a neutral is involved, as discussed below. AMAICC at pp. 1-20.

3. Distinguishing Mediation from Ordinary Settlement Negotiations

In many cases, the ADR process is initiated by the parties themselves and is not the result of a court order. Under these circumstances, it is important to distinguish a mediation from ordinary settlement negotiations. As noted above, mediation is a process in which a neutral person or persons facilitate communication between the disputants to assist them in reaching a mutually acceptable agreement. Cal. Evid. Code section 1115(a). Therefore, a neutral person or persons acting as a mediator is required for mediation. Mere settlement negotiations between the parties without a neutral person involved acting as a mediator do not qualify as mediation. AMAICC at pp. 1-20.

Who Qualifies as a Mediator In California?

As noted above, you cannot have a mediation in California without a mediator. The Evidence Code defines a mediator as a neutral person who conducts a mediation. It includes any person designated by a mediator either to assist in the mediation or to communicate with the participants in preparation for a mediation. Cal. Evid. Code section 1115(b). Simply put, a mediator is the neutral person who conducts the mediation and the members of their staff who assist with the mediation and/or communication with the participants in preparation for a mediation. AMAICC at pp. 1-20.

Most mediators are attorneys, many of them retired judges. But a mediator is not required to be an attorney and non-lawyers do serve as mediators, particularly those with expertise in a specialized area. See Cal. Prac. Guide Alt. Disp. Res. Ch. 3-B § 3:75; and AMAICC at pp. 1-20. Parties have many options to consider when selecting the appropriate mediator for their dispute. Unless the mediator is appointed by the court, all of the parties to the dispute must agree on the selection of the mediator. When making this decision, a party should consider the mediator's reputation, level of experience, and potential for bias for or against the party. AMAICC at pp. 1-20.

What Is a Mediation Consultation?

A mediation consultation is defined as a communication between a person and a mediator for the purpose of initiating, considering, or reconvening a mediation or retaining the mediator. Cal. Evid. Code section 1115(c). Essentially, a mediation consultation includes any communications that a party has with a mediator or a member of the mediator's staff for the purpose of initiating, considering, or

reconvening a mediation or retaining the mediator. AMAICC at pp. 1-20.

Confidentiality Plays a Critical Role in Mediation

Confidentiality is one of the most important features of mediation. Nothing said or written during mediation or a mediation consultation is admissible in any noncriminal proceeding. Cal. Evid. Code section 1119. Confidentiality allows parties to negotiate freely with the understanding that their communications during mediation will remain confidential. California Courts have long held that the success of mediation depends on a candid and informal exchange among the parties and the mediator. See Cal. Prac. Guide Alt. Disp. Res. Ch. 3-B § 3:94; see also Rojas v. Sup.Ct. (Coffin), (2004) 33 Cal. 4th 407, 415; Simmons v. Ghaderi, (2008) 44 Cal. 4th 570, 578; and AMAICC at pp. 1-20. [Editor's Note: The California Law Revision Commission recently proposed a new exception to confidentiality in cases of alleged attorney malpractice. The Legislature has declined to introduce such an exception but is considering requiring explicit disclosures to participants regarding confidentiality.]

Conclusion

Settlement negotiations can take on a variety of forms. It is important for California practitioners to familiarize themselves with the applicable procedural and evidentiary rules to ensure that their settlement communications are protected.

California's Money Bail System

FEB 24, 2018

BY CHARLES D. DRESOW

(https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20179/PDRReport-FINAL%2010-23-17.pdf) In our criminal justice system, the presumption of innocence is a paramount protection. Only admissible, legally obtained evidence may prove an accused guilty beyond a reasonable doubt. So why has one out of every four inmates in California's jails or prisons not been sentenced or even convicted of a crime? Because of pre-trial detention. And many of those in pre-trial detention languish in jail prior to the adjudication of their charges because California's money bail system leaves indigent individuals unable to afford the same set amount of bail that wealthy individuals are able to pay.

Many observers, including California Chief Justice Tani G. Cantil-Sakauye, have long suggested that California's current procedures for setting money bail are unconstitutional because the poor are unfairly held in custody prior to the adjudication of their cases. The issue of how California's current bail schedules and trial court bail-setting procedures unfairly and unjustly impact indigent individuals has been at the forefront of criminal justice reform. Two cases since the start of the year, one in the California First District Court of Appeal and the other in the Federal Ninth Circuit Court of Appeals, have caused a seismic shift in the discussion by declaring the current system unconstitutional because indigent individuals are detained pre-trial without consideration of their ability to pay bail.

The Current System

Money bail is largely set based on a bail schedule that outlines the amount of bail for each crime and enhancement. This bail schedule does not account for either the presumption of innocence or an individual's ability to pay. Furthermore, each of California's counties is responsible for setting its own bail schedule, which also leads to uneven treatment of the same offense county to county. Unfortunately, money bail also operates as much as a mechanism to force guilty pleas in criminal cases where detained individuals can't afford bail as it does a tool to protect public safety. An individual

who lacks the means to afford bail is more likely to plead guilty to a criminal offense if it means immediate release from custody. Court observers have long noted with dismay the reality that potentially innocent individuals plead guilty to get out of jail when they can't afford their bail amount because they would stay in jail longer if they fought their case rather than immediate release via a guilty plea and credit-for-time-served sentence.

In her 2016 State of the Judiciary Address, California Supreme Court Chief Justice Tani G. Cantil-Sakauye questioned whether California's money bail program unfairly penalized the poor, "I also want to talk about bail. I think it's time for us to really ask the question whether or not bail effectively serves its purpose, or does it in fact penalize the poor. Bail—does it really ensure public safety? Does it in fact assure people's appearance in court, or would a more effective risk assessment tool be as effective for some cases?" (http://www.courts.ca.gov/34477.htm) (1) She commissioned a workgroup to study the problem of bail and this group published its findings and recommendations in October 2017. The workgroup noted that the current bail structure in California was failing its purpose, "At the conclusion of this process, the Workgroup determined that California's current pretrial release and detention system unnecessarily compromises victim and public safety because it bases a person's liberty on financial resources rather than the likelihood of future criminal behavior and exacerbates socioeconomic disparities and racial bias." (https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20179/PDRReport-FINAL%2010-23-17.pdf) (2)

The Recent Decisions: In Re Humphrey

On January 25, 2018, in a landmark ruling, the California First District Court of Appeals recognized that the issue of money bail unfairly impacting indigent individuals has been noted for decades:

Nearly forty years ago, during an earlier incarnation, the present Governor of this state declared in his State of the State Address that it was necessary for the Legislature to reform the bail system, which he said constituted an unfair "tax on poor people in California. Thousands and thousands of people languish in the jails of this state even though they have been convicted of no crime. Their only crime is that they cannot make the bail that our present law requires." Proposing that California move closer to the federal system, the Governor urged that we find "a way that more people who have not been

found guilty and who can meet the proper standards can be put on a bail system that is as just and as fair as we can make it." (Governor Edmund G. Brown Jr., State of the State Address, Jan. 16, 1979.) The Legislature did not respond.
In re Humphrey (Cal. Ct. App., Jan. 25, 2018, No. A152056) 2018 WL 550512, at *1

Indeed, the court acknowledged that the criticism dates back nearly to the founding of our country:

[T]he problem this case presents does not result from the sudden application of a new and unexpected judicial duty; it stems instead from the enduring unwillingness of our society, including the courts (see, e.g., Foote, The Coming Constitutional Crisis in Bail: I (1965) 113 U. Pa. L.Rev. 959-960, 998), to correct a deformity in our criminal justice system that close observers have long considered a blight on the system. (29)

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Alexis De Tocqueville, a keen early observer of our criminal procedures, observed in 1835 that our bail system "is hostile to the poor, and favorable only to the rich. The poor man has not always a security to produce ...; and if he is obliged to wait for justice in prison, he is speedily reduced to distress. A wealthy person, on the contrary, always escapes imprisonment. ... Nothing can be more aristocratic than this system of legislation. (De Tocqueville, Democracy in America (Dover Thrift ed. 2017) p. 56.) Tocqueville attributed this anomaly to English law which he thought Americans retained despite the fact that it was "repugnant to the general tenor of their legislation and the mass of their ideas." (Ibid.)
In re Humphrey (Cal. Ct. App., Jan. 25, 2018, No. A152056) 2018 WL 550512, at *24

The First District Court of Appeal went on to rule unanimously that the current framework of bail schedules, bail hearings, and money bail leads to unconstitutional injustice because of the lack of meaningful protections before a presumed innocent person is ordered detained subject to a bail they cannot afford. The Justices specifically found that pre-conviction, presumed innocent individuals were being detained without adequate due process protections because bail hearings have largely degenerated into decisions based on review of allegations and not of evidence:

As this case demonstrates, there now exists a significant disconnect between the stringent legal protections state and federal appellate courts have required for proceedings that may result in a

deprivation of liberty and what actually happens in bail proceedings in our criminal courts. As we will explain, although the prosecutor presented no evidence that non-monetary conditions of release could not sufficiently protect victim or public safety, and the trial court found petitioner suitable for release on bail, the court's order, by setting bail in an amount it was impossible for petitioner to pay, effectively constituted a sub rosa detention order lacking the due process protections constitutionally required to attend such an order.
In re Humphrey (Cal. Ct. App., Jan. 25, 2018, No. A152056) 2018 WL 550512, at *2

The Humphrey Court recognized that its ruling would change the landscape of bail hearings in California and this would be difficult for courts to financially absorb:

The problem, as our Chief Justice has shown, requires the judiciary, not just the Legislature, to change the way we think about bail and the significance we attach to the bail process. Though legislation is desperately needed, administration of the bail system is committed to the courts. It will be hard, perhaps impossible, for judicial officers to fully rectify the bail process without greater resources than our trial courts now possess. Nevertheless, the highest judicial responsibility is and must remain the enforcement of constitutional rights, a responsibility that cannot be avoided on the ground its discharge requires greater judicial resources than the other two branches of government may see fit to provide. Judges may, in the end, be compelled to reduce the services courts provide, but in our constitutional democracy the reductions cannot be at the expense of presumptively innocent persons threatened with divestment of their fundamental constitutional right to pretrial liberty.
In re Humphrey (Cal. Ct. App., Jan. 25, 2018, No. A152056) 2018 WL 550512, at *24

The language and analysis of the Humphrey Court is shockingly direct and clearly calls out the legislature for failing to properly address the bail issue. The opinion also challenges trial court judges to take the role of protector of the liberty of pre-trial detainees when it comes to setting bail. This opinion is sure to be controversial because it places the liberty interests of pre-trial detainees into an equation that also includes the protection of public safety and ensuring that an accused returns to court.

The Recent Decisions: Arevalo v. Hennessy

The Ninth Circuit Court of Appeals echoed the Humphrey Court and granted a federal writ of habeas

corpus where bail was set in the trial court without consideration of the defendant's ability to pay bail or findings as to what government interest would be served by bail in the amount of one million dollars. The Petitioner in Arevalo v. Hennessy "argued that the trial court violated California law and his federal constitutional rights to equal protection and due process by requiring money bail without making the findings required for an order of pretrial detention. The Court of Appeal summarily denied the writ four days later." Arevalo v. Hennessy (9th Cir. Feb. 9, 2018, No. 17-17545) 2018 WL 794530, at *1 The California Attorney General did not oppose the petition. Indeed, the Ninth Circuit panel noted, "The State filed an answer declining to defend the district court's bail setting and affirmatively arguing that Arevalo was entitled to a hearing with specific consideration of his ability to pay and nonmonetary alternatives to bail." Id. at *2

Finality of In Re Humphrey

On February 20th 2018, California Attorney General Xavier Becerra announced that his office would not be appealing the Humphrey decision:

'The Court of Appeal's decision is an important recognition of the critical need to reform our current bail system,' said Attorney General Becerra. 'We must continue to pursue changes in our bail system to ensure it's rooted in principles of fairness and prioritizes public safety for all. As the Court notes, this is going to require legislative changes and additional resources. Decisions regarding who should remain in jail while awaiting trial should be based on their danger to the public, not dollars in their pocket. Bail determinations must keep Californians safe and ensure that a defendant shows up for trial. Bail determinations that do not consider whether a person awaiting trial can afford bail, and whether there are alternatives to incarceration that still preserve public safety, do not promote justice." (https://oag.ca.gov/news/press-releases/attorney-general-becerra-we-will-not-appeal-bail-decision-humphrey-case) See Humphrey Case Press Release

It is now clear that it is unconstitutional for a court to fail to consider an individual's ability to afford bail prior to setting bail. Likewise, it is clear that a court must consider what non-custodial alternatives protect public safety. The Humphrey decision places massive pressure onto our trial courts to figure out how to protect the constitutional rights of the accused (all of whom are presumed to be innocent) while protecting public safety. Until the legislature acts, the trial courts must balance these competing

interests while attempting to find the resources to comply with the Humphrey court's dictates.

Incorrect Initial Guidance

Unfortunately, an influential judge has already issued guidance on implementing Humphrey that strikingly misinterprets the case to allow pretrial detention without bail to protect public safety for any crime, directly contravening the California Constitution. Retired Placer County Superior Court Judge J. Richard Couzens regularly publishes reports and guidance for trial court judges through the California Judicial Council. Setting aside the issue of whether it is appropriate for the California Judicial Council or a retired judge to be issuing guidance to trial court judges across the state without any public input or notice to the defense bar or prosecution, Judge Couzens is regarded as a respected source for interpretation of new statutes and appellate court decisions and unfortunately his guidance is likely to be followed by trial courts at least for now.

Article I, Section 12 of the California Constitution requires bail to be set except in limited cases. Bail may be denied for (1) capital crimes, (2) violent felonies where the court makes a specified finding of the risk of great bodily harm to others if bail is not denied, and (3) all felonies where the court makes a specified finding of the risk of great bodily harm to others when the accused has threatened it. The Humphrey court cannot overrule the Constitution nor did it purport to. But in setting forth the steps a trial court should take when considering bail, in a memo published January 30, 2018, Judge Couzens claims:

The court should first determine whether the defendant is ineligible for bail under the provisions of article 1, section 12 of the constitution, or otherwise presents a danger to the public or victim. If the court determines by clear and convincing evidence that no condition of supervision or alternative to custody will adequately protect the public or a victim, the court may order preventive detention without regard to setting of a particular amount of bail – it would be a "no bail" setting…

To be clear, Humphrey held that a court may preventively detain a person where the court determines by clear and convincing evidence that "no less restrictive nonfinancial conditions would be sufficient to protect the victim and community." (Humphrey, page 17.) The court did not limit such authority to capital offenses or crimes of violence specified in article 1, section 12 of the constitution.
(See Memo from J. Richard Couzens dated January 30, 2018, regarding In re Humphrey (2018) ___

Cal.App.5th ___ [A152056] Ability to pay determination required for bail setting and requirements for pretrial detention)

Judge Couzens inexplicably interprets Humphrey to allow a trial court to deny bail in a broader range of cases than the Constitution allows, a step in the opposite direction from Humphrey. His interpretation is against the spirit of bail reform and is squarely contradicted by the First District Court of Appeals, the Federal Ninth Circuit Court of Appeals, and the Attorney General of California. It seems unlikely that any detention based on Judge Couzens' interpretation of Humphrey would be upheld at the appellate level. But the broad gap between his opinion and the directives of the higher courts certainly reinforces the need for urgent legislative action on the issue of money bail in California.

(http://www.courts.ca.gov/34477.htm) (1) STATE OF THE JUDICIARY ADDRESS TO A JOINT SESSION OF THE CALIFORNIA LEGISLATURE March 8, 2016, 4 p.m. (https://newsroom.courts.ca.gov/internal_redirect/cms.ipressroom.com.s3.amazonaws.com/262/files/20179/PDRReport-FINAL%2010-23-17.pdf) (2) Pretrial Detention Reform RECOMMENDATIONS TO THE CHIEF JUSTICE PRETRIAL DETENTION REFORM WORKGROUP OCTOBER 2017

European Clients? What You Need to Know About the EU's General Data Protection Regulation May Deadline

FEB 28, 2018

BY SAMIK BHATTACHARYYA

The General Data Protection Regulation(GDPR) (Regulation (EU) 2016/679), promulgated by the European Union (EU), comes into effect this May, a little over two years after it was adopted by the European Parliament and the Council of the European Union. The GDPR is designed to protect the personal data of EU residents wherever such data sits in the world. The high risks and costs of non-compliance under GDPR are forcing many American companies, including law firms, to evaluate and supplement their existing data protection practices.

In General

The GDPR takes effect May 25, 2018 and replaces the current EU Data Protection Directive and the UK Data Protection Act of 1998. (You can access the regulation and related information (https://ec.europa.eu/info/law/law-topic/data-protection_en) on the EU's data protection website.) There is no grace period after May 25th and companies in non-compliance may start accruing fines starting that date. The regulation's penalties for non-compliance can be costly as companies can be fined up to four percent of annual global revenue or €20 million.

The GDPR is meant to protect the personal data and privacy rights of people living in the European Union ("Data Subjects"). Personal data is considered to be any information related to a natural person that can be used to directly or indirectly identify that person. Under this broad classification, anything

from a name, an email address, a residential address, bank information, photo, medical information, social media posts, or even a computer's IP address may be considered to be personal data protected by the GDPR.

The regulation not only applies to companies located within the EU, but also to companies located outside of the EU if they offer goods or services to, or monitor the behavior of, people in the EU. The GDPR applies to all companies that may process and hold the personal data of Data Subjects, regardless of the company's location or size.

Application to Law Firms

A law firm's regulatory obligations under GDPR will vary depending on the firm's practice areas and the nature of its use of personal data of Data Subjects. Under the GDPR, companies are categorized into two categories: data controllers and data processors. Data controllers are entities that determine the purposes, conditions, and means of processing personal data, while data processors are entities that process personal data on behalf of a data controller. Both controllers and processors must comply with the GDPR, but their obligations and responsibilities under the regulation differ. A law firm can act as either a data controller or processor depending on its role in collecting and managing personal data.

In order to understand the day-to-day implications of the GDPR, consider how the regulation attempts to safeguard the privacy of an individual's personal data. A well-known mandate is the "Right to erasure" (also known as the right to be forgotten), which entitles a person to request a data controller erase all personal data associated with him or her. (1) For law firms there is an exception in that the Right to erasure does not apply to the extent personal data processing is necessary "for the establishment, exercise or defence of legal claims." (2) Additionally, this GDPR requirement does not override federal or local obligations to retain certain types of data for a certain period of time. <img src="https://mlsvc01-prod.s3.amazonaws.com/24fc8343001/ae237058-087b-4d08-9a51-961b8ada4e35.jpg?ver=1517850359000)

Another GDPR provision that may affect law firms is the 72-hour breach notification requirement. (3) A law firm acting as a data controller must notify its lead supervisory authority (4) within 72 hours after becoming aware of a personal data breach. A law firm acting as a processor must notify the data

controller without “undue delay” after becoming aware of a personal data breach. Breach notifications to a supervisory authority have to take a certain form and contain a required set of information. (5) Whether acting as a controller or processor, it is important for law firms to have established breach notification procedures in place so that if there is a breach the firm can comply with the GDPR’s strict time requirements.

Several other aspects of the GDPR may also apply to law firms. Some provisions are broad and open to interpretation such as “Right of access,” (6) which entitles a person to obtain an accounting of all personal data stored by a controller and “Data Protection by design,” (7) which calls for privacy protections to be implemented in the very design of data processing systems. Others are narrower and more prescriptive, such as data encryption requirements (8) and requiring companies to appoint a Data Protection Officer (9) in some situations.

If your law firm doesn’t have any European contacts through personnel, customers, or data then your firm may not be subject to the GDPR. But, if your firm has European employees, European clients, or processes European personal data through discovery or other information sharing processes then it may be wise to evaluate your firm’s exposure to GDPR at this time.

Any such evaluation should begin with a firm-wide information inventory or audit documenting where all protected personal data is located in your firm’s systems. After that, the law firm’s current data protection practices should be assessed and compared to the GDPR’s requirements, which will reveal compliance gaps whether they are technical, administrative, or organizational. This type of gap analysis can be the foundation to your firm’s roadmap to GDPR compliance. However, with time running short it is important to prioritize and approach compliance gaps wisely so that your firm can be ready when May 25th rolls around.

(1) Art. 17
(2) Art. 17, Sec 3, Paragraph e
(3) Art. 33 Sec. 1
(4) The EU member state data protection authority that acts as the lead authority with regard to cross-border personal data processing.
(5) Art. 33 Sec 3, Paragraph a-d

(6) Art. 15

(7) Art. 25

(8) Art. 32

(9) Art. 37

Campaign Rally Murder: The Partisan in the Bathroom with the Walking Stick—The Case of the 2018 Mock Trial Competition

FEB 27, 2018

BY ANNA PLETCHER

On two recent Saturdays, 206 students from nine high schools filled the Marin County Courthouse for the 30th annual Mock Trial Competition. By 8:00 a.m., the hallways buzzed with teenagers snacking on breakfast bars, practicing lines, and chatting nervously. Parents and coaches swarmed around, straightening ties, brushing hair, filling water bottles. Teams gathered in tight circles, cheered, and filed into their respective courtrooms to do battle.

The two-day competition was the culmination of months of preparation. At the beginning of the school year, the teams received the case file — 79 pages of rules, fact patterns, witness statements, exhibits, and case law. Students spent hours poring over the materials, familiarizing themselves with every detail. Coaches worked with the students over the next several months to develop strategies, hone questions, prepare objections.

The facts of mock trial cases are well-balanced, designed to present the prosecution and the defense with equal opportunities. This year's case, People v. Davidson, was no exception. Political rivals Davidson and Thompson attended a rally in which a controversial anti-immigrant radio show host was scheduled to speak. The crowd turned violent. Thompson was punched in the nose by an unknown assailant and headed toward the bathroom to clean up. Davidson followed. Shortly thereafter, Thompson was found beaten to death, with Davidson's bloody walking stick on the ground nearby. But Davidson had an alibi — she was at a local tech store buying batteries for her bullhorn. And dueling forensic

experts disagreed about the likely murder weapon and the time of death.

Mock trial cases always include a disputed legal matter to be resolved pretrial. This year's pretrial motion focused on a timely issue: whether law enforcement's collection of the defendant's GPS location data from a car company violated the Fourth Amendment.

The trial itself proceeds much like a real trial, with a few modifications. The parties argue the pretrial motion first. The judge rules on the motion, then the trial follows. Each team has a total of 34 minutes to complete their entire case: opening statement, direct and cross examinations, and closing argument. Objections, based on modified rules of evidence, are expected and encouraged.

Each school fields a prosecution team and a defense team. The teams consist of four witnesses, three or four trial attorneys, and one attorney who argues the pretrial motion. The bailiff and timekeepers also play important roles, swearing in witnesses and ensuring that the teams adhere to the strict time limits.

Three volunteer attorney scorers mark students individually on a scale of 1 to 10, based on their knowledge of the material, rules of evidence, poise, eloquence, and professionalism. The scorers also render a verdict, which may or may not correspond to the team with the highest score. At the end of the day, however, it is the point total that matters.

This year, Marin Academy and Tamalpais High School faced off in the finals. Tam came out on top, continuing its impressive 23-year winning streak.

Organizing the county-wide mock trial competition is no small feat. The Marin County Office of Education spearheads the effort. Lisa Schwartz serves as the Director and Jonathan Lucha and Luz Lopez are the primary coordinators. Planning begins the summer before school starts. In September, they meet with teachers and attorney coaches and begin recruiting attorney scorers and judges. The work intensifies in December and January with complex scheduling and continued volunteer recruiting.

"The most challenging part [of our job] is the recruitment of attorneys and judges. Our budget for this event is small, therefore, using staff time can be difficult," said Lopez.

Volunteers make the event possible. Eight Judges volunteered to participate in this year's competition: Roy O. Chernus, James T. Chou, Stephen P. Freccero, Paul M. Haakenson, Beth S. Jordan, Shelia Shah Lichtblau, Mark A. Talamantes and Beverly K. Wood. Six employees from the Marin County Office of Education pitched in to help the flow of people and paperwork during the competition days. And thirty six local attorneys volunteered their time as scorers and coaches.

At the end of the day, this tremendous effort is well worth it. For Lopez, the most rewarding part is "when students get to run through the trial on the competition days in an actual courtroom with the presiding judge in front of jurors."

Lily Datnow, a sophomore at San Rafael High School and prosecution pretrial award winner, agreed. She said "getting to take part in the actual system where someday as adults we may be working" is the best part.

For parents, watching their children rise to the challenge is priceless. One San Rafael High School parent said, "My son was such a quiet boy. Through mock trial, he has learned to speak articulately in public, put his thoughts in order, and pay attention to details. He has learned to ask for help when he needs it and to communicate with adults. He is comfortable in his own skin."

It would be hard to ask for a more positive result from any high school activity. The experience is rewarding for all involved, including the volunteers. If you'd like to participate in next year's trial, contact (jlucha@marinschools.org) Jonathon Luca or (lmlopez@marinschools.org) Luz Lopez.

Greg Brockbank

FEB 27, 2018

BY CHRISTIAN MARTINEZ

The Marin Lawyer recently sat down with MCBA board member Greg Brockbank to discuss his legal career, life in Marin and turning a Supreme Court opinion into a play.

What is your practice area?
I started with landlord/tenant — I will represent either one — and civil litigation. Sixteen years ago, when I joined Marin Law Center, and ultimately bought it, I added family law (divorces) and living trust packages.

Do you have a particular emphasis?
I really try to keep costs down for clients, with relatively low hourly rates, efficient work, and light billing, but I always have to explain to new clients when they call or email that, despite the name of my firm, we are not a clinic or nonprofit organization, and are in fact a private law firm. I try to help them resolve their case themselves -- including referring them to Nolo Press books, legal websites, Legal Aid of Marin, the Legal Self-Help Center, or Small Claims Court -- rather than hiring me, in order to save them money, as many or most of my clients are pretty low-income (especially tenants and many divorcing parties).

Why did you decide to become a lawyer?
It wasn't really because I argued so much as a kid that my parents said I should become a lawyer. Actually, I started out in college as a math major, and then my first "career," albeit brief, was in theatre, although I never really earned any money at it. After a degree in Theater Arts, two years of graduate work, and a year in NYC, I came back to Marin and always say I took a "tragic career turn" and went to law school. Truthfully, the intellectual aspect of it appealed to me, as well as the problem-solving, and the opportunity for public service. The money sounded good in theory, but as a 32-year sole practitioner now, I'm still waiting for that part.

What is the best thing about being a lawyer?
I like the first consultation, when I try to be very efficient in sharing knowledge from my 32 years of practice; I answer the client's questions, weigh the pros and cons of various approaches, and try to make it as easy as possible for the client to get the business over and done with. Often, I can settle a case with a call or two to the other side. And I've always liked being self-employed.

Why do you live in Marin?
I moved here with my family from Chicago when I was 11 years old, and I've never wanted to be anywhere else. Why would anyone?

What do you love to do when you're not busy practicing law?
Besides singing and dancing in musical comedies, which I've resumed doing here in community theaters in recent years, I've always been active in Democratic politics. I've been on the Democratic Central Committee of Marin for the past 32 years and was the chair a few years ago. I've served on several dozen civic and political boards — advocating for low-income housing, for the environment, for election integrity, and for single-payer health care, among others. I spent 22 years as an elected official on the College of Marin Board of Trustees, and then the San Rafael City Council.

Tell us about your family.
Two children, ages 31 and 32, both of whom became teachers and both of whom now live in Santa Rosa. Two grandsons, one six months old and the other age two. I live in San Rafael with my wife, Esther Wanning, who is a psychotherapist, a writer, and like me, a political activist. For 20 years, she led the charge in Marin for a single-payer health care system.

If you could pursue any other career besides law, what would it be and why?
Singer and/or actor. But barring those, or being a full-time paid politician, I sometimes think I would have enjoyed a career in public administration.

Why did you join MCBA?
Truthfully, it never occurred to me NOT to join. Because I went solo immediately upon passing the bar, I joined as soon as I started my practice.

If you had to pick a single highlight of your career, what would it be?
Several years ago, I did a jury trial, representing a tenant facing eviction, up against a top landlord attorney. Jury trials are extremely rare in eviction cases, and this one was pretty complex, yet after the landlord's case was presented, I moved for and won a directed verdict for my client.

What hard lessons have you learned practicing law that spill over into your former role as a city councilmember? What hard lessons have you learned as a city councilmember that spill over into the practice of law?
Of course listening is a crucial skill in both areas (maybe all areas), and I like to think I do well in that area, although my wife would undoubtedly give a dissenting opinion. Practicing law involves giving individual people (in my case) advice or representation, based on their facts, and the law, but the client is usually the ultimate decision-maker. Serving in any public office involves being responsive to members of the public, individually and/or collectively, but the office-holder is the ultimate decision-maker. In both cases, being clear, articulate, and sincere are important skills. And while clients need to have confidence in you as an attorney, so does the public in serving as an office-holder. A client can fire you (or an attorney can resign), and as an office-holder, the public can defeat you for re-election, or you can resign or decline to run for re-election.

What were 3 recent books you read for pleasure?
My wife would say I don't read any books, but that isn't quite true, although I do spend far more time reading newspapers and emails. In recent years, I've read a few murder mysteries (including a political one), and some political books.

Favorite legal flick?
Probably that old chestnut, The Verdict, with Paul Newman. Even a mess of an attorney can pull himself together and draw on some legal skills to win a big victory, even winning over a judge who didn't much respect him. I have also enjoyed a few TV series about the law, on those rare occasions I watch TV, but I find both legal movies and TV series to be shockingly unrealistic in that they seem to think someone can start preparing for trial the day before the trial, and they condense what might be hours or even days of testimony into a few minutes.

Favorite type of food?
I like food in general, as long as it's vegetarian, preferably vegan. I used to love primarily Italian food, and still do, but my wife has "refined" my palate considerably, and I now also enjoy Thai, Indian, and Mexican food, among others.

Go-to drink for those special occasions?
Not having drunk any alcohol for nearly 20 years, I guess I'd have to say a non-alcoholic beer, which I drink a few of each week. And lots of lemonade.

Best way to unwind?
For me, although most would probably shudder, it's performing in musical comedies. Next up: Daddy Warbucks in Annie, a great role in a great show with three great songs, even though personally I'm the opposite of a billionaire Republican industrialist. The first two weekends in May at the Playhouse in San Anselmo.

What supreme court opinion would make a great short play?
Although I really enjoy most of the MCBA membership lunch programs, my favorite in recent years, for political as well as legal reasons, has been Hastings Prof. Rory Little talking about the recent US Supreme Court opinions, and speculating on the big ones about to come out in the final week. One of those from a few years ago, Citizens United, further increased the already too-large influence of anonymous big money donations and excessive corporate influence in politics, a subject near and dear to my heart, and for which I ran two countywide political campaigns in Marin in the past couple decades to get some form of publicly financed elections statewide. So I think that subject might make a good dramatic presentation, and in fact I had a brief conversation recently with fellow MCBA Board Member Christian Martinez about doing such a thing together. You could do great things with Citizens United. Think of all the greedy corporate profiteers throwing huge wads of dough around and our supposed public servants doing their bidding.

NONPROFIT PROFILE

Spaulding Marine Boat Center: Teaching Marine Skills to All Ages in Sausalito

FEB 28, 2018

BY CHRISTIAN MARTINEZ

Sausalito's maritime roots run deep. The city's first home was built by renowned mariner William Richardson in 1835. The Sausalito Land & Ferry Co. began paddle-wheel ferry service in the 1850's, reducing the trip from San Francisco to Marin by hours. Although the Golden Gate Bridge pushed aside the need for ferries, shipyards remained busy through World War II.

Myron Spaulding

It is no surprise then that a non-profit dedicated to preserving the local maritime history by teaching boat-building classes to youths and adults is on the Sausalito waterfront. However, the non-profit has surprising roots, planted by Myron Spaulding, concert violinist for the San Francisco Symphony. In addition to the fiddle, he studied boatbuilding at Polytechnic High School in San Francisco. According to classmate Prescott Sullivan, "[b]y the time I had finished my bookends, that guy had built a boat."

Spaulding became one of the most celebrated boat builders and yachtsmen on the West Coast, and in 1951 he bought the current location to build his own boat designs, many of which are still in use. Spaulding died in 2000, and the Center is now part of a charitable trust.

The Center

You will step into the past—and into a 20,000-foot boatyard—if you visit the Center. You might be

asked to pass a hand plane before climbing rustic wood stairs to peruse the extensive nautical library overlooking the workspace or admire historic boats and the handiwork of the Center's craftspeople. But skimming books or on-looking is not the goal. The Center builds. It is described as a working museum and hosts a wide array of educational programs and community events for people of all ages. There is a two-week youth program in the summer, where young woodworkers can build their first boat, a set of oars, a toolbox, or a skateboard. There are year-round Saturday seminars for mariners of all skill levels, and adult classes for making canoes and restoring classic yachts.

The Center's seven-person crew includes President Bill Edinger, boatyard staff and a general manager, Clark Beek, a marine electrician who teaches Marine Electrical Systems.

The Mission

The Center's mission is to preserve, share, and celebrate the Bay Area's maritime history. It describes itself as a "link to the past and a promise for the future." The Center is open to the public and Beek encourages anyone to "come by and hang around."

"We are expanding our summer program in 2018," said Beek. "We've hired a new Director of Education and Watershed Restoration" and the summer camps will not only teach boat-building, but also watershed restoration to instill environmental stewardship to our youths. Most of the students come from local Marin schools, particularly Willow Creek Academy and Greenwood School, which includes classes at the Center as part of its curriculum. Summer camps include a lot of one-on-one attention, are limited to ten students, and true to its mission, the Center regularly offers scholarships.

The Center's courses have included Women and Woodworking, Marine Electrical Seminar, Knots and Splices, and Marlinspike Seamanship. It also offers job-training for developmentally delayed students.

For relief from the hard work, the Center offers classic, seafarer-related movie nights (next showing on March 9) and a variety of other programming for the local community of all ages.

For more information, please feel free to contact (clark@spauldingcenter.org) Clark Beek via email.

The Gossip According to Matthew

MAR 04, 2018

BY MATT WHITE

What's on the Events Calendar for March? ADA Nicole Pantaleo will be chairing the Soroptimist Ruby Awards ("Women Helping Women") on March 8, at the Corinthian Yacht Club. Tim Nardell will be the keynote speaker at this year's MCBA and Legal Aid of Marin pro bono luncheon on March 28, at the Four Points Sheraton. (Many other MCBA lawyers, too numerous to name here, will also be featured honorees.) Ayanna Jenkins-Toney was honored with the prestigious "Solo Practitioner of the Year" award for 2018 from the California Association of Black Lawyers (CABL). Her award will be presented on April 28 at the Association's annual conference at the Hilton Garden Inn in Emeryville.

You need to know this: Under Business & Professions Code §6128, a lawyer is guilty of a misdemeanor, punishable by jail time, if the lawyer "[w]illfully delays his client's suit with a view to his own gain." You can amuse yourself by thinking of all the times your opposing counsel (or you) could have been locked away. In fact, consider this scenario: The judge suggests April 1st as a trial date. You say, "I have a vacation planned that week. How about April 8th?" Aren't you delaying your client's suit for your own gain? I'm not sure, but you may want to bring your toothbrush to the hearing, just in case.

The Baby Boom continues! Katie and Charles Dresow are ecstatic over the birth of Jack William Dresow, born February 19th. Charlie handles criminal defense out of the Ragghianti Freitas enterprise. Football and rugby scouts are already skulking about the family residence.

If you see a judge on the bench without a robe, I suggest a citizen's arrest. Under Government Code §68110, "[e]very judge of a court of this state shall, in open court during the presentation of causes

before him or her, wear a judicial robe, which the judge shall furnish at his or her own expense." So now you know.

Forgiveness pioneer Eileen Barker has joined Monty White LLP as "of counsel." Eileen will continue her work in the forgiveness movement as well as her high-conflict mediation practice.

What a relief! The Civic Center cafeteria has reopened for business. It had been closed briefly by the Health Department after rodents overran the joint. Gary Klein's article in the IJ featured this lede: "Marin County's seat of government has been overrun by out-of-control spongers feeding relentlessly on public resources. Not only that, they're leaving their droppings everywhere." Good writing, Gary.

Food From the Bar Campaign Begins

MAR 02, 2018

BY PHILIP FELDMAN

Food From The Bar (FFTB) is an annual campaign in which law firms and corporate in-house legal departments compete to generate the most money and volunteer hours in support of the San Francisco-Marin Food Bank. Running from May 1st to June 1st this year, the campaign celebrates its twenty-seventh year of legal community support for the Food Bank. Over the course of its history, the campaign has raised $6,974,591 and generated 26,605 volunteer hours. The sum of these generous contributions has provided nineteen million meals for those in need in San Francisco and Marin, where one in four people lives at risk of hunger.

Vendors and consultants that support the local legal community have a unique opportunity to have their name and logo seen by more than seventy law firms and hundreds of attorneys and staff. Please consider the following opportunities and benefits of participating:

$3,000 Sponsor:
Logo on FFTB website
Logo in weekly campaign emails to participating firms and companies
Recognition at and invitation to awards reception at the legendary Merchants Exchange Club in downtown San Francisco on Wednesday, June 27, 2018.

$5,000 Sponsor – the above, plus:
Name on Bread Winner's plaque in SF-Marin Food Bank lobby (SF)
Four (4) tweets during campaign
Table/display at awards reception

$10,000 Sponsor – the above, plus:
Name on individual Bread Winner's can in SF-Marin Food Bank lobby (SF)
Table/display at Munger Games (campaign trivia night)
Present awards at awards reception (#TBD)

To become a sponsor or for more information, please contact:
Debbi Bellush, Manager of Community Engagement, SF-Marin Food Bank
By (dbellush@sfmfoodbank.org) email or telephone 415-282-1900 ext 380

Find the Gavel and Get a Free Lunch!

MAR 02, 2018

BY MEE MEE WONG

To enter the contest, just email (gavel@marinbar.org) gavel@marinbar.org and let us know which article has the <img src="https://mlsvc01-prod.s3.amazonaws.com/24fc8343001/ae237058-087b-4d08-9a51-961b8ada4e35.jpg?ver=1517850359000) . We'll draw one name from the first twenty (correct) entrants.

John Vos, an MCBA member since 1979, found the gavel in last month's article and became the lucky winner when his name was drawn from the entrants.

John attended the lunch program on February 28 at Embassy Suites and here's what he said:
"Just attended a fabulous program delivered by Gerald Uelmen courtesy of the gavel find program. Not only does the Marin Lawyer broaden my legal perspectives and education, you might be lucky to attend their special monthly programs for free. And attending the luncheons is a good way to get out of the office and a great way to network."