

The Marin Lawyer

An Official Publication of the Marin County Bar Association

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HAPPINESS IS AN OPTION FOR LAWYERS...

By: Dr. Maynard Brusman

In the increasingly demanding world lawyers face, many lawyers desire to achieve professional success, a fulfilling life, and true happiness. However, achieving both their personal and professional goals sometimes proves to be very difficult. Many lawyers report being unhappy with the choices they have made and desire a different future.

Most lawyers live hectic and stress-filled lives. They experience a great deal of pressure from the billable hour requirement and client/firm demands. Finding a balance between work and life without sacrificing professional success, deciding on the best practice area or work setting, and making possible career transitions can be challenging tasks, even for the most talented and effective lawyer.

Working in a law firm can present significant challenges. Becoming a partner has become more and more difficult. Some attorneys thrive in certain law firm cultures and have difficulty when there is a poor fit. A number of lawyers choose to develop their own practice or seek alternative careers. Lawyers frequently find marketing their practice or creating a career that is more aligned with their values and evolving interests a significant challenge.

You have made a major investment in your legal career. You've earned the right to both career success and a happy personal life.

The happiness self-assessment quiz will help you determine just how happy you are!

SELF-ASSESSMENT QUIZ

We are all trying to be happy and achieve success in our work and personal lives. Mostly we react in a positive and productive manner. However, many attorneys are describing their lives as so busy, working so many hours, that they often feel physically and emotionally exhausted. *(continued on page 3.)*

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Michael Samuels was guest editor of this issue of *The Marin Lawyer*. Dan Harris is Series Editor for 2004.

Calendar of Events

July 28, 2004
General Membership Meeting - Norm Pattiz
12 noon Giorgio's

August 20, 2004
Senator Barbara Boxer
12 noon Giorgio's

September 9, 2004
MCLE Program
State Court Filing
4 - 6 p.m.

October 6, 2004
MCLE Program
Mediation Advocacy
4 - 6 p.m.

Look for details each month in *The Marin Lawyer*.

GENERAL MEMBERSHIP MEETING

THE BATTLE FOR HEARTS AND MINDS IN THE MIDDLE EAST

Norman J. Pattiz will address the Marin County Bar Association at its General Meeting on July 28, 2004. Mr. Pattiz will speak of the United States' broadcast initiatives to counter terrorism in the Middle East and around the world.

Mr. Pattiz is a prominent member of the worldwide broadcast community. He is the founder and Chairman of Westwood One, America's largest radio network organization, and one of the nation's largest suppliers of local traffic, news and sports programming to TV stations. Westwood One owns, manages or distributes the NBC Radio Network, the CBS Radio Network, CNN Radio, and Metro Net-

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PRESIDENTS MESSAGE

By Matt White

STATE OF THE BAR ASSOCIATION ADDRESS

Halfway through the year! We have accomplished much, although we have many more miles to go. Here are some of the 2004 highlights so far:

The Justice Center. President-Elect **Len Rifkind**, Executive Director **Lynn Pfeifer**, and former director **Faye D’Opal** have worked hard on the Justice Center Committee to help create an efficient, “no wrong door” program for consumers of low-cost and no-cost legal services in Marin. The Committee is expected to complete its report to the Marin Community Foundation by the end of the calendar year.

Diversity Forums. The MCBA and Lawyers for One America are planning a series of Diversity Forums in the County, designed to identify and implement ways of making the legal profession more diverse and more representative of our community. We hope to have our first public forum in early fall.

Children’s Waiting Room. The MCBA is working with the Marin County Women Lawyers to explore the possibility of a children’s waiting area in the courthouse. Currently, there is no safe place on the courthouse floor for children to wait while family members attend court proceedings. Many children end up playing in the hallway, causing disturbances and incurring the wrath of bailiffs.

Events and programs. Program chair **Jeffrey Lerman**, with the help of his Program Committee, has already produced some fabulous events. In addition to the January installation dinner at the Mill Valley Community Center, Attorney General Bill Lockyer addressed the annual Legal Aid dinner in May, and former California Governor Jerry Brown spoke

to the MCBA in June. Both events received prominent press coverage. Coming up: International journalist and Westwood One radio network founder Norm Pattiz on July 28, and U. S. Senator Barbara Boxer on August 20.

Fairness Committee. Fairness Committee Chair **Elliot Bien** met with Marin judges and others recently to discuss placing signs again in the courthouse. The signs, which were removed during construction, explain that persons who feel they have been treated unfairly in courts may complain to the Committee, and provide a telephone number for the complaint “hot line.” The judges have agreed to re-post the signs, which were removed during recent construction. The Fairness Committee is jointly administered by the MCBA and the Marin County Women Lawyers.

By-laws. Not the most exotic topic, but chair **Monty Georgeson**, along with Board Liaison **Paula Weaver**, has kept the Bylaws Committee working on two important tasks. The first is a critical re-examination of the manner in which MCBA Directors and Officers are selected. They are also revising the descriptions and missions of Bar committees, many of which have evolved significantly over the past few years.

CLE. **Phil Green** and **Lauren Terk** have arranged an excellent series of CLE programs so far this year, ranging from federal filings to family law and estate planning And, especially for those of you lacking “special subject” CLE, watch for our CLE program on Bias in the Legal Profession, led by Lawyers for One America CEO Teveia Barnes, which we hope to present in early 2005.

Community outreach. MCBA directors have fanned out into the community to meet and talk with representatives of a wide variety of community segments, including public safety, the press, education, the business community, and many others. MCBA directors **Ed Berberian** and **Dave Feingold**, for example, have prepared and distributed brochures to every law enforcement agency in Marin, identifying legal services available to residents of modest means.

The Marin Lawyer. With the help of his monthly guest editors, MCBA Treasurer **Dan Harris** has continued to expand and improve our monthly newsletter, which continues to be an increasingly valuable member benefit. The newsletter is published under the guidance of the Membership Committee, which also oversees membership benefits and the MCBA web site. The Membership Committee is chaired by overworked and underappreciated MCBA director **Lisa Maslow**.

Law Day. In May, **Tim Chambers** and **Rick Franceschini** made presentations at local schools on the justice system and on *Brown v. Board of Education*. The programs were well-received and were featured in a favorable Independent Journal newspaper article.

This is, of course, only a partial list of accomplishments and acknowledgements. There is also much more to be done on most of these projects, and your help is always needed and appreciated. Call me (453-1010) and let me know your interest.



MISSION STATEMENT OF THE MARIN COUNTY BAR ASSOCIATION

To involve, encourage, and support bar association members,
to serve as a liaison to the Marin County courts,
and to educate the community and enhance access to legal services.

(Happiness continued from page 1.)

Happiness and success in your work and personal life requires being clear on your purpose, mission, and values. It is really self-management. The way you keep balance in your work and life is to set priorities and focus on what is truly most important.

Think about the past month. For each of the work/life pressures listed below, indicate how much each has been a source of distress for you.

Score each item according to how much of the time each statement applies to you.

The Scale: 1 (never), 2 (rarely), 3 (sometimes), 4 (often) and 5 (always)

- ___ 1. I feel overwhelmed by too many tasks and responsibilities-juggling priorities.
- ___ 2. I am very busy and impatient.
- ___ 3. I get angry on a frequent basis.
- ___ 4. I work long energy-exhausting hours.
- ___ 5. I find it difficult to pace myself.
- ___ 6. I feel pressured by too many demands from clients.
- ___ 7. I am more reactive than proactive.
- ___ 8. I find it difficult to stay agile, flexible, and resilient and focus on what is important.
- ___ 9. I feel I have lost my energy and enthusiasm for practicing law.
- ___ 10. I find it difficult to appreciate what I have.
- ___ 11. I feel overwhelmed by the amount of billable hours required.
- ___ 12. I frequently feel unappreciated.
- ___ 13. I can't remember a time when I experienced "being in the flow."
- ___ 14. I am a perfectionist.
- ___ 15. I am uncomfortable with marketing and practice development.
- ___ 16. I feel that my work does not reflect my vision, mission, and values.
- ___ 17. I have forgotten what motivated me to practice law in the first place.
- ___ 18. I dislike most of my clients.
- ___ 19. I am pessimistic about the future.
- ___ 20. I find it difficult to create a healthy work/life balance

___ **TOTAL SCORE** Add up your results to find out what your score means.

TOTAL POINTS:

1 - 30 **HAPPINESS MASTER**

You are doing a great job attaining happiness. Congratulations!

31 - 50 **LEARNING**

You are somewhat happy in your life and work. There is still room for improvement.

51 - 100 **RED ALERT!**

Unhappiness may be a serious problem for you.

Hopefully, you feel this self-assessment quiz provided you with insight on how happy you are in your work and life.

WHAT MAKES PEOPLE HAPPY?

The good news is that most lawyers can achieve happiness in their lives. The first step is to be aware of the factors that contribute to happiness and subjective well-being. Research shows that the following seven factors highly correlate with people being happy.

- 1. Strong social relationships.
- 2. Physical health and fitness.
- 3. Feelings of competence and control.
- 4. Progress on meaningful goals.

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5. Marriage.
6. Positive self-esteem and optimism.
7. A clear sense of life purpose.

Martin E.P. Seligman covers a number of these factors in his book *Authentic Happiness* (Free Press, 2002). He teaches that happiness can be cultivated by identifying and using many of the strengths and traits that one already possesses – including kindness, originality, humor, optimism, and generosity. By frequently calling upon one’s signature strengths in all crucial realms of life, people not only develop natural buffers against misfortune and the experience of negative emotion, they move their lives up to a new more positive plane.

Positive psychology researchers Dr. Nansook Park, Dr. Christopher Peterson and Dr. Martin Seligman have been studying 24 character strengths in depth, and are looking at the role of individual strengths in creating subjective feelings of happiness. A study with more than 4000 participants revealed that five key strengths – *gratitude, optimism, zest, curiosity, and the ability to love and be loved*– are more closely and consistently related to life satisfaction than the other strengths.

A very compelling reason to give special attention to these five key strengths is that each strength on the list is, by definition, mutable and can be learned. We can all become more *grateful, optimistic, zestful, curious, and loving* if we are willing to make a concerted effort to do so.

Martin Seligman, founder of the positive psychology movement, suggests that lawyer imbalance, and therefore unhappiness, has three causes:

1. Lawyers are pessimistic and are rewarded for their pessimism.
2. Young lawyers have jobs with a lot of pressure and low decision latitude.
The result may be poor health and low morale.
3. The practice of law is to some extent a zero-sum game.

He claims it is easy to remedy the problems of pessimism and low decision latitude by learning “flexible optimism” and in-house firm training and mentoring programs to address systemic issues. Seligman believes that the win-lose adversarial legal process might be a significantly more difficult problem to solve. More focus on mediation and negotiation may provide some relief.

There are many outstanding lawyers who are happy, functional, and able to integrate their professional and personal lives. In order to convert professional success into personal happiness, you need to leverage your strengths, mediate your weaknesses and learn some specific happiness enhancing strategies.

HAPPINESS STRATEGIES

In the demanding world lawyers face, becoming change and stress resilient are essential components of happiness. Resilience is the ability to persevere and adapt when overcoming obstacles. It is the key to happiness and success at work and in life. The secret to the emotional intelligence competency of resilience is *accurate* thinking. It is important to challenge limiting beliefs and negative thinking. Managing stress and dealing with change allows you to excel in the workplace while maintaining a well-balanced, healthy lifestyle.

The legal profession is currently experiencing increasing numbers of lawyers who are dissatisfied with their careers and abandoning the practice of law for less stressful career alternatives. Contributing factors include anxiety, depression, relationship issues, and questions relating to personal values and the meaning of life.

Unmanaged stress increases anxiety, depression, anger, substance abuse, and feelings of unhappiness -- all of which decrease quality of life and workplace productivity. In fact, a study done at John Hopkins University found that out of 104 occupational groups, lawyers were the most likely to suffer from depression -- more than three times more likely than average. High levels of stress are reported by almost 3/4 of lawyers and resulting in damage to the physical health or emotional well-being of 1/3 of these attorneys.

Increasing billable hour requirements, time pressures, and work/life balance issues are frequently cited as the reason for the high rates of lawyer dissatisfaction. Attorneys complain of little time for themselves or their

families. In contrast, happy people are less self-focused, less hostile, more loving, forgiving, trusting, energetic, decisive, enthusiastic, creative, sociable and helpful.

The greatest source of stress is the tremendous internal pressure and anxiety that we create for ourselves through...

- *worrying* about situations we can't control
- *perfectionism* - expecting too much of ourselves or others
- *competition* - turning every encounter into a win-lose situation
- *self-criticism* - focusing on faults, rather than strengths
- *insecurity* - looking to others to provide emotional security rather than ourselves
- *powerlessness* - failing to see the choices that are available
- *hurrying* - constantly pushing ourselves to perform better and faster
- *comparison* of our achievements, or lack of them, to those of others
- *pessimism* - expecting the worst from life
- the *unrealistic expectation* that life can be problem-free

Take action to make things better. How? Experiment with these strategies. Begin with one specific behavior change item. Then, commit over 21 consecutive days to record, measure and implement successful change.

Focus on the Positive Write down your most proud accomplishments. When do you exhibit peak performance?

Get Organized Put important things first. This is the habit of self-management. It involves organizing and managing time and events around personal priorities.

Do It Now Procrastination breeds stress! Do your most difficult task at the beginning of the day when you're fresh; avoid the stress of dreading it all day.

Stop Perfectionism Perfectionism is often a poor use of time. Not everything requires perfection. High priority items require more perfection than low priority items. By demanding perfection of yourself and others, you may be wasting time in unnecessary effort.

Change Attitudes Think of stressful situations as a *challenge* to your creative thinking, rather than looking at them as insurmountable problems. Generate solutions.

Learn to Say "No" Say "no" when your schedule is full: to responsibilities that aren't yours; to emotional demands that leave you feeling exhausted; to other people's problems that you don't have the power to solve.

Take Care of your Body You will have more energy and become stress hardy when you eat a balanced diet, get sufficient sleep and exercise regularly.

Optimistic Self-Talk Use positive self-reinforcement: "I can handle this one step at a time," instead of frightening or depressing yourself by coming up with reasons why you can't cope.

Support Actively seek support from friends, colleagues, and family. Don't be a Lone Ranger.

Express Gratitude Take time to appreciate what you have. Express appreciation to others.

Take Charge Take responsibility for making your life what you want it to be. It is more empowering to feel a sense of control and to make decisions. Commit to what will bring meaning into your life and take action.

LAWYER GETS A LIFE

I recently worked with a very successful high-performing attorney working for a Silicon Valley Law Firm who was burned out. He was working 80 hours per week and exhausted. The pressure of meeting the billable hour requirement and professional goals was having an adverse affect on his health and home-life.

Based on his values and life purpose, we worked on a process to transform his work life. He took several assessments to help determine his current state of happiness, work/life balance, stress resiliency, and emotional intelligence. We collaborated on creating some goals to make his life more sane and enjoyable. He had to work hard to establish some new habits

He took on some new and exciting marketing tasks and reduced his client case load. He started an exercise program and renewed his interests in several community and family-related activities.

In addition to work, the attorney made his health and family a priority. He learned how to become more stress resilient. As he became more stress hardy, he was able to more fully engage in his work for the law firm. He became much happier with his career and personal life.

TAKE ACTION

As an attorney, you are used to asking tough questions. Making changes in your life aligned with your values and purpose requires asking yourself insightful questions that

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(Happiness continued from page 5.)

reveal what matters most to you and how much is enough.

HAPPINESS is an OPTION for LAWYERS

Self- Reflection Questions

A coach might help you with the process by asking you the following questions. How would you respond?

- What makes you happiest? When were you happiest? How did you become happiest?
- What brings vitality to your life? What's your proudest achievement? In what situation do you feel most alive?
- Which areas of your life are neglected or overemphasized?
- What kind of process do you use to manage stressful situations?
- Are you progressing towards meaningful goals?
- When have you felt fulfilled? What were you doing? Who was there with you?
- When was the last time you experienced satisfaction in your work? What did you do that brought you satisfaction?
- In what ways do you think you are contributing to the greater good of the people in your firm and your clients?
- How much is enough?
- What matters most?
- Is forgiveness a possibility?
- Was there a time in your life when you felt most alive, creative, excited, successful, and enthusiastic?
- Deathbed exercise: if you were to imagine yourself in the future, lying in bed, living your final moments of this lifetime, and you looked back at your whole life to remember moments of happiness, which memories would come up?

In our busy world, full of distractions, it is easy to lose focus of what is most important. Tape a copy of these happiness tips in your briefcase to remind you of your commitment to lead a happy and fulfilled life.

Top Ten Happiness Tips for ATTORNEYS

1. Maintain a balance between your professional and personal life.
2. Express gratitude to others.
3. Create positive and collaborative interpersonal relationships.
4. Remember that enthusiasm and happiness are highly correlated.
5. Focus on strengths and ask for multi-rater 360-degree feedback.
6. Consider forgiveness.
7. Focus on the fact that there is no relationship between money and happiness.
8. Develop and maintain a supportive network of close relationships.
9. Create a personal purpose/mission statement aligned with your values.
10. Care about character in your professional relationships.

"The trouble with the rat race is that even if you win you're still a rat." -- **Lily Tomlin**

Happiness is clearly an option for lawyers. It takes time, effort and wise choices to realize your fullest potential and a happy life.

References:

Maister, D. C(1997). *True Professionalism*. New York, NY: Simon and Schuster.

Seligman, M. E. P. (2002) *Authentic Happiness: Using the New Positive Psychology to Realize Your Potential for Lasting Fulfillment*. New York, NY: Free Press.

Dr. Brusman lives in Marin County, California and is a consulting psychologist and executive coach with a practice in the San Francisco Financial District. He specializes in working with attorneys and law firms. He presents workshops on "Happiness is an Option for Lawyers" and facilitates law firm retreats. Dr. Brusman may be contacted at Working Resources at 415• 546•1252, brusman@workingresources.com or <http://www.workingresources.com>

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(The Battle continued from page 1.)

works, and is the nation's largest producer of news, sports, talk and entertainment programming.

In May of 2000, Mr. Pattiz was appointed by President Clinton to the United States Broadcasting Board of Governors, and was reappointed by President Bush in September of 2002. The BBG oversees all U.S. non-military international broadcasting, including Voice of America, Radio Free Europe/Radio Liberty, Worldnet Television, Radio and TV Marti, and Radio Free Asia. Mr. Pattiz serves on the Executive Committee and is Chairman of the Middle East Committee. The services reporting to the USBBG provide programming in over sixty languages to over 100,000,000 people outside the United States, promoting freedom and democracy through the free flow of accurate and uncensored news and information. Most recently, Mr. Pattiz has been the driving force behind the creation of Radio Sawa, the USBBG's 24/7 music, news and information radio network, and Alhurra Television, the U.S. sponsored, Arabic language satellite TV channel to the entire Middle East.

Mr. Pattiz additionally serves as a Regent of the University of California, is past president of the Broadcast Education Association, a member of the Board of Councilors of the Annenberg School for Communication at USC, and a primary benefactor of the Hamilton High Academy of Music. He additionally serves as a member of the Council on Foreign Relations and Pacific Council on International Policy, and serves on the boards of RAND's Center for Middle East

Public Policy, the Museum of Television & Radio, Cedars Sinai Hospital in Los Angeles, and the Earth Communications Office (ECO).

Mr. Pattiz will address the impact of American media on the war on terrorism, the unique issues related to a free press in the Middle East, and criticisms of American broadcasting initiatives as propaganda.

Mr. Pattiz is an interesting and dynamic speaker, and his remarks promise to stimulate and inform.

RESERVATION FORM

General Membership Meeting

Speaker: Norman Pattiz

Please make _____ lunch reservations for me on Giorgio's in Greenbrae at 12:00 to 1:30 p.m. on Wednesday, July 28, 2004

Name or Firm Name: _____

Phone: _____

Enclosed check for _____ people @ \$30. per/person

Visa Mastercard _____ Exp _____

Make checks payable to MCBA and mail to 30 North San Pedro Road, Ste 140, San Rafael, CA 94903

INVITATION TO ADR SECTION MEETING JULY 15

The next MCBA ADR section meeting will be held Thursday, July 15, 2004, at Noonan's Bar and Grill, 2233 Larkspur Landing Circle, at noon.

Ruth Glick and Maury Zilber will present the program, **"IS THE REGULATION OF MEDIATORS ON THE HORIZON?"**

The State Bar Commission on Revision of the Rules of Professional Conduct is considering the adoption of standards of conduct for attorney-mediators. The Judicial Council is trying to determine how complaints about mediators serving on court panels can be heard without violating confidentiality. Meanwhile, the ABA Section of Dispute Resolution is working on revisions to the Model Standards of Conduct for Mediators and the California Dispute Resolution Council is looking at whether their Standards of Practice for California Mediators should be updated. How might their decisions affect you?

RUTH GLICK and MAURY ZILBER will lead us in a discussion of these current developments. Your input will be solicited on these important questions:

1. Should there be formal standards of practice for all mediators?
2. If so, who should write them, and how should they be enforced?
3. Should the State Bar be involved in the adoption and enforcement of mediation standards?
4. Should the Judicial Council be involved in the adoption and enforcement of mediation standards?
5. Is the neutral in mediation ever engaged in the practice of law? What conduct on the mediator's part might be

so construed?

6. What about licensing or credentialing of mediators? Is either needed, or likely to be an improvement over the current situation? This program will be co-sponsored by the California Dispute Resolution Council.

Ruth Glick is a mediator and arbitrator whose knowledge and commitment to ADR derives from her work as both a practitioner and educator. She has had over 20 years experience as a dispute resolver in both her legal and business careers and has been the Adjunct Professor of Arbitration and ADR Law at University of California, Hastings College of the Law for the past nine years. As a full time neutral, she serves as a mediator and arbitrator for business, securities, contract, commercial, labor and employment disputes. She is on the American Arbitration Association commercial panel as well as a number of federal and state court, industry and government ADR panels. Ruth was the President of CDRC in 2002 and continues to serve as the Legislation Committee chair.

Maury Zilber is a full time neutral and has over 20 years of experience as an arbitrator and mediator. He has arbitrated over 150 domestic and international commercial and consumer disputes over a wide range of business, intellectual property and public utility issues. In addition, he has mediated disputes relating to software development, rights to copyrighted designs, zoning violations, purchase and sale agreements and sales representation agreements. He serves as a member of a number of panels of the American Arbitration Association and serves on the panel of mediators for the California Court of Appeals, First Appellate District Mediation Program. He is a member of the Mediation Society of San Francisco and co-chair of the Arbitration Committee of the Bar Association of San Francisco. Maury practiced business, public utility and intellectual property law with the Boston office of Nixon Peabody LLP for 35 years. He serves as CDRC Treasurer and Chair of the By-laws Committee.

Cost of the meeting is \$17.00 which includes choice of three entrees, non-alcoholic beverage, tax, and tip.

Please RSVP to Patricia Prince; patriciaprince@PrinceMediation.com or 415-383-8001 or Elizabeth McAdams expbeyond@aol.com or 415-499-7731.

Don't miss this interesting event!

Approved for 1 credit Minimum Continuing Legal Education by the State Bar of California.

MARIN COUNTY LEGAL PROFESSIONALS ASSOCIATION

A professional organization for legal assistants

NEXT MEETING:

July 8, 2004, 6 pm, Café Arrivederci,
11 G Street, San Rafael

SPEAKER: RON JOHNNY

Marin County Drug Court Coordinator

RSVP/INFO:

Kate Athias, (415) 459-2000x11
ktathias@sbcglobal.net

MCLPA TIP OF THE MONTH: Our membership has access to a dozen different benefit providers offering auto, homeowners, health, dental, long-term care insurance and financial services.

MARRIAGE CIRCA 1948

THE CALIFORNIA SUPREME COURT SPEAKS

Regardless of your views on the current definition of “marriage,” check out this historical perspective.

On Oct. 1, 1948, the California Supreme Court became the first high court of any state to strike down laws against interracial marriage. Below are excerpts from the Supreme Court’s opinion in Perez v. Sharp 31 Cal.2d 7711.

(Excerpts from Justice Roger Traynor’s majority opinion.)

In this proceeding in mandamus, petitioners seek to compel the County Clerk of Los Angeles County to issue them a certificate of registry (Civ. Code §69a) and a license to marry. (Civ. Code §69.) In the application for a license, petitioner Andrea Perez states that she is a white person and petitioner Sylvester Davis that he is a Negro. Respondent refuses to issue the certificate and license, invoking Civil Code §69, which provides: “. . . no license may be issued authorizing the marriage of a white person with a Negro, mulatto, Mongolian or member of the Malay race.” . . .

Petitioners contend that the statutes in question are unconstitutional on the grounds that they prohibit the free exercise of their religion and deny to them the right to participate fully in the sacraments of that religion. They are members of the Roman Catholic Church. . . .

The due process clause of the Fourteenth Amendment protects an area of personal liberty not yet wholly delimited. . . . “Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.” (Meyer v. Nebraska, 262 U.S. 390.)

Marriage is thus something more than a civil contract subject to regulation by the state; it is a fundamental right of free men. There can be no prohibition of marriage except for an important social objective and by reasonable means. . . .

Legislation infringing such rights must be based upon more than prejudice and must be free from oppressive discrimination to comply with the constitutional requirements of due process and equal protection of the laws. . . .

(Marriage continued from page 10.)

[Since the right to marry is the right to join in marriage with the person of one's choice, a status that prohibits an individual from marrying a member of a race other than his own restricts the scope of his choice and thereby restricts his right to marry. It must therefore be determined whether the state can restrict that right on the basis of race alone without violating the equal protection of the laws clause of the United States Constitution.]

A state law prohibiting members of one race from marrying members of another race is not designed to meet a clear and present peril arising out of an emergency. In the absence of an emergency the state clearly cannot base a law impairing fundamental rights of individuals on general assumptions as to traits of racial groups. It has been said that a statute such as §60 does not discriminate against any racial group, since it applies alike to all persons whether Caucasian, Negro, or members of any other race. (In re Estate of Paquet, 101 Ore. 393, 399.) The decisive question, however, is not whether different races, each considered as a group, are equally treated. The right to marry is the right of individuals, not of racial groups. The equal protection clause of the United States Constitution does not refer to rights of the Negro race, the Caucasian race, or any other race, but to the rights of individuals. (State of Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 351.) . . .

Many courts in this country have assumed that human beings can be judged by race and that other races are inferior to the Caucasian. Respondent[’s position is based upon those premises. He] justifies the prohibition of miscegenation on grounds similar to those set forth in the frequently cited case of Scott v. State, (1869), 39 Ga.321, 324: “The amalgamation of the races is not only unnatural, but is always productive of deplorable results. Our daily observation shows us, that the offspring of these unnatural connections are generally sickly and effeminate, and that they are inferior in physical development and strength, to the full blood of either race.” [Modern experts are agreed that the progeny of marriages between persons of different races are not inferior to both parents. Nevertheless, even if we were to assume that interracial marriage results in inferior progeny, we are unable to find any clear policy in the statute against marriages on that ground. . . .]

In the present case . . . there is no redress for the serious restriction of the right of Negroes, mulattoes, Mongolians, and Malays to marry; certainly there is none in the corresponding restriction of the right of Caucasians to marry. A member of any of these races may find himself barred by law from marrying the person of his choice and that person to him may be irreplaceable. Human beings are bereft of worth and dignity by a doctrine that would make them as interchangeable as trains. . . .

Respondent maintains that Negroes are socially inferior and have so been judicially recognized (e.g., Wolfe v. Georgia Ry. & Elec. Co., 2 Ga.App. 499), and that the progeny of a marriage between a Negro and a Caucasian suffer not only the stigma of such inferiority but the fear of rejection by members of both races. If they do, the fault lies not with their parents, but with the prejudices in the community and the laws that perpetuate those prejudices by giving legal force to the belief that certain races are inferior. [If miscegenous marriages can be prohibited because of tensions suffered by the progeny, mixed religious unions could be prohibited on the same ground.]

For many years progress was slow in the dissipation of the insecurity that haunts racial minorities, for there are many who believe that their own security depends on its maintenance. Out of earnest belief, or out of irrational fears, they reason in a circle that such minorities are inferior in health, intelligence, and culture, and that this inferiority proves the need of the barriers of race prejudice.

[Careful examination of the arguments in support of the legislation in question reveals that “there is absent the

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compelling justification which would be needed to sustain discrimination of that nature.” (Oyama v. California, 332 U.S. 633. . . .) Certainly the fact alone that the discrimination has been sanctioned by the state for many years does not supply such justification. Shelley v. Kraemer, 334 U.S. 1. . . .]

In summary, we hold that §§60 and 69 . . . violate the equal protection of the laws clause of the United States Constitution by impairing the right of individuals to marry on the basis of race alone and by arbitrarily and unreasonably discriminating against certain racial groups.

Let the peremptory writ issue as prayed.

(Concurring opinion by Justice Douglas Edwards – excerpts)

It is my considered opinion that the statutes here involved . . . are the product of ignorance, prejudice and intolerance, and I am happy to join in the decision of this court holding that they are invalid and unenforceable.

(Dissenting opinion by Justice John Shenk, joined by Justices B. Rey Schauer and Homer Spence)

I dissent. . . .

The power of a state to regulate and control the basic social relationship of marriage of its domiciliaries is here challenged and set at nought by a majority order of this court arrived at not by a concurrence of reasons but by the end result of four votes supported by divergent concepts not supported by authority and in fact contrary to the decisions in this state and elsewhere.

It will be shown that such laws have been in effect in this country since before our national independence and in this state since our first legislative session. They have never been declared unconstitutional by any court in the land although frequently they have been under attack. [It is difficult to see why such laws, valid when enacted and constitutionally enforceable in this state for nearly 100 years and elsewhere for a much longer period of time, are now unconstitutional under the same Constitution and with no change in the factual situation. It will also be shown that they have a valid legislative purpose even though they may not conform to the sociogenetic view of some people. When that legislative purpose appears it is entirely beyond judicial power, properly exercised, to nullify them. . . .]

The right of the state to exercise extensive control over the marriage contract has always been recognized. The institution of matrimony is the foundation of society, and the community at large has an interest in the maintenance of its integrity and purity. (Sharon v. Sharon, 75 Cal. 1.) . . .

[Research has not disclosed a single case where a miscegenetic marriage law has been declared invalid. . . . Not only the state courts but the federal courts as well have uniformly sustained the validity of such laws.

The foregoing authorities form an unbroken line of judicial support, both state and federal, for the validity of our own legislation, and there is none to the contrary. . . .]

Some of the factual considerations which the Legislature could have taken into consideration are disclosed by an examination of the sources of information on the biological and sociological phases of the problem and which may be said to form a background for the legislation and support the reasoning found in the decisions of the court upholding similar statutes. A reference to a few of those sources of information will suffice.

On the biological phase there is authority for the conclusion that the crossing of the primary races leads gradually to retrogression and to eventual extinction of the resultant type unless it is fortified by reunion with the parent stock. W.A. Dixon, M.D., Journal of American Medical Association, vol. 20, p. 1 (1893); Frederick L. Hoffman, statistician, Prudential Life Insurance Co. of America, American Economics Association, vol. 11 (1896) “Race Traits and Tendencies of the American Negro” . . .) In volume 19 of the Encyclopedia Americana (1924), page 275, it is said: “The results of racial intermarriage have been exceedingly variable. [. . .] But scientific breeders have long ago demonstrated that the most desirable results are secured by specializing types rather than by merging them. . . .”

Edited by Michael Samuels, a member of the MCBA Board of Directors.



JERRY BROWN PITCHES ISSUES TO COUNTY BAR

By Richard Halstead, IJ reporter

Speaking to a Marin audience yesterday, Oakland Mayor Jerry Brown - a candidate for state attorney general in 2006 - rejected the notion that his past opposition to the death penalty would handicap his candidacy and pledged to attack the root cause of California's skyrocketing prison population.

"We've had attorney generals who had conscientious scruples about the death penalty - namely my father, Stanley Mosk and John Van de Kamp," Brown told more than 150 members of the Marin County Bar Association, at a luncheon at Giorgio's Ristorante Italiano in Greenbrae.

In 1960 - when Brown was a college student and his father, Edmund G. "Pat" Brown, was governor - he persuaded his father to postpone the execution of Caryl Chessman. When the younger Brown became governor, he vetoed death-penalty legislation only to have his veto overridden by the Legislature in 1977. Later, he drew criticism for appointing judges who opposed the death penalty - most notably state Supreme Court Justice Rose Bird. She was recalled by voters in 1986, principally because of her opposition to the death penalty.



But Brown told yesterday's audience, which included Marin County District Attorney Paula Kamena, "I will enforce all the laws, including the laws requiring capital sentences wherever there are special circumstances."

Brown also said that the state's prison population, which now tops 160,000, could be reduced if more job training was



given to inmates and their parole was based on participation in such training.

"Are they going to do that?" Brown asked. "Well, not unless I cause a lot of hell, and that is exactly what I intend to do when I become attorney general."

Brown, who was elected to his second term as Oakland's mayor in 2002, said that most of the inmates in California's prisons lack the job training to be successful in the outside world.

"We have people who have a certain skill set, and that skill set is criminality - that's all they know," Brown said. "Prison, for them, is kind of an R&R because, if they stay on the street, they'll probably die."

The Little Hoover Commission, a state agency that studied California's parole system last year, reported that 80 percent of parolees are unemployed and drug addicts, 50 percent are illiterate and 10 percent are homeless. The commission found that 2 of 3 parolees in the state are sent back to prison within 18 months of their release - twice the national average.

Brown linked the poor performance of the state's educational system to the growing prison population. He lampooned officials who have championed testing as a means of improving the state's schools.

"It's like a man whose car is going too slow concluding he needs a second speedometer," Brown said. What is needed, he said, is more educational options for kids who are never going to make it through college.

Brown said his efforts to require that inmates paroled to Oakland observe a nighttime curfew have been frustrated so far. Nevertheless, he said Oakland is jailing for up to six days parolees who venture out at night.

"You have to give them a hearing in seven days, so we only hold them six," Brown said. During that time, the parolees receive counseling.

Brown said this program is the reason that Oakland's murder rate is down 30 percent - "an inverse relationship to the San Francisco murder rate."

"Disruption of the orderly flow of contraband has an effect on the number of people who become murder victims," Brown said.

Contact Richard Halstead via e-mail at rhalstead@marinij.com

Article re-printed courtesy of the Marin Independent Journal.

"MEDIATING A SEXUAL HARASSMENT CASE"

FREE CLE Program (1 Hour credit)

Wednesday, July 21, 2004

12:00 to 1:30 p.m.

3100 Kerner Blvd. Suite B-2, San Rafael

Sponsored by Kesten Colton & Brandt

Presented by JAMS Mediator, Cathy A. Yanni, who will discuss how an attorney can better mediate an employment case, and will share a JAMS training program DVD.

Bring brown bag lunch, beverages provided. Space is very limited. Reservations required or you can join us but may be standing room only. Reserve your space by calling Carrie Ann Colton at 415-453-1202.

This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of one (1) hour of credit. JAMS, as an approved provider, certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.



POTENTIAL LEGISLATION – WILL IT AFFECT YOUR PRACTICE?

Following is a brief description of some of the legislative proposals to be debated at the Conference of Delegates in October. Keep in mind that of those proposals that pass, about 70% are enacted into law. All of these can be viewed at www.cdcba.org, where all information about the proposals is included.

If you would like to comment – for or against – any of the proposals, send your views to Ken Drexler, chair of the MCBA Legislative Committee at kdrexler@svn.net, and/or sign up to be a delegate at the conference (and remember, there is free MCLE during the entire conference.)

- 01-01 to 04: Discrimination by Insurance companies based on sexual orientation & civil marriage v. domestic partnership
- 02-04: Business Goodwill – method of appraisal
- 03-05: Juror Disqualification – Opposition to capital punishment
- 03-07: Death Penalty – moratorium
- 03-10: Topless sunbathing
- 01-11: Death Penalty – Mental retardation
- 03-14: Operation of motor vehicles – cellular telephones
- 04-01 to 04: Miscellaneous discovery matters
- 05-02: Unemployment insurance
- 06-01: Collaborative Family Law
- 06-05: Family Law-expansion of equitable powers
- 06-06: Civil rights – marriage equality
- 06-07: Civil union defined
- 07-03: Privacy – electronic signatures
- 07-05: Arbitration clauses – commercial contracts
- 07-09: Removal of commercial and industrial property from Prop. 13
- 08-02: Levy on bank accounts

- 08-06: Fiduciary embezzlement
 - 08-10: Good faith settlement
 - 08-16: Service by overnight delivery
 - 09-... Probate issues
 - 09-05: Withdrawal of life support for conscious conservatees
 - 10-03: Attorney - reveal confidential information
 - 11-01: Constitutional violations – Bush Administration
 - 11-07 & 08: Election laws
 - 11-10: California Constitution – definition of “person”
 - 11-12: Support of Judiciary in State Court funding crisis
 - 12-01: Amicus disclosure requirements
 - 12-02 – 04: Appellate issues
 - 12-05: Judicial disqualification (170.6)
- And to lighten the mood, 11-11: Christmas police.

ESTATE PLANNING/TRUST ADMINISTRATION

Established Santa Barbara law firm offers an excellent opportunity in successful Estate Planning and Trust Administration practice. Candidates must be a member of the California Bar and have 3-7 years experience in Estate Planning, Taxation, Probate, and Trust Administration. L.L.M. in Taxation or Estate Planning preferred. Exceptional writing ability, superior academic credentials and good work ethic required.

We offer a competitive compensation package based on experience and expertise, including a 401(k) and profit sharing plan. Will consider part-time and flexible scheduling. Special Skills: Ability to Handle Post Death Trust Administration, Estate Tax Returns, and Asset Allocation Agreements.

Qualified applicants should submit their resume to: Allen & Kimbell, LLP, P. O. Box 36, Santa Barbara, CA 93102 Attn: Jackie Walsh, or by email to jwalsh@aklaw.net

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Presenting

**THE MARIN COUNTY BAR ASSOCIATION'S
2004 MCLE CALENDAR**

September 9, 2004 ~ State Court Filing (tentative)

Although civil procedure has been officially standardized in California, in practice the local courts continue to have inconsistent filing and calendaring rules. Join us to hear a panel of Court Clerks from Sonoma, Marin and San Francisco discuss their current and future filing and calendaring procedures, as well as unique issues faced by each county.

October 6, 2004 ~ Mediation Advocacy

With well over 90% of the civil cases set for trial in Marin settling, strong mediation advocacy skills are a necessity for any litigator. Join us to hear a panel of local experts discuss the tactics, skills and trends for obtaining a successful mediation outcome.

November 18, 2004 ~ to be scheduled / save the date

To register for the September program, please fill out the form below and mail it with your check payable to the Marin County Bar Association, to the following address: MCBA, 30 N. San Pedro Rd., Ste. 140, San Rafael, CA

Name: _____

State Bar # _____

Program date: _____

Check enclosed for \$ _____ or

You can bill my Visa or MasterCard#

_____ Exp. Date _____

MCBA Member

Non-member

Registration Fee: \$45 MCBA members \$65 non members

This program has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of one (1 hour) of credit. The Marin County Bar Association, as an approved provider, certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education. State Bar Provider #411

MARIN COUNTY WOMEN LAWYERS

cordially invite you and your guests to our

27th Annual Business & Professional Women's Dinner

Celebrating Women in Science

(Can Our Daughters Beat the Odds and Prepare for and Achieve a Career in Science?)

Tuesday, July 13, 2004

The Spinnaker Restaurant
100 Spinnaker Drive ~ Sausalito

Featuring Keynote Speaker:

DR. MARSHA McNUTT

President and Chief Executive Officer of the Monterey Bay Aquarium Research Institute

Speaking on "One Woman's Career in Ocean Exploration"

No Host Bar at 6:00 p.m., Dinner at 7:00 p.m.

Reservations are required. Mail a check for \$52.00 per person by July 2, 2004. Seating is limited, please respond early. MCWL will provide dinner **SCHOLARSHIPS TO LOCAL HIGH SCHOOL STUDENTS** (female) to offer them an opportunity to gain the strength and confidence needed to begin preparing for a career in science. If you are able and willing, **PLEASE ADD \$10.00 to your check to assist with these important scholarships (Total: \$62.00)**. Thank you.

To make a reservation by mail, please PRINT your information below and mail it with your check (payable to MCWL). Send to Lois Prentice, 1301 Bridgeway, Sausalito, CA 94965. For more information call Lois at 332-1066 or Sally at 499-4665

Name: _____ Tel: _____

Address: _____ City: _____ Zip: _____

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I will bring the following guests (names): _____

Please make reservations for ___ people @ \$52.00 (\$62.00) per person. Total enclosed \$ _____, Check No. _____

THE MARKETPLACE

SHARING OFFICE, secretarial and administrative expenses I am a trial lawyer in San Rafael. I have an experienced and talented legal secretary who manages the office, performs the accounting and prepares the routine forms required in a law practice. I currently rent space in San Rafael and seek a lawyer in need of space and a secretary administrator to share expenses. I would consider relocation to another Marin location if the economic circumstances would permit. Call Francis X. Doherty at (415) 257-8585.

HARD WORKING Marin law student seeks an unpaid summer internship to sharpen his legal skills. I have just completed my first year of law school. Contact James Moering at Moering9@yahoo.com for more information.

LIKE NEW law library including: CalApp3d; CalApp4th; Cal3d; Cal4th; West's Annotated Codes. Any and all offered at 65% of new purchase price. 415-789-5086/415-314-5314.

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14' x 14' SUNNY OFFICE with shared reception area (room for a desk) and covered parking, close to Civic Center. Call 499-5620.

CLASSY CONFERENCE ROOM to meet clients. Easy highway access. Plenty of free parking. Three attorney office makes its conference room and address available to limited number of Marin solos who want a professional environment in which to meet and greet clients. \$150.00 per month. Call (415) 457-2668.

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