

Restorative Justice and the DA's Race

MAY 03, 2018

BY ROBERT ROSBOROUGH

If you are not familiar with restorative justice, this month's issue is your opportunity to learn more about it while also learning more about our candidates for District Attorney. Since several of our articles address it, I'll refrain from defining it here but if you think that restorative justice is some sort of new age alternative to the "real" justice system, you might be surprised. More and more research is being done on the criminal justice system and we are learning more and more about what works and what doesn't, from how lineups are conducted to sentencing guidelines. One thing in particular that strikes me about restorative justice is not just its lower rate of recidivism over prison but the higher rate of victim satisfaction. For those who read my article on the (<https://marinbar.org/news/article/?type=news&id=238>) integrative law movement, you'll recognize restorative justice as an integrative practice that seeks to more fully address the needs of our citizens and society than traditional criminal proceedings.

A special thanks to this month's guest editor, Marie Barnes, who had the inspiration and wherewithal to get each of Marin's candidates for District Attorney to write about restorative justice. With the primary election just over a month away, you can learn something about each of the candidates while exploring the topic of restorative justice. And a big thank you to each of the candidates for taking the time to write for us. Marie has also written a recap of MCBA's April membership luncheon, which was a forum for each of the candidates to discuss their positions on a variety of issues. Far too much was said for us to relay any detail on the candidates' positions so if you didn't make it to the luncheon, I encourage you to attend one of the other candidate forums scheduled throughout Marin. But take a look at the article to get a sense of the candidates and insight into a couple of the issues. And in keeping with our restorative justice theme, instead of profiling an MCBA member, Marie has profiled Cindy Ayala,

the Probation Department's Restorative Justice Coordinator and leader in developing restorative justice in Marin County.

If you tire of reading about restorative justice, Megan Yip addresses an important issue for all of us, not just in estate planning, but in our lives: the dangers of relying on password sharing. Megan is an expert on digital assets but of course password sharing can affect assets like cold hard cash too. This article will give you an overview of the problem and some tips for addressing it and I highly recommend it to all of our readers, not just estate planners. We hope to bring you some more detailed advice on all things digital later this year.

And finally, I'd like to remind our readers that we welcome unsolicited articles as well as input on what you'd like to see (or not see!) in the Marin Lawyer. Feel free to express your opinion to me, pro or con, on anything when you see me at events or by phone (415.673.5081) or (rob@manjushrimermediation.pro) email.

Big Shoes to Fill at the District Attorney's Office

MAY 02, 2018

BY THOMAS S. BROWN

This month's Marin Lawyer focuses on the upcoming election for the Marin County District Attorney's Office. As of press time, the MCBA was preparing to host a District Attorney Candidates Forum and several other election events were scheduled to allow the Marin community to get to know the candidates. This local race is turning into one of the most watched and interesting items on this year's June ballot.

Reflecting on the election, I am reminded of my time in the District Attorney's Office. I began as a young prosecutor with Jerry Herman as the District Attorney. Jerry was an institution when I joined the office in 1997 as he had been reelected as DA for four different terms, serving from 1978 to March 1998, when he stepped down prior to the end of his term. Chief Assistant District Attorney Michael Gridley (or MAG) was then appointed to serve as DA for the remainder of Jerry's term. When Mike announced his intention not to seek election for a full term in 1999, the position of DA became wide open, similar to the current situation. Two internal candidates, Paula Kamena and John Posey, and a third outside candidate, Dennis Cashman ran for the position. I remember the pressure on the line prosecutors to support either Paula or John and the development of two different camps within the office. It was a challenging and stressful time at the DA's office as both Paula and John were veteran prosecutors and well respected within the office and the legal community. For attorneys who are primarily focused on investigating and prosecuting their cases and going about their business, being involved in a political campaign was something of a foreign concept and friendships and working relationships became frayed depending on the candidate you supported. It was a relief to all when the election was over.

Paula was elected as Marin County's first female District Attorney and served from 1999 to 2004,

when she retired. In January 2005, Ed Berberian was appointed by the Board of Supervisors and after being elected in 2006, has served as District Attorney ever since. As Chief Assistant District Attorney, Ed had been in charge of the day-to-day operations of the office for several years and was a true trial attorney, one who relished being in the courtroom. I have great respect for Ed, as I do for all of my former bosses, Jerry, Mike and Paula. Being the chief law enforcement officer for the county carries great responsibility to seek justice and to make difficult and challenging decisions about what cases to prosecute, decisions that may be unpopular with many in the community. Ed, Paula, Mike and Jerry were all faced with making these decisions on a daily basis as well as tasked with the responsibility of operating the largest law firm in the County: a firm today that has a staff of approximately 60 people, including 24 attorneys and eight investigators.

Having been in private practice for the last seven years, I am often asked whether I miss being in the DA's office. What I miss most is the people I worked with for 16 years and the satisfaction that if you are doing your job correctly as a prosecutor, you are always doing the "right thing," even when making the difficult decisions about prosecution. Although I am no longer in the office, I am aware that this upcoming election has made it challenging for the prosecutors, investigators and staff to continue to focus on their work. Two of the candidates, Anthony J. Brady and Lori Frugoli, are current prosecutors in the office and obviously seek the support of the majority of the office. I know both AJ and Lori well and have come to know the third candidate, Anna Pletcher, as well, through her work on the Marin County Bar Association Board of Directors. I know I won't be the only one who is glad when the election is over.

Whoever takes over for the retiring District Attorney will have large shoes to fill, not only those of Ed but of his predecessors. I encourage the membership to attend as many of the candidate events as possible to become educated about the candidates and familiar with their positions on the issues and I wish all the candidates the best as they prepare for the upcoming election for Marin County's Top Prosecutor.

Best,
Tom

The Case for Restorative Justice

MAY 01, 2018

BY A.J. BRADY

The case for restorative justice is best exemplified in one of the more common crimes we prosecutors dwell on: residential burglary. It is a crime of dwelling with the intent to commit a felony within, usually theft. In short, someone breaks into your house.

The impacts of a residential burglary on victims are incredibly complex. Nearly uniformly, victims feel a sense of violation and fear. They feel unsafe in their house when they weren't home. They think the thieves must have watched their home. And if these thieves were watching, when will they be back? This leads to perpetual fear of being retargeted.

The normal criminal justice system does not alleviate these feelings. A defendant once arrested is afforded a defense attorney at public expense. Victims often ask, "How come I don't get a paid attorney?" This defense attorney has the right to make a vigorous defense case, including subpoenaing the victim and hiring investigators to talk to witnesses and visit the crime scene. Victims feel re-victimized by the defense attorney and investigator doing their jobs. If we obtain a conviction and proceed to sentencing, the defendant is advised to keep his eyes forward and talk to the judge; the victim may choose to make an impact statement, but it is usually to the back of the defendant's head.

When do I get in the room with that 'whipper-snapper'?" For years I had to respond, "We don't do that."

However, seeing this void created by crime and the desire of victims to meet face to face with their offenders is what led to my research and interest in the potential of restorative justice. At its core, restorative justice is a mindset that seeks to define a harm/problem, determine the problem's roots,

and repair the damage done to a victim or community. Often in restorative justice programs, victims and offenders participate in victim-offender dialogues, which are facilitated meetings where the offender must explain and the victim try to understand why a crime happened. The offender must try to understand the impact of the crime on the victim and potentially a broader community. At the conclusion of this dialogue, the victim, offender, and possibly community members, may come up with an agreement about how an offender can potentially repair the damage caused by their crime.

Restorative justice is broadly used in our school systems as an alternate way of dealing with suspensions and expulsions and in juvenile delinquency systems as an alternate approach to dealing with youthful offenses. However, in the American adult court system it is a rarity. In comparison, restorative justice is more widely used in courts in Canada, the UK, Germany and New Zealand. These court systems have also been the subject of research measuring the efficacy of restorative justice versus solely traditional justice approaches.

Broadly speaking, the foreign research looked into three main areas of potential impact: recidivism, satisfaction with the justice system, and restitution. On recidivism, the use of restorative justice has a positive impact. On victim satisfaction, those who go through a restorative justice process uniformly have much higher feelings of satisfaction with the overall justice system. Lastly, with regards to restitution, a defendant who goes through a restorative process is more likely to repay restitution than one who just goes through a traditional criminal justice process.

In 2015, I partnered with the Marin County Probation Department to bring restorative justice to the Marin County adult justice system. As part of this partnership, the Probation Department began offering restorative justice in post-judgment, probation cases and the District Attorney's office created a misdemeanor diversion program using restorative justice programs. This pilot is still in its infancy, but the results are encouraging. Recently, after a face-to-face meeting, a victim forgave a large five-figure restitution amount after understanding the defendant's background and after the defendant went through appropriate substance abuse treatment. To this victim, assurances about future harm were much more important than the monetary loss.

So where do we as a County go from here? If we accept the ample evidence that restorative justice can provide victims with a greater sense of satisfaction and that offenders are more invested and

accountable with this process, then the answer is with the large middle ground: felonies.

In Canada, restorative justice exists as a parallel sentencing process. If a person is convicted, the case is both referred to a traditional probation department for a presentence report and to a restorative justice coordinator for recommendations to the judge. The restorative justice coordinator sees if the victim and offender wish to go through a restorative process. If the victim and offender meet and come up with an agreement, those non-binding terms are forwarded to the judge for consideration at sentencing along with a probation department report detailing the background and prospects of the defendant.

Such a process is remarkably more informed than a current felony sentencing here in the United States. Unfortunately, as it stands now, judicial officers and district attorneys often grasp at phrases from a probation report or at court demeanor in an attempt to figure out whether a defendant is remorseful. With an additional restorative report, a judicial officer can have confidence that at least the victim has been heard, that they are providing input into the process, and that effort has been put into the recommendations. While of course the parties must argue for what is in the best interests of their clients, and the judge has a duty to make sure there is some level of consistency in sentencing, restorative sentencing reports inject more confidence that the justice system is working and is responsive to the persons most profoundly affected by the results.

This face-to-face accountability is what the modern criminal justice system lacks. It is only the 'whipper-snappers' who can truly alleviate burglary victims' feelings of insecurity. Only the 'whipper-snappers' can tell the victim that they were not targeted, but simply live in an affluent neighborhood that has a pattern of leaving its doors or windows open. Only the 'whipper-snappers' can explain that no one was watching the victim, they walked up and down the street ringing doorbells until they found one where no one was home and then tried the door or a rear sliding door. Lastly, only the 'whipper-snappers' can truly explain to a victim that they are more than a 'whipper-snapper,' that they are a complicated individual, perhaps down on their luck or struggling with sobriety, and that they are deeply remorseful for all the pain they have caused the victim.

Restorative justice should play an even larger role in our criminal justice system in the upcoming years. Providing peace of mind to victims while reducing recidivism is how we should better serve our communities. A robust criminal justice system here in Marin that embraces restorative justice will

provide progressive public safety consistent with our local values.

Marin County and Restorative Justice

MAY 01, 2018

BY LORI FRUGOLI

"Why don't we resolve this case with restorative justice?" That question was first posed to me years ago when a public defender suggested restorative justice as a resolution to a case. I broached the subject to my supervisor and was promptly told "we don't do that." In hindsight, both myself and my supervisor should have asked "What exactly is restorative justice?"

Despite its frequent use by many members of the public safety and justice system communities, the term "restorative justice" lacks a definitive, widely agreed-upon definition. More often than not, it is used to convey a general set of principles designed to broaden the justice system's focus beyond just the crime committed and punishment of the convicted, to include the community, the victims, restitution and rehabilitation.

As a Marin County Deputy District Attorney with 28 years of experience handling thousands of cases and over one hundred jury trials, I want to share my insights about restorative justice in action and how Marin County puts restorative justice into practice.

I have seen a shift in attitude towards restorative justice throughout my career. The initial leaders of restorative justice in Marin were Probation Chief Mike Daly and Cindy Ayala, the program Coordinator. Cindy has extensive experience in teaching restorative justice practices and came to Marin from Canada to start Marin County's Adult Restorative Justice program. This program involves all parties affected by a crime and offers them an opportunity to speak and be heard in a safe space, share their experiences, and obtain support and information.

Marin's Youth Court has been thriving since 2004 under the stewardship of Don Carney of the YMCA.

Unlike our Adult Restorative Justice program, the Youth Court uses peer-to-peer restorative practices and accountability. Often the restorative practice resolution will be group volunteer work and serving as a juror in a future Youth Court. The Marin County Youth Court has a 95 percent completion rate, which results in removal of the event from the participant's juvenile record. I highly encourage you to attend Youth Court on a Thursday afternoon at 4:30 on the Court Floor. Before the proceedings start, Don Carney gives an outstanding and realistic view of the dangers of the legalization and corporatization of marijuana and its effects on our youth. Later, when the cases are called, you will see and hear a true story about a young man or woman who acknowledges wrongdoing, answers questions from peers (their jury) and then is advised of the restorative plan that their jury of peers has devised. Since many of the cases involve the use of marijuana, Don Carney's words and warnings ring true.

Marin also currently offers a very successful 12-week program to our jail population called, "Thinking for a Change." Thinking for a Change is a cognitive behavioral therapeutic curriculum designed to facilitate behavior change through addressing the underlying thought processes that precede behavior.

Another avenue that needs to be further explored is housing and treatment for those who go through the revolving door of justice, which would greatly reduce recidivism. We need to follow the lead of counties such as Sonoma that have provided wrap-around housing and treatment with great success. For example, the "Palms" project is one on which I would like to model a Marin County program.

My campaign for Marin County District Attorney focuses on expanding restorative justice programs for mentally ill, homeless, and drug addicted individuals. I also want to build on the success of Marin's Youth Court by increasing community participation and by bringing law enforcement and neighborhood leaders to the courthouse so they can see for themselves how the court addresses the root causes of the school-to-prison pipeline, which disproportionately affects youth of color. I also hope to collaborate with the Court, the Public Defender, the Marin County Probation Department, and community partners to launch a Veterans Court in Marin County. This Court will provide services, outreach, and resources to our Veterans.

As I have campaigned for District Attorney, I am often told, "You are on a listening and learning tour as opposed to a campaign tour."

One such occasion occurred last summer at a community fundraiser when I was introduced to a gentleman who was volunteering for the GRIP (Guiding Rage Into Power) program at San Quentin. This conversation resulted in a lunch meeting with Jacques Verduin, the Dutch psychologist who brought the GRIP program to San Quentin twenty years ago.

Over a long lunch, we discussed the in-prison restorative justice program in depth. At that time, there were 500 inmates on the wait list for the program. Not every inmate is suited for the program and vice-versa. It requires walking away from gang membership and one hundred percent commitment to the program. Participants are required to dig deep to acknowledge their crimes and what led to them. At one point, they prepare a timeline for the period preceding their crimes (many of which are violent assaults and murder). The reality check in the timeline is telling. I was told that in most cases, the actual crime was committed in a matter of seconds. That juxtaposition with the years of prison imposed for the act of violence, and the lifelong harm to the victims and their families, is often the moment of change for some inmates and results in a deeper understanding of the impact of their criminal activity. After the yearlong class, families of victims of the same or similar crimes come to the prison for the restorative portion of the program. At this event, the inmate apologizes for the harm suffered by the volunteer and their family.

Graduation from the GRIP program does not always translate to release from prison. One of the first questions I asked Jacques was "where do your graduates find employment?" He smiled and explained that the Governor was very supportive of the program and was employing graduates to teach the program in prison. The GRIP program has an amazingly high success rate (well above 90 percent).

I was so impressed with Jacques and his program that I asked one of his graduates to talk to a young man currently in custody in the hopes that he might connect with the defendant on a level where others had yet to succeed. I hope that we can continue this collaboration with GRIP graduates and to educate the community on the success of the program.

Did you know there was a restorative justice program in the Canal area of San Rafael? The Canal Welcome Center provides support to Latino residents interested in implementing restorative justice practices in their community. This program is using restorative justice to conduct interventions in the Canal and to support the Probation Department's continued efforts in addressing disproportionate

minority contact in Marin County. This brings new meaning to the term "keeping it local."

So, whether the program is on a countywide level, or a smaller, community level, restorative justice clearly has proven to be a successful approach that has diverted countless adults and juveniles from the justice system and restored faith in the system to victims and defendants. That is what I call a win-win outcome.

People over Punishment: Restorative Justice in Marin County

MAY 01, 2018

BY ANNA PLETCHER

One night in Elmira, Ontario, in 1974, two teenagers went on a drunken rampage. They slashed tires, smashed windows, and even overturned a boat. All told, they vandalized 22 homes, costing thousands in damages.

The youths were arrested and questioned by law enforcement, but they did not go to jail. Instead, a probation officer suggested a different approach: in addition to paying fines and restitution, the young men should face the victims of their crimes and own up to their actions. The judge accepted the idea.

The teens went door-to-door, apologizing to the people whose property they had destroyed. Russ Kelly, who was 18 at the time, said "It took every ounce of courage I had to stand on their doorsteps and meet them. Seeing the anger in their eyes and the disgust on their faces, it was an emotional thing. That was harder than if we'd just pleaded guilty, spent six months in jail and then moved on. We wouldn't have learned anything."

The experience was a turning point for Kelly, who never committed another crime, overcame his drug and alcohol addictions, and obtained a college degree. It was also a turning point in the history of crime and punishment -- the Elmira incident marked the beginning of the modern restorative justice movement.

In contrast to the traditional criminal justice system, which is based on punishment, restorative justice focuses on people. This approach elevates the voices of crime victims and community members and

holds offenders accountable directly to the people they have harmed. The goal is to heal the relationships among the offender, the victim, and the community.

Here in Marin, we are fortunate to have several restorative options, including a reconciliation program operated by the Probation Office and specialized courts. Perhaps one of the most compelling restorative justice successes in Marin is with our young people.

Marin Youth Court

Established in 2004 and operated by the YMCA, Youth Court is a peer-to-peer program for children ages 11 to 17 who have committed low-level criminal violations. Youth court has served over 1,000 young people since its inception.

I have served for several years as a volunteer judge for Youth Court and am impressed by it every time I participate. This is how it works: First, the offender, known as the “respondent,” must accept responsibility for their actions and be willing to make amends for the harm they have caused. Then law enforcement, school administrators, or the Probation Office may refer the juvenile to Youth Court.

The court session takes place in a regular courtroom at the Marin County Civic Center. A volunteer “facilitator” or judge, often a local attorney, sits at the judge’s bench, ensuring that the rules are followed. Parents and the public are allowed to sit in the gallery and observe.

The jury typically consists of between ten and twenty young people. Teens also play the roles of bailiff and courtroom advocates. The advocates are similar to defense attorneys and prosecutors, but in this context, they are not adversarial. Their job is to highlight facts for the jury to consider when arriving at a restorative plan.

The respondent sits in the witness stand and explains to the jury how and why the criminal violation happened. Then the questioning begins. Each juror must ask at least two questions. The questions range from simple factual clarifications to challenging probes into complex family dynamics. They often touch on school performance and friendships, relationships with parents, interactions with law enforcement, and the underlying causes of drug use. They require respondents to think about what steps

they will take to make better decisions in the future. Ultimately, they demand self-reflection and accountability to the community -- two critical components of restorative justice that are absent in the traditional, punitive justice system.

When the questions end, each advocate addresses the jury with a recommendation for a restorative plan. The restorative plan is always a combination of community service hours and Youth Court jury duty. The jury then deliberates and presents their final restorative plan. The respondent accepts the decision and the court adjourns.

The courtroom session is not, however, the end of the process. The respondent must still complete the 12-hour YMCA Alcohol and Drug Safety Skills Training. Six of those hours must be with their parents.

Youth Court has an eight percent recidivism rate, compared to 20 percent in the traditional system. Importantly, Youth Court participants do not receive a criminal record. Like Kelly from Elmira, they are able to learn from their poor choices and successfully re-engage in the community.

Our Challenge: Racial Disparities

Youth Court is a model restorative program. It is not, however, available equally to all teens in Marin. "The Color of Youth Court," a documentary produced by Tamalpais High School students in 2015, highlighted the racial disparity in access to the program. The film noted that African-Americans comprise 15 percent of juveniles arrested in Marin but only one percent of offenders referred to Youth Court. The remainder face the traditional system.

One reason for this disparity is that individual law enforcement jurisdictions have significant discretion over whether to refer a juvenile to Youth Court. The Marin County Sheriff, which has jurisdiction over the majority of African-American communities in Marin, generally does not refer to Youth Court.

Implicit bias may also contribute to the racial gap. According to the 2018 "Race Counts" report by the Advancement Project, Marin ranks number one in racial disparities among all 58 counties in California. Inequality in the criminal justice system was one of the primary drivers of our top ranking.

Marin should continue to invest in and improve upon its existing restorative justice programs. Restorative justice builds stronger and safer communities. It saves taxpayer money by focusing on prevention and rehabilitation and drastically reduces recidivism. By bringing stakeholders together to identify opportunities to expand access to restorative programs and to reduce racial bias, we can ensure that all communities in Marin reap the benefits of accountability, growth, and healing.

Post-Death Administration in the Age of Access by Password

APR 30, 2018

BY MEGAN YIP

Today many people access most of their accounts - bank accounts, credit card accounts, investment accounts, mortgage accounts, and more - online via password access. Many professionals advise that in planning for incapacity or death, folks should keep a list of passwords to share with their loved ones or trusted agents who will need to access these accounts. I do not advise clients to share their passwords for many reasons, but the most concerning one is that, seemingly as a direct result of the popularity of the estate planning advice, "share your passwords," I see a trend in people neglecting key parts of the legal post-death administration process.

It's an old adage that probate proceedings and trust accountings never include cash or guns. We are rapidly getting to the point that we can add "accounts accessed by password" to the list of things that the general public will not be consulting their attorneys about when a loved one dies.

Consider a meeting with a family member after a loved one's death. It matters very little whether the client might be the named executor or trustee or is seeking help with an intestate matter. During the meeting, you review an inventory of what the decedent owned or kept at the time of death. Then you walk the client through the various processes they need to follow to close accounts, transfer title of assets, clear title of assets, seek advice to keep assets productive, etc. During this part of the meeting, people are pretty accepting of the fact that to transfer or clear title to real estate requires filing documents with the county or that vehicles need to be processed through the DMV. However, there is often disbelief or hesitation in following the advice that someone needs to go through a formal procedure (with paper and signatures!) to transfer an account, be it credit card, bank or investment, when they have in their possession the "log-in" information to access that account online. This is especially confusing when they see a list of passwords kept seemingly as part of the estate plan.

Most, if not all, websites' Terms of Service prohibit users from sharing their password with others. Though enforcing this is difficult and often not the highest priority for companies, if your client has violated the terms, you will not be in the best position to negotiate with that company in the future. In a post-death access or transfer situation, the company will be able to see all access after the date of death, which you will be providing to them. Unless you are claiming that one hundred percent of the account access post-death is fraudulent, you will be facing an uphill battle if you ever need to defend an account against fraud. It is truly difficult to watch a client with a legal claim to an asset unable to defend an account against fraud because they have simply taken over a loved one's login credentials instead of taking the time to ask for assistance to legally transfer ownership of the asset.

Though I have not seen it yet, I worry about the separate property accessed with a password by a surviving spouse who doesn't bother to notify a bank or check a beneficiary designation only to find out a child of the deceased spouse, or non-family third party has claim to that money.

To help avoid such a situation, here are a few practitioner tips:

- During estate planning, have clients work up inventories including the accounts they hold and access by password, but note there is more risk than advantage to leaving lists of passwords around. Most everyone I know can accomplish a lot with an inventory and do less harm without the passwords.
- During planning, encourage talking about and making notes of beneficiary designations, which can encourage conversation around the decedent's wishes and the legal reasons for transferring title of accounts, which may not be specifically addressed in a will or trust.
- After someone's death, ask clients specifically how they are accessing accounts and planning to clear or transfer title of accounts that their loved one primarily accessed online.
- After death, encourage clients to notify banks and financial institutions of their loved one's death, even if they have access to them online.
- After death, as a matter of fraud prevention, advise clients to close most online accounts that hold and present personal information even if there is no monetary value.

The Race for District Attorney: The Candidates Address the Issues at MCBA's April Membership Meeting

APR 29, 2018

BY MARIE BARNES

The last 20 years have not seen a contested election for Marin County District Attorney. The last 70 years have not seen a Marin County District Attorney who had been working outside of the DA's Office. This year, we have the former and the possibility of the latter. Three candidates are vying for the position. Anna Pletcher comes from the Department of Justice while AJ Brady and Lori Frugoli both come from the DA's Office.

At MCBA's April 25th general membership luncheon, President Tom Brown and Secretary Sue Feder quizzed all three candidates on issues affecting the DA's office itself, the justice system and the Marin community as a whole. Pletcher highlighted her experience as a federal prosecutor, her management skills and the perspective of an outsider. Frugoli stressed the need to reform the DA's office culture and to connect the community more closely with the courthouse. Brady emphasized his fairness, innovation and policy expertise.

Rather than try to report on all of the issues covered, we highlight two and encourage readers who were unable to make the membership luncheon to learn more at one of several more candidate debates before the June primary.

Death Penalty

The death penalty remains an option in California despite recent attempts to eliminate it. Each candidate was asked their position on the use of the death penalty and if opposed to it, how they would reconcile their personal belief with their obligation to enforce the laws of the state of California.

While all three candidates acknowledged major problems with the use of the death penalty, Brady was the only one to vow never to seek it. He stated that equivocating itself placed a fiscal burden on the DA's office. Frugoli referred to the death penalty system as broken but said that as the chief law enforcement officer of the county, she is obligated to consider it. She added that the death penalty should not be used as a bargaining chip. Pletcher stated that she opposed the death penalty because, "It does not keep us safe, it is fiscally irresponsible, and it is biased." While she would work as hard as she could to overturn it, she said that she would follow the law and considerate it in the rare Marin case where it is a possibility.

Quality of Life Crimes

With more serious crime rarer in Marin County than many other parts of the Bay Area, much of the District Attorney's office caseload is for "quality of life" misdemeanor crimes such as public intoxication, trespassing, unlawful lodging and petty theft. Each candidate was asked how they would address these cases, particularly when judges dislike them but the public expresses frustration that the issues are not being addressed and degrade the quality of life in Marin.

Pletcher began by stating we have to look at the underlying causes: poverty and mental illness. She emphasized partnering with local non-profits to improve access to mental health treatment. She urged the expansion of alternative justice processes, like Judge Wood's Youth Court in which she is an active participant. Another innovative model is Los Angeles' approach to homeless crime, where the court travels to the homeless and imposes common sense penalties based on the circumstances of the offender so that there are actual consequences.

Brady stated that he believes that these crimes need to be prosecuted, not ignored, but in a way that uses the leverage of incarceration to force treatment for substance abuse or mental illness. He advocated evidence-based alternative interventions such as community court and the need to go out

into the community to actively seek out offenders who have been charged in order to produce results.

Frugoli pointed out that the number one crime in Marin County is DUI, the number ten crime is domestic violence and that every single one in between falls into this quality-of-life category. The same people cycle through a broken system. She stated that Marin is behind the curve on innovative approaches. She cited Sonoma County's "Palms" project. Catholic Charities took over a derelict hotel to house homeless without requiring them to be sober. The evidence shows that "housing first" increases the chances of success.

The forum ended with Brady noting that he is not a polished politician but is fair and has the endorsement of the Marin Prosecutors' Association. Frugoli emphasized the need for collaboration with the community and Pletcher said it was time for something new after 70 years and noted her endorsement by the Democratic Party, the Sierra Club and Lynn Woolsey.

Who will be the next District Attorney? That is up to you this June and November.

Restorative Justice Leader: Cindy Ayala

APR 28, 2018

BY MARIE BARNES

In November of 2016, the Marin County Probation Department launched its first restorative justice program. Cindy Ayala, the department's Restorative Justice Coordinator came all the way from Canada to run the program. I recently sat down with her to learn more about her and the program she has been instrumental in bringing to life here in Marin.

Tell me about your experience with restorative justice prior to coming to the United States and why you chose to work in this field.

When I was 20, I began volunteering at a halfway house for formerly incarcerated women. I knew criminal behavior was a result of numerous factors. Very few people committed crime simply because of poor judgment. After hearing the stories from residents, it became very clear that we, as a community, were failing our own members. I later became manager of the facility and began working with different partners in the community to help create re-entry plans for each of the residents. Most of the offenders had been victimized in their own past and indeed had suffered severe trauma prior to any criminal activity. The criminal justice system had failed to address important issues and needs, while still expecting good results solely by imposing retributive measures.

I was introduced to restorative justice by a professor of mine. She was a visiting professional at the International Criminal Court in La Haye [Editor's Note: that's The Hague for us English speakers], and taught restorative justice and victimology at the University of Montreal. I learned of an approach that focused on meeting the needs of all parties affected by crime—victim, offender and community—and that sought to address the root causes of a criminal behavior. This approach invited those affected by

what happened to participate in a dialogue on how to repair the harm caused. It would be a process where the offender takes responsibility for their actions, works to repair harm done to the victim and/or community, and takes steps to make positive life changes to stay out of the justice system. It made complete sense to me and I was hooked.

Dr. Howard Zehr, considered a pioneer of the modern concept of restorative justice, defines it as follows: "Restorative justice is a process to involve, to the extent possible, those who have a stake in an offense and to collectively identify and address harms, needs and obligations, in order to heal and put things right as possible."

While continuing my studies, I worked for the Church Council on Justice and Corrections, and eventually moved to Ottawa, where I joined the Restorative Justice Division at the headquarters of Correctional Services Canada. Before coming to California, I was a caseworker at the Collaborative Justice Program (CJP) at the Ottawa courthouse. What made CJP an incredible place to work was that it facilitated restorative justice processes alongside the traditional criminal justice system.

At CJP, we would invite parties to participate in our program after charges were laid but before sentencing. They would have an opportunity to resolve their issues while criminal proceedings took their course. Needs such as information, reparation, restitution, communication, and accountability were met much earlier through the restorative process and the outcome of the process would be taken under consideration by the judge come sentencing time. Cases ranged from diversion-eligible cases to serious and violent offenses such as aggravated assaults, attempted murder, and DUIs causing severe bodily harm or death. Our clients were both young and adult offenders. The face-to-face meetings (aka restorative justice circles) in those cases resulted in the transformation, healing and accountability of the participants.

How is Canada's involvement with restorative justice different?

CJP is a good example of how restorative justice is being utilized in Canada: it is not an alternative to the traditional criminal justice system but an approach that works well in conjunction with it. Several provinces in Canada have been using new strategies to divert more people away from jail, using alternative programs such as restorative justice to improve outcomes for victims, reduce court backlog

and ensure responsible reintegration. Canada is also a leader in research in this area and its current government has shown great support for public education on restorative justice.

Why did you take this position in Marin County?

I would be doing the work I love in sunny California, what's there to think about? All joking aside, what interested me the most about this position was that the program did not exist yet. There was an amazing pilot project in place, but it still needed to take off. This meant that I would have an amazing opportunity and privilege to create, develop and implement a restorative justice program for adults. It was a challenge I could not ignore. Marin County would be one of the first counties to integrate a restorative justice program for adults into its criminal justice system. Since it was the early stages of developing the program, it meant that we could invite and include different stakeholders to be part of it all. The Probation Department, the District Attorney's Office and the Public Defender's Office would all be involved in a collaborative process. This would ensure that the program truly reflected both the needs of the county and the community. All would have a stake in it and all want to see it succeed. Those were inviting circumstances.

What do you hope to achieve in Marin County?

One is to educate our community on restorative justice and its benefits. A study in the UK stated, "There is more evidence on restorative justice, more positive results, than there has been for many other policies and for most innovations in criminal justice that has [sic] ever been rolled out nationally." For example, studies, including meta-analyses, show that restorative justice can have a positive impact on re-offending rates. Some programs can be up to 25 percent more effective than the traditional criminal justice system with respect to recidivism and California has a rate that is among the highest in the nation: just over 65 percent of those released from the prison system return within three years. Restorative justice reduces crime and consequently provides a cost savings to government.

People often ask me why a victim would want to participate in a restorative justice process. There are many reasons: wanting restitution, to hold the offender accountable, to have them hear of the ripple effects and pain they caused, to avoid court proceedings, to learn more about what happened, to make sure the offender is taking concrete steps to change his or her life, even to help the offender. And when

they do participate, there are consistently high satisfaction rates for victims, up to 98 percent! The overall perception of the criminal justice system is also more positive for participants when they have been part of a restorative process. They feel that the system has been fair to them and they are satisfied with the outcomes. They also feel they were heard and had more of a say when it comes to the kind of “justice” obtained. So it may not be surprising that post-traumatic stress symptoms drop significantly when victims (and even offenders who show signs) participate in a restorative justice process. Offenders are also more likely to pay restitution when they are accountable to the victim through a restorative justice process compared to restitution mandated directly by the courts.

Restorative justice is not the answer to every case; however, it does offer an option for those still searching for answers that the current justice system is simply not built to provide. I was encouraged to see individuals from different departments willing to support this initiative and I hope that “restorative justice” becomes part of the vocabulary we use in this county when discussing ways to respond to crime. Restorative justice is not just a program, it is also a set of principles we can all adhere to in our everyday lives. We can choose to behave in a more restorative way with our neighbors, our colleagues, our families and friends. We can work on restoring broken relationships and prioritizing people rather than throwing them away. Restorative justice is all about humanizing justice and simply reassuring our fellow citizens that we hear and see them.

Cindy Ayala holds a BA in criminology from the University of Montreal, and a degree in addiction studies. In her spare time, she enjoys meeting new people and traveling; she has been to 18 different countries and plans to travel to two more this year. You can reach her at (CAyala@marincounty.org)
CAyala@marincounty.org.

What's "Best for Women?" Soroptimist Has an Answer

APR 27, 2018

BY MARIE BARNES

I recently had the honor to attend, "Marin Women of Change," an event honoring women who have made a difference in Marin County. The event was hosted by Soroptimist International of Marin County. In 1921, in Oakland California, a time and place with communities plagued by poverty, women were not permitted to join male service organizations. A group of 80 women who wanted to volunteer to make a difference in their own communities decided to form the first Soroptimist club so they could do just that.

Today, Soroptimist is a global organization with nearly 1,275 clubs in 21 countries and territories, all working to improve the lives of women and girls facing poverty, violence, and teen pregnancy. They have their work cut out for them:

- Women represent 40 percent of the world's labor force but hold just one percent of the world's wealth.
- One in three women have been beaten, coerced into sex or otherwise abused.
- More than 110 million children today are not in school and approximately 60 percent of them are girls.

Soroptimist strives to change these facts. Soroptimist means "best for women"—women at their best, working to help other women to be their best. Soroptimist values gender equality, empowerment, education, and diversity. In the year of the #metoo movement, where the movement for gender equality

is rapidly accelerating, shedding light on what has gone on in the shadows for too many years, I was inspired to explore the work of this organization through my local Marin chapter.

Soroptimist's local chapters participate in programs known as the Dream Programs. These programs are designed to ensure that women and girls not only have access to education and training but also to mentors and career education resources. Investing in women's lives with the goal of producing a sustainable and measurable change in each of their lives is the mission of the Soroptimist organization.

In addition to the Dream Programs, Soroptimist also offers cash grants to fund local projects designed to assist women and girls in their own communities. Each year, Soroptimist awards more than \$1.6 million to further access to higher education, childcare and daily needs like transportation. Awards have helped countless women and girls overcome poverty, domestic violence, and substance abuse.

One does not have to look far to observe the unique difficulties facing women and young girls. Right here in Marin, women still face domestic violence, poverty, substance abuse, and gender inequality. On the night of the event I attended, Soroptimist honored three women with its 2018 Ruby award. Each honoree had a story. Their stories showed how each had forged the way for other women like them within our own community. Women helping women—what Soroptimist is all about.

Visit (<http://www.marinsoroptimist.org/>) www.marinsoroptimist.org for more information. Women who are interested in joining their local Marin Soroptimist club can contact (siahq@soroptimist.org) siahq@soroptimist.org and reference this article.

Submit a candidate for MCBA Awards

AUG 14, 2023

BY MEE MEE WONG

MCBA invites our members to submit nominations for the following three achievement awards. Each of these special honors is awarded only upon submission of a nominee our awards committee deems deserving of the honor rather than with any particular frequency. In some years, no awards have been given. For any potential award to be given this year, please submit a one-page letter via email describing the merits of the candidate per the criteria for the award you are nominating them for.

The Ann Diamond Young Lawyer Award recognizes a lawyer who has been a member of the bar less than ten years for legal accomplishments and contributions to the community of Marin.

The Lawyer of the Year Award recognizes a lawyer who has dedicated a remarkable amount of time, effort and support to the legal system and to the legal community and to their clients. This lawyer has also demonstrated competence, civility, and honor in their professional interactions.

The Lifetime Achievement Award recognizes a person who has:

- A distinguished career as lawyer or jurist of at least 25 years;
- A demonstrated commitment to community involvement, volunteerism, and/or other noteworthy achievements; and
- A consistent and demonstrated involvement in the MCBA and the fulfillment of its mission statement.