

From Mediation to Cross-Examination

APR 02, 2018

BY ROBERT ROSBOROUGH

While I hope that your cases don't go from mediation to cross-examination, our articles this month do. Many thanks to Susan Feder, our guest editor this month, who as a mediator herself has brought us a couple of great articles on mediation. Both of them are helpful not just to mediators but to all mediation participants and indeed, to anyone who negotiates, which is pretty much all of us, isn't it?

Mark LeHocky's article on civility in mediation demonstrates how civility gets better results, and indeed is essential to the success of mediation. And Ann Buscho's article makes a powerful case for the benefits of helping clients fully understand the other side's story without having to agree with it. While her article specifically addresses helping clients in divorce mediation, as a conflict resolution professor, I teach the value of this approach in all conflict and recommend her article to all of our readers.

If all of the great mediators we have here in Marin have not kept your case out of trial and you have expert testimony coming up, John Feder's article is an excellent primer on how to cross-examine expert witnesses (and how not to) and has some tips for direct examination too. Even the most experienced litigators will pick up a few pointers.

I would like to welcome a new column on politics by MCBA board member and long-time Marin political junkie Greg Brockbank. Greg's column will take a look at races from the local level on up to offer insight on the candidates and their chances and other political goings on. While any opinions expressed are purely his own, his column is not about advocating any politician or any position but about observing politics to help you stay better informed. Greg's column will alternate months with Matt White's

gossip column. You are not sending Matt enough juicy gossip for him to produce a monthly column. Are we that boring? Come on, we know you like hearing about all of our members and not just their legal work because you read Matt's column religiously. But you have to help him write it too! Send him your news!

Finally, I encourage you to read Susan Feder's report on MCBA's and Legal Aid of Marin's annual pro bono luncheon, where MCBA board member Tim Nardell gave a heartfelt speech. Tim astutely observed that like much of our paid legal work here in Marin, our pro bono work here tends towards the personal. Each of you really can make an enormous difference in many people's lives and witness that difference yourself by volunteering even just a small amount of your time through the many avenues we have, whether via the Lawyers in the Library program, through Legal Aid of Marin or in any number of other ways. The need is great and you can help regardless of your expertise. And whether you volunteer or not, you can still help by going to a party: attend Legal Aid's Jam for Justice on May 4th. Learn more about the event (<https://www.facebook.com/events/358336728003567/>) here.

A Call for Service—For Everyone's Benefit

APR 01, 2018

BY THOMAS S. BROWN

Too often it seems like lawyers are criticized from all sides: by clients for not delivering on unreasonable expectations, by fellow litigators in an effort to gain a tactical edge, by judges for filing unnecessary discovery motions, and by those in the community for just generally, well, being lawyers. The criticism certainly comes too from politicians and the media, where our daily news is engulfed by a focus on the problems of the role of law in our society. In short, practicing law requires having a thick skin, something I learned several years ago and continue to learn on a daily basis.

In an effort to get a respite from the practice of law, may I offer a recommendation: let's practice more law. This past month, the MCBA and Legal Aid of Marin co-hosted the annual Pro Bono Awards Luncheon. Attendees were treated to an inspiring acceptance speech by Tim Nardell, who was recognized for his devotion to pro bono this past year. In presenting the awards, Presiding Judge Paul Haakenson spoke of his perception of lawyers as doing much good in the world, recalling the impromptu free legal services provided to Ebony, one of his Street Law students from law school, who had no one to turn to when his mother died suddenly in the home they shared in Hunter's Point in San Francisco as one of the first in a long line of instances of helping he has encountered. Finally, Legal Aid Board President Johnathan Gertler noted how much greater the need is in Marin than it used to be. These were inspiring speeches and a very helpful reminder why many of us elected to pursue a career in law in the first place.

Helping those who are unfortunate or in dire need of basic legal assistance is a rewarding feeling for all involved. We encourage members to become involved in the many worthwhile pro bono and other legal services offered by the Marin County legal community. Whether you are a sole practitioner, a

government prosecutor or public defender, or a partner or associate in a large corporate firm, opportunities abound to give back to the legal community. MCBA's Lawyers in the Library Program is serving more and more people and in need of volunteers. Legal Aid of Marin's needs continue to expand. Several settlement conference panels provide yet more opportunities.

Or you might consider volunteering your time to coach one of our excellent mock trial teams (our own Tamalpais High School brought home the state title again this year) or participate in a street law or government class at one of the local high schools. Having done so myself, I can vouch that fielding questions from high school students on the Fourth Amendment can be every bit as challenging as arguing a summary judgment motion or cross-examining a police officer.

Another program to consider joining is the MCBA's Mentor Program, which we are looking to reinvigorate this year. Similar to the Barristers Program in San Francisco, this program partners a more seasoned attorney with a newer bar admittee or MCBA member. The goal is to provide a resource to newly admitted—or newly arrived in Marin—attorneys to assist them in becoming familiar with the legal landscape and resources available in the County. Those of you who are interested in becoming a mentor, please contact me.

Finally, if volunteering your services is not your idea of taking a break from the practice of law, then keep a look out in the upcoming months for MCBA's Wellness events, where you can find some relief from the pressures of the practice of law without practicing more law.

Civility and the Mediation Process

MAR 31, 2018

BY MARK LEHOCKY

Civility is more critical to the mediation process than to any other form of dispute resolution. The reasons are several: First, unlike trial and arbitration, success in mediation depends entirely upon adversaries agreeing. No agreement, no deal. To no surprise, civility helps draw people toward a consensus, while incivility has the opposite effect.

Second, behavioral studies of client and attorney decision-making show that lawyers and clients often develop unduly optimistic views of their litigation prospects, often with unfortunate consequences. (1) As these studies reveal, both clients and counsel predict their chances of success with levels of confidence that defy mathematic principles and common sense. In turn, they often turn down pre-trial settlement opportunities only to incur much less attractive adjudicated outcomes – both for clients and counsel-client relationships.

Third, other psychological studies by no means unique to disputes reveal patterns whereby we all seek out reaffirming information and discount contrary data. Often referred to as confirmation bias, this phenomenon impacts us all, particularly under adversarial situations, where the contrary position and the adverse parties are discredited in favor of our rosier predictions.

Now link these phenomena to the mediation process: Lawyers and their clients approach mediation with rose-colored glasses and a proclivity to undervalue the other side's position, and no one can make you do anything – not the mediator, not anyone. With these phenomena in mind, civility is critical to success – in initiating the mediation process, presenting your position, and conducting the mediation session.

Commencing the mediation process: Incivility is often the biggest hurdle to simply initiating a mediation. Having served as the general counsel of different companies, I encountered several instances where our counsel warned that mediation would be pointless precisely because the other side was incapable of

being civil.

However, we decided to plow ahead anyway with mediation, trusting our team and the mediator to maintain decorum and focus upon a realistic discussion of strengths, weaknesses, alternatives and tradeoffs. These efforts consistently bore fruit, immediately if not soon thereafter, contrary to the prior predictions. Obviously, maintaining a civil discourse from the outset is the best set up. But even in the face of prior incivility (on the other side as well as your own), the mediation forum provides a fresh opportunity to civilly engage with the aid of a skilled neutral.

Presenting your case: Remembering that counsel and clients start out with rose-colored glasses and an unfavorable view of the other side's position, imagine the impact of a mediation brief laced with invective as to parties and their positions. Briefs maligning the other side's intentions, brimming with words like "frivolous", "specious" or "baseless" rarely change the adversary's mind. Rather, they prompt the adversary to reply in kind, and the exercise devolves into both sides focusing on the slights and affronts rather than the merits of the dispute.

So what to do? Leave the incendiary language at home. Focus on the essential elements of liability and damages – what's there and what's not. Concurrently, exercise the discipline to only argue what truly matters. Strong points are lost in the mire of arguing everything, and worse, minor points distract the mediator and impede the mediation.

Second, share your brief with the other side. While some courts mandate such exchanges, other courts and regional practice may not. Do it anyway. If your purpose is to convince the other side to compromise, this is one of your best means of doing so. Concurrently, holding back your best evidence rarely makes sense. Despite the protest that one side needs to hold their "smoking gun" in reserve, rarely does that protest hold up to scrutiny. To the contrary, cases settle because the parties have exchanged more, rather than less.

Civility at the mediation session: Practicing civility at the mediation session also produces unmistakable dividends, starting with your credibility with the mediator. While mediators take pride in our neutrality, uncivil behavior directed at the other side or the mediator is sheer madness. While your mediator does not decide your case, she or he will be positively or negatively impacted by the tone and level of

professionalism counsel and their clients exhibit, with corollary effects on the mediation session.

Interestingly, the fear of uncivil exchanges has prompted many attorneys to avoid joint sessions altogether. But think about this tradeoff: The joint session may be your only real opportunity to speak directly with key decision makers about strengths and weaknesses, freed from concerns that what you say can and will be used against you. It is also an opportunity to show that you are not the demon or simpleton that maybe, just maybe, you have been described to be by adversary counsel. This is also your chance -- shorn of invective and affronts -- to tell the compelling story that you will lay out to a judge, jury or arbitrator if the case does not settle. Properly executed, this type of presentation will shape the mediator's assessment, and with the neutral's input, should prompt the adversary to reevaluate their position. It takes poise, discipline and confidence. But isn't this what you have been trained to do?

Editor's Note: This article was previously published in the Contra Costa Lawyer Magazine.

(1) See, Donna Shestowsky, J.D., Ph.D., University of California, Davis School of Law, *The Psychology of Procedural Preference: How Litigants Evaluate Legal Procedures Ex Ante*, (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2378622)
I(https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=402976) *owa Law Review* Vol. 99. No. 2 2014 ; Randall Kiser, *Beyond Right and Wrong: The Power of Effective Decision-Making for Attorneys and Clients* (Springer 2010), pp. 29-48; Mark LeHocky, (<http://issuu.com/bestlawyers/docs/blf2016-cover-elements/52?e=3342698/30903449>) *Navigating the Litigation Conversation: Confessions of a Litigator Turned General Counsel Turned Mediator*, *Best Law Firms* 2016, 6th Edition, U.S. News & World Report

Helping Clients Work Through Conflict During A Divorce: The Difference Between Understanding and Agreement

MAR 30, 2018

BY ANN BUSCHO, PHD

Family law practitioners and collaborative team members often are called upon to support divorcing couples as they work through their conflict. I believe that one of the keys to providing this support is helping people appreciate the power of understanding and empathy as alternatives to the power of coercion.

Divorcing spouses often describe how difficult it is to listen to their spouse without becoming defensive or wanting to criticize or ignore what they are hearing. They fear that if they try to understand their spouse, their own position will be somehow weakened, or their sense of the strength of their own side will be diminished.

Practitioners and coaches can help their clients by working to make the distinction between understanding and agreeing. Importantly, you can understand someone fully without having to accept the validity of anything they are saying. Appreciating this distinction is a significant and liberating step towards being able to move through a disagreement. It runs counter to the way in which we generally think about our conflicts. To some clients, it is a big shift in mindset to recognize that two views can simultaneously exist without cancelling each other out. Remind your clients that mutual understanding paves the way for a respectful dialog about the decisions that they will be making during their divorce.

Although this shift in mindset may sound simple, it is actually quite difficult. Your client may feel very

vulnerable when asked to step into their spouse's shoes. They may feel that they risk giving up their position by acknowledging that they understand the opposing position. They may fear that their spouse will perceive the shift as an acquiescence that the spouse is "right" in a conflict.

It is hard to accept that acknowledging the existence of a different perspective doesn't necessarily mean that one's own perspective is wrong. This black and white thinking causes couples in conversation to fall into a win-lose battle. The concepts of right and wrong have a huge hold over all of us, especially when we are in a conflict. Even just acknowledging two conflicting views simultaneously without discounting one of them is not only intellectually challenging, but emotionally is even harder because we are so conditioned to believe that there is one right and one wrong in almost every conflict.

So how do family law practitioners, mediators and collaborative team members help their clients appreciate the value of understanding without necessarily agreeing? They stress that it takes courage, an open mind and a willingness to feel vulnerable. It also takes intellectual flexibility to listen to someone say they understand your position without being convinced that they therefore agree with it. You may need to encourage your client to push beyond his or her comfort zone, and to strengthen their voice to speak their truth.

The professional's consistent goal should be to keep the process moving forward in a balanced way, and to seek agreements with mutual understanding. Counsel your client to imagine that, when their divorce is over, they may be able to understand their former spouse's perspective without feeling that they had to give up their own. This is one step toward healing that will pay dividends for years to come.

For their contributions to this article, Dr. Buscho thanks
(<http://www.clrob.com/our-attorneys/catherine-conner/>) Catherine Conner, mediator and collaborative attorney in Santa Rosa and (<http://understandinginconflict.org/>) Gary Friedman, attorney, mediator, trainer and writer.

Cross-Examination of Adverse Experts: 13 Commandments

MAR 29, 2018

BY JOHN M. FEDER

Picture this scenario: You are well into your trial and are about to take on your opponent's highly-paid and self-important expert witness. You are excited to expose the fallacies in his or her opinion, and can't wait to show the jury how much you know. Pause...wait...and think before you dive in. And heed this baker's dozen commandments from someone who has been there before!

1. THOU SHALT PREPARE, PREPARE, PREPARE.

Get detailed input from your own experts in planning your cross-examination of adverse experts.

Create a plan of attack implementing what you have learned about the style and personality of the adverse expert as well as the key points to establish.

For deposition, make a written checklist setting forth the sequence and precise wording of your questions. Remember you want sound bites for trial.

For trial, prepare visual aides, charts, photographs, models, PowerPoint, etc. so the jury can see what you are teaching and then remember it. Show and tell works!

2. THOU SHALT NOT BORE THE JURY.

Be brief – start strong and finish strong.

At trial, attorneys often begin their cross-examination by arguing about the last question from the direct exam. Make your cross-examination concise and interesting. The jurors have to understand the logic of your reasoning. Remember to keep your focus on the important points, not the boring minutiae.

3. THOU SHALT KNOW THY OBJECTIVE.

Make a list of the points you need to make and the documents that support each point.

Tab your cross-examination checklist by subject matter and by documents needed to prove or impeach.

4. THOU SHALT LEAD THE WITNESS.

Lead the witness down the path you have created in your plan of attack, using your deposition sound bites as a guide. However, avoid the temptation to ask why, how, what, please explain, or how can you possibly arrive at such a stupid conclusion. You won't likely appreciate the answer!

5. THOU SHALT HAVE A PLAN AND FOLLOW IT (BUT BE ADAPTABLE IF YOU STRIKE GOLD).

Great cross-examination at trial starts with a great deposition before trial. Make sure you read the deposition yourself and have the exact question and the exact response from the transcript to use for impeachment.

6. THOU SHALT NOT ASK A QUESTION, THE ANSWER TO WHICH YOU DO NOT KNOW IN ADVANCE.

Don't go fishing in front of your jury.

7. THOU SHALT ALWAYS LISTEN CAREFULLY, AND THOU SHALT WATCH THE JURY TO SEE HOW THEY ARE REACTING.

Don't find yourself searching for your next question before listening carefully and concentrating on the response to the current question. Be mindful of how the jurors are reacting to the witness' testimony and demeanor.

8. THOU SHALT NOT QUARREL WITH THE EXPERT.

Don't let your anger exceed the jury's anger – you may know the witness is flat out lying, but the jury does not have your experience. Control yourself = Control the witness. Lose your temper = lose your case. Don't be tempted to goad the witness with sarcasm or off the cuff retorts. It is better to maintain an even, thoughtful and professional demeanor.

9. THOU SHALT NOT ALLOW THE EXPERT TO EXPLAIN HIS ANSWERS OR REPEAT HIS DIRECT EXAM

TESTIMONY.

Give the expert one shot. Avoid asking “Why?” or posing questions like “How can you say?” or “What do you mean?”

10. THOU SHALT NOT ASK ONE QUESTION TOO MANY.

Know when to quit – get in and get out like a surgeon.

11. THOU SHALT KNOW THY RULES OF EVIDENCE.

For example, in cases where an expert deposition has been videotaped pursuant to notice given under CCP 2025.220 (reserving the right to use the deposition at trial), then under section 2025.620, you may introduce any part of that videotaped deposition to impeach, even though the witness is available to testify in person. See Evidence Code sections 720-724, 801-805, and CCP section 2034.

12. THOU SHALT KNOW THY JUDGE AND HOW THEY RUN THEIR COURTROOM.

Watch the judge in action a few weeks before your trial date, and talk to your colleagues who have tried cases in front of the judge.

Talk to the courtroom staff about the judge’s likes and dislikes.

Read the rules for the department, and consult California Courts and Judges (James Publishing, 2007-2008), which takes note of judicial temperament, demeanor, and particular rulings.

13. THOU SHALT REMEMBER THESE TEN TIPS FOR THE DIRECT EXAM OF YOUR OWN EXPERT WITNESS.

1. Tailor your expert’s credentials to the case.
2. Do not lead your expert; rather ask short, clear, open-ended questions. Do not ask your experts to describe their OPINIONS regarding the case. Rather, ask them to describe the CONCLUSIONS reached step by step so the jury reaches the same ones.
3. Do not wait until the last minute to design your demonstrative exhibits for the courtroom.
4. Test the effectiveness of your exhibits before trial.
5. Make sure the expert defines the terms used during testimony. Plain language is better.
6. Be cautious with video depositions; they can get very boring, very quickly.

7. Do not forget to “audition your experts.” Determine which of your potential trial witnesses can best tell your client’s story to the jury.
8. Do not let your experts use overly complicated speech; refer to “the car,” not “the motor vehicle.” People do not “exit their vehicle,” they “get out of the car.”
9. Do not think you can just “wind ‘em up and let ‘em go.” You are not looking for a ten-minute speech from your expert that leaves the jury snoozing.
10. Make sure the expert is objective, concedes what needs to be conceded, and diffuses the weak points of your case.

Marin's June Ballot and A Look Ahead to November

MAR 28, 2018

BY GREG BROCKBANK

Here is what we have to look forward to as local, state and national elections quickly approach.

MARIN'S LOCAL NONPARTISAN RACES

Marin has five elected supervisors and four elected department heads, all four of whose offices are up this June, with two retiring and one facing a challenger. Marin also has eleven town and city councils, nineteen school boards, and dozens of special districts (mostly water, fire protection, community services, and public utilities) with elected boards. Before last year, most held their elections in November of odd-numbered years, with the rest in June and November of even-numbered years. But a new law forced them all to move their elections to even-numbered years. Most of them are coming up this November in addition to the usual few this June, but two city councils have switched to this June, one of which has a ballot contest.

Filing closed March 9th for incumbents and March 13th for new candidates. In most of Marin's potential races, there were no challengers so there will be no election on the ballot. All incumbents filed for reelection except in three races. Counting those three and two more races where challengers filed despite no retirements, a total of seven seats are being contested.

County Supervisor: Incumbent JUDY ARNOLD, from the Novato-based district, is being challenged by TONI SHROYER, as she was four years ago, in an extremely close race. As there are only two candidates, the race will be determined in June. (If there were three or more strong candidates, and no one got over fifty percent, there would be a November runoff between the top two.)

County Superintendent of Schools: Incumbent MARY JANE BURKE is being challenged for the first time since being first elected twenty-four years ago. MATT NAGLE, a West Marin principal, is the challenger.

District Attorney: Incumbent ED BERBERIAN is retiring, and there are three candidates running to succeed him, all of whom have been actively campaigning for at least a year: A.J. BRADY, LORI FRUGOLI, and ANNA PLETCHER.

Assessor/Recorder: Incumbent RICH BENSON is also retiring, and the three candidates running to succeed him are SHELLY SCOTT, BRIAN KARR, and JENNY MATTSON.

Corte Madera Town Council: Incumbents CARLA CONDON and DIANE FURST are stepping down. Appointed incumbent BOB RAVASIO (who lost his re-election race four years ago but was subsequently appointed to a seat when someone resigned mid-term) is running, along with new candidates DAVID KUNHARDT, ELI BECKMAN, and VALERIA SASSER, for three at-large seats.

MARIN'S PARTISAN RACES FOR CONGRESS AND LEGISLATURE

In local and statewide partisan races, the new "top two" rules apply for the June primary, even when the top two candidates are from the same party (thanks to Prop. 14 in 2010 changing California's primaries to the "top two" regardless of party, with all voters now getting the same ballot in June as well as November.)

Congress: JARED HUFFMAN is running for his fourth two-year term and will once again be challenged by Republican DALE MENSING of Garberville and Democrat ANDY CAFFREY of Van Nuys (formerly of Mendocino County, from where he ran this race two years ago, so he's back; there's no requirement that a congressional candidate or member live in the district they represent, and there are occasional carpetbaggers). Jared usually gets seventy-plus percent of the vote, and this year is unlikely to be any different.

State Senate: MIKE MCGUIRE, the thirty-eight-year-old "energizer bunny" from Healdsburg who has already served on his local school board, city council, and the Board of Supervisors, will be running for

his second four-year term, challenged only by fellow Democrat and perennial candidate RONNIE JACOBY of Santa Rosa, a former city councilwoman.

State Assembly: MARC LEVINE is running for his fourth two-year term, but although he has over one million dollars in campaign funds available, many progressives are not happy with him. He is being challenged by first-time candidate but long-time progressive activist DAN MONTE, who is thus far struggling to raise money.

STATEWIDE RACES

U.S. Senate: DIANNE FEINSTEIN was first elected in 1992 but is now eighty-four years old. She is being challenged by fellow Democrat KEVIN de LEON, who just stepped down as President Pro Tem of the State Senate; he actually got more votes than Feinstein did from the several thousand delegates at the State Democratic Party's convention in February. However, in November, where these two top candidates will inevitably be the only ones on the ballot, Feinstein, as the more moderate of the two, will presumably get most of the Republican votes, with her advantages as the incumbent, with name recognition, far more money, and nearly twenty-six years in that office.

Governor: Lt. Governor GAVIN NEWSOM jumped into the race very early, about three years ago, and leads in fundraising and in the polls, but his once-large lead over former Assembly Speaker and former L.A. Mayor ANTONIO VILLARAIGOSA shrank to about two points recently, although it has now grown again. A Republican businessman now holds second place in the polls, although given how blue this state is, he's a sure loser in November. Other major (Democratic) candidates include State Treasurer JOHN CHIANG and former State Superintendent of Public Instruction DELAINE EASTIN, both in single digits in the polls, as is another Republican, and probably nearly all Republicans for all statewide races. Look for most of the races to feature two Democrats in November, as happened in the 2016 U.S. Senate race here.

Lt. Governor: This race is unusual, in that most of the major candidates (all Democrats, as usual) have never run for public office before, including former State Bar Association President and former Ambassador (to Australia) JEFF BLEICH and former Ambassador (to Hungary) ELENI KOUNALAKIS. The only "traditional" candidate, being termed out of the Legislature after 12 years, is State Senator ED

HERNANDEZ. The favorites, both at the recent State Democratic Convention and in the polls, seem to be Hernandez and Kounalakis.

Attorney General: State Insurance Commissioner DAVE JONES (a former Sacramento City Councilman and former State Assemblyman) is being termed out of his current office. He began running for A.G. three years ago, locking up the endorsements of the majority of Democratic activists and local officeholders and raising a considerable amount of money. But when KAMALA HARRIS was elected to the U.S. Senate a year and half ago, Governor Jerry Brown appointed L.A. Congressman XAVIER BECERRA to fill out the final two years of her term. A.G. Becerra has raised a very significant amount of money in the past year, putting him about even with Jones despite Jones' two-year head start. The State Convention delegates favor the more progressive Jones.

State Superintendent of Public Instruction: State Assemblyman TONY THURMOND, from Richmond, seems to be the front-runner, with his major opponent being MARSHALL TUCK, who lost a race for this seat four years ago to then-incumbent Tom Torlakson, now termed out. Tuck is a big supporter of charter schools, which are becoming more controversial in recent years, and in fact many progressive candidates now refuse to take money from charter school sources, as it seems more and more charter schools are owned and operated by private, profit-seeking corporate chains.

State Treasurer: State Board of Equalization Member (and former S.F. Supervisor) FIONA MA seems relatively unopposed for this open seat.

State Insurance Commissioner: State Senator RICARDO LARA seems poised to win this open seat, also relatively unopposed.

Secretary of State: Incumbent ALEX PADILLA should cruise easily to a second term.

State Controller: BETTY YEE also has no serious opposition for a second term.

NATIONAL ELECTIONS

U.S. Senate: Everyone wants to know if the Democrats can take back the Senate in November in what is

expected to be a blue wave (size not yet known), but the road to success is narrow. Of the thirty-three Senatorial seats up nationwide this year, only ten of them are held by Republicans, and except in Nevada (the only state Trump lost among those ten; the others are deep red), most of the incumbent Republicans look pretty secure – although there is a chance for a few upsets. Meanwhile, there are ten incumbent Democrats running for re-election in states won by Donald Trump, and five of them are currently trailing in the polls. But they say a month is an eternity in politics, so seven months (until the November election) is more than enough time for the polls to reflect a reversal of fortune for the currently trailing Democrats if that blue wave indeed materializes and is big enough and holds. So the Democrats do have a chance to take control, but they would have to keep all their seats and take Nevada (likely) and one other state (e.g., Arizona, Kentucky, or Mississippi).

U.S. House of Representatives: The party in the White House nearly always loses seats in the mid-term elections, and the less popular the President is, the more seats are likely to be lost. Donald Trump's approval ratings have set record lows for a first-year President (starting in the high forties) and dropped throughout last year (to the low thirties), although a recent poll shows he's bounced back to the low forties in recent weeks, allegedly due to the tax bill which is somehow still viewed positively by surprisingly too many people. The Democrats need to flip twenty-three seats, which is doable with presidential approval ratings around forty, but in a wave year, they could take at least twice that number. Several could come from California, as we have fourteen Republican Congress members (out of fifty-three), seven of whom are in districts won by Hillary Clinton. There are huge mobilizations from Democrats in those counties (with help from neighboring counties) to take those seats.

Recognizing Contributions and Encouraging Participation

MAR 27, 2018

BY SUSAN FEDER

The annual Pro Bono Appreciation Luncheon on March 28, jointly presented by MCBA and Legal Aid of Marin (LAM), filled the Four Points Sheraton conference room with a warm recognition for the important community work done by many volunteers from both organizations. The Louderback Law Group generously sponsored the event, which was attended by almost all members of the Marin County bench.

Laurie Joyce of LAM, and Tom Brown of MCBA, both emphasized the nexus between the two organizations and expressed their mutual desire to publicly acknowledge and thank those tireless volunteers who have given so generously of their time and skills to help the underserved in our community.

Over 40,000 people in Marin try to survive on a subsistence income, and more than seventy percent of low-income families have at least one civil legal problem a year, so the need is great for pro bono legal help in Marin. Several thriving programs of both organizations satisfy part of that need including: Lawyers in the Library, Marin Community Court, Unlawful Detainer Settlement Conferences and free legal consultations for seniors through Whistlestop and the Mill Valley Community Center.

Presiding Judge Paul Haakenson related a moving personal story of a young man he knew when he was just a law student. When Judge Haakenson investigated one day after the young man had not shown up for street law class, he discovered that the young man's mother had just died at home and that he was alone not knowing what to do. Judge Haakenson mobilized law students and lawyers with no connection to the man, all of whom freely and gladly took on the many tasks that needed to be done to keep the young man's life in order and on track. The Judge commented that the many times he has witnessed

pro bono acts like these over the course of his career belie the negative stereotypes society often attributes to lawyers.

Judge Haakenson then presented the Wiley W. Manuel Attorney and Community Volunteer Awards to those individuals who have donated an extraordinary amount of time to benefit those in need of legal services. The attorney awardees were: the firm of Morrison & Foerster (Dina Roumiantseva), Douglas Roberts, Kristina Maalouf, Jacquelyne Gorton, James Poindexter and J. Timothy Nardell. The community volunteer awardees were: Luke Phillips, Beth Brandes, Susan Brennan, Kiara Canales, Christine Mullen, Jeremy Castro, Nancy Frease, Robert Harris and Karen Karlow.

Keynote speaker, awardee, and MCBA Board Member J. Timothy Nardell, of Nardell, Chitsaz & Associates, spoke passionately of his experiences with pro bono and public service and highlighted the difference between what he termed “Big Firm Pro Bono” and “Small Firm Pro Bono.” While large law firms take on significant “impact” issues and litigate cases of import to society, small firm pro bono has the power to more directly impact the quality of life of a single individual or family. Tim stressed that we, the members of the Marin legal community, can make a big difference in the lives of others with even a relatively modest commitment of our time. We truly have the knowledge and the skills to make a difference! He encouraged audience members not only to give of their own time, but also to implore their colleagues to do the same. The community, and the world, can be a better place because of it.

Jonathan Gertler of Chavez & Gertler, President of the Board of Directors of LAM, concluded the luncheon by thanking everyone who supports pro bono work, whether by volunteering directly or by contributing to the cause. He highlighted the importance of maintaining equal access to justice and commended the Bench for their contributions as well. Jon remarked that the landscape of Marin county, as well as our nation, has changed dramatically over the years and that the quest for justice and equality is ongoing. While congratulating participants for the significant strides we have helped to make in the past, Jon urged audience members to ask themselves what they could do to make a greater difference in the weeks and months ahead. Finally, Jon encouraged everyone to attend the LAM “Jam for Justice” event on May 4 where Judge Roy Chernus and Renee Chernus will be honored.

The annual luncheon was a great success, providing not only delicious food for the body but

inspirational food for the soul.

(https://www.facebook.com/pg/marincountybar/photos/?tab=album&album_id=1805669436405853)

Link to photos of event.

Nestor Schnasse

MAR 26, 2018

BY SUSAN FEDER

The Marin Lawyer sat down with one of MCBA's new directors, Nestor Schnasse, to learn more about practicing and bicycling in Marin.

What is your practice area?

My law practice is entirely devoted to civil litigation, representing people with personal injury matters. I've had the great fortune to work with Larry Strick since 1997, as an attorney since 2006.

Do you have a particular emphasis?

I do have a particular interest in bicycle related cases. I was a competitive cyclist at age 14, a passion I pursued for many years over many miles before racing in the professional ranks. The international cycling community provided me invaluable challenges both mental and physical, for which I am extremely grateful. That journey also included countless close calls with cars, terrifying episodes of road rage, and the destruction of several helmets from auto collisions. Bicyclists are extremely vulnerable, a problem I understand quite well. It is enormously satisfying to be able to give back in a significant way by representing injured cyclists. [Editor's Note: Nestor had some advice for counsel in bicycle cases in our April 2017 issue, which you can read (<https://marinbar.org/news/article/?type=news&id=196>) here.]

Why did you decide to become a lawyer?

Early on, I was struck by the amount of bad behavior that occurs every day from simple neglect to much worse. A broken jaw from a hit and run collision crystallized in my young mind the importance of justice and accountability to victims. As my mouth was wired shut and malnutrition took its course, I wanted an

advocate. Finding none, I made a private pledge to become one for others.

Later, after leaving competition, I came to work with Larry Strick, who is absolutely passionate about advocacy for the injured. He has been the sort of example and mentor anyone would hope for, guiding and encouraging my development into a now experienced litigator.

Why do you live in Marin?

I was raised in Minnesota, a beautiful place but not exactly warm much of the year. My wife and I moved to San Francisco in the early '90s, which was a great improvement. After a particularly frightening auto/bike collision, the second in one year, we decided to look for safer roads to train on. We landed first in a small place in Mill Valley near Panoramic Highway, then descended to Blithedale canyon, and for the past ten years have called Novato home.

What do you love to do when you're not busy practicing law?

That is simple. Family time.

Tell us about your family.

Thirty years ago, I met an amazing woman named Ann in a philosophy class. We moved to California soon after, and will celebrate 19 years of marriage this summer. We're doing our best to not ruin three great children, our two sons and one daughter who are now in 8th, 7th and 6th grades.

Like so many, ours is a busy household filled by the creative force of our kids. Each has a favorite activity, many we can share. One is training for his third Dipsea. Another enjoys backpacking in the back country. Another loves to dance. There is rarely a dull moment, and I'm doing my best to balance practice and still make the most of this short window of time.

If you could pursue any other career besides law, what would it be and why?

That is a tough one. I love what I do. I've recently been trained in Wilderness First Aid thanks to NOLS

[fka the National Outdoor Leadership School], and was surprised at how much I enjoyed learning the role of first responder.

Why did you join MCBA?

Since joining the Strick Law Offices, there has been a clear expectation of support for key associations. MCBA has been one from the start, a vital institution to connect bench, bar, and the public.

Why did you become a director?

Again, I blame Larry Strick for setting a strong example of contribution. All joking aside, his example has encouraged me to be involved in many associations, such as PTA, Boy Scouts, and Novato's Bicycle and Pedestrian Advisory Committee (B/PAC). Those groups have been a great training ground. Now, after benefiting from the efforts of so many MCBA directors who came before me, it is time for me to pull my weight.

If you had to pick a single highlight of your career, what would it be?

In personal injury, the problems we are trying to address are always serious and sometimes devastating. So, I'm not sure highlight is quite the right term. The greatest sense of satisfaction for me came after a hard-fought case against a School District where a young boy had taken his own life due to bullying on campus. The legal work was both challenging and drawn out. More importantly, only through that persistence were we able to shed light for the parents on what their son had endured, on failures to protect or inform the parents, and ultimately to bring some measure of closure to the family.

North Marin Community Services

MAR 25, 2018

BY SUSAN FEDER

I was introduced to North Marin Community Services (NMCS) by my sister-in-law, who serves as a Board Member for this newly created nonprofit organization. NMCS is the product of a January 2018 merger between two Novato based agencies that served the North Marin community for more than 40 years: Novato Human Needs Center and Novato Youth Center. By combining the services of these two organizations, the new NMCS reaches a larger group of north Marin residents, and provides a myriad of valuable community services.

The North Marin area is home to a diverse community with many needs in all age groups. NMCS's mission is to empower youth, adults and families to achieve wellbeing, growth and success. It offers a wide variety of educational, enrichment, and support programs for youth of all ages. And it offers critical services to low-income adults, from temporary rental assistance to financial planning to family law and immigration services. A staff of sixty and over 400 volunteers serve over 4800 people each year.

NMCS's youth offerings start with early care and education for children from one to five years old through programs designed to engage parents and children alike in language and literacy, math and science, and social and physical development. For elementary school students, NMCS provides out-of-school enrichment programs designed to increase the skills and motivation needed to succeed in school and beyond. The youth enrichment track continues with a middle school program to support academic, social and emotional growth during this next stage of development.

NMCS offers valuable services intended to support wellness and resiliency in youth as well as in the greater community. It offers several counseling services for individuals, groups and families. One such program is the Novato Teen Clinic which partners with Marin Community Clinics and provides a weekly free, confidential and bilingual teen clinic for youth ages twelve to twenty-one. Additionally, a peer health

education program engages a team of Novato public high school students to work at the clinic providing outreach and education. Indoor soccer and fitness is also available at their gym.

NMCS reaches out to families and the community at large with “Amigos de la Familia” providing case management resources to 40 families, and the “Thriving Families Initiative” directed at 35 low-income families. Beyond these comprehensive programs, NMCS offers a wide array of support services, including rental and employment assistance, transportation and phone access, a weekly food pantry and holiday meals and gifts, all designed to help at risk residents move from crisis to stability.

NMCS is a vital organization to the North Marin community. If you would like more information, or are interested in supporting them, please visit their (<https://www.northmarincs.org/>) site or call CEO Cheryl Paddack at 415-892-1643, ext. 228.