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Articles

Editor's Note: In last month's issue, contributing writer Robert W. Olson, Jr.'s name was spelled incorrectly. We apologize for the error.

Sections

On the Cover

R.A. Carrington receiving the Legal Community Appreciation Award on May 9, 2024, surrounded by Santa Barbara Bar Foundation Board Members (left to right) Guneet Kaur, Barbara Carroll, Jill Monthei and Marisol Alarcon. Photo by Mike Lyons.

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Legal Community Shows its Appreciation for R.A. Carrington

By Eric Woosley

On May 9th the Santa Barbara County Bar Foundation honored one of the stars of our profession by awarding R.A. Carrington the Legal Community Appreciation Award. Margaritas, wine and beer were in ample supply and generously poured and the historic venue was appreciated by all who attended.

The record turnout came as no surprise to Foundation President Barbara Carroll. R.A. has been a member of our community for longer than most of us have been practicing law and the advance ticket sales were truly impressive and appreciated by the Foundation.

The crowd was regaled with stories of R.A.'s prowess and big heart by the Honorable Thomas Anderle; R.A.'s mediation partner, Victoria Lindenauer, and the author of this piece. I will refrain from repeating those accolades as I think R.A. has been embarrassed enough. I will tell you that one common refrain was R.A.'s judicious use of language and his early to bed, early to rise routine!

The crowd was treated to stories of R.A.'s youth as a championship basketball player through his decision to attend USC and become an attorney. After becoming an attorney R.A. had a very successful litigation firm and he, along with David Nye, were at one time the holders of the largest verdict in Santa Barbara's history. R.A.'s tremendous work ethic as an attorney was front and center including some of his idiosyncrasies which are plentiful.

Most of those attending were well aware that after

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Mediator's Proposals: How to Use Them and Avoid the Pitfalls

By John Derrick

Mediators are meant to guide the parties in a dispute to a negotiated resolution. But what if the parties just can't reach an agreement? One option is to return to litigation. But another is a "mediator's proposal." This article will explain what that entails and why it's sometimes a trickier process for both lawyers and mediators than it might at first appear.

What is a "mediator's proposal?"

A mediator's proposal is a mechanism to try to break an impasse when the parties haven't been able to reach a settlement by a certain point in a mediation. The way it works is that the mediator gives the parties a proposed settlement, usually in writing. The parties then can either accept it, or reject it. But they can't make a counter-proposal. Any counter is a rejection.

If both sides accept it, the mediator reports back there has been a settlement. If neither side accepts it, the mediator reports there has not been a settlement. And if one side accepts it, and the other rejects it, then the mediator also reports there hasn't been a settlement.

But the mediator *never* tells a party that rejected the proposal whether or not the other side had accepted it. A party that said "yes" will obviously be able to infer the other side said "no" if the mediator reports no settlement. But a party that says "no" will never know what the other side had decided. This rule ensures parties can say "yes" without worrying this will then be taken as a sign of weakness by the one that said "no" or used as a starting point in any subsequent negotiations.

The concept can also work with mediations involving more than two sides. But, for the sake of simplicity, this article will discuss them in the context of two-sided disputes.

Not about "should" or "would"

When I make proposals, I always explain to the parties that I am not stepping out of my role as a mediator to become some sort of arbitrator making a non-binding proposal about a fair and just outcome. The lawyers likely already know this, but the parties may not. I want the parties to understand that any proposal I make is not based on my view of what the outcome *should* be. Nor is it based on my prediction of how a case *would* turn out if litigated to the bitter end.

John Derrick

Rather, my mediator's proposals consist of settlement terms that—based on my reading of the two rooms—are those least likely to be rejected by both sides if the parties are given a binary choice of saying "yes" or "no."

In cases where the negotiation involves money and not much else, some lawyers assume a mediator's proposal will simply mean something pretty close to the mid-point between the parties' last positions. And that can make them hesitant to want to entertain one. And, no doubt, that is how some turn out.

But I tend to discourage the mid-point assumption. My reading of the rooms may lead me to believe the "least likely to be rejected" number is somewhat closer to one side than the other. Various factors can influence such a reading. Some might be things the parties or their lawyers have told me. Some might be based on my intuition based on what I hear and observe. I might *indirectly* be influenced by my view of the merits. But not in the sense that I am making a merits-based decision. Rather, it's because if one side obviously seems to have a merits advantage, that would likely influence their settlement position.

An impure method?

Purists may take the view that any outcome presented to weary litigants by the mediator as a take-it-or-leave-it deal subverts one of the basic tenets of mediation, which is that the parties control the whole process. Litigants are more likely to leave the mediation satisfied with the outcome if it's one they negotiated and agreed on themselves. Conversely, one that was presented to them with no further scope for negotiation is likely to sit heavier in the stomach and may be more likely to fall apart later.

There's something in those concerns. That said, the parties are, of course, free to reject a proposal, so they are not actually surrendering control. It is still a voluntary process. But it is, admittedly, one in which the parties are being

led in a more heavy-handed manner. In a perfect world, by contrast, the mediator simply creates what renowned neutral Lee Jay Berman—who spoke recently at an MCLE held by the Santa Barbara County Bar's ADR section—calls a "magic space." In such a space, the neutral is almost able to step back at a certain point with the parties themselves breaking the logjam. And that is the opposite of an outcome secured via a mediator's proposal.

I don't know of any mediator whose *preferred* method is to settle a case with a proposal, although some reach for the option more readily than others. But not all mediations do lend themselves to magic spaces. And as imperfect a method as it may be, a mediator's proposal can be better than ending a mediation with no settlement when the neutral's gut view is that an agreement *is* still possible if the parties are confronted with a stark choice.

Sometimes not a good idea

There is no point in making a proposal if the mediator feels there is no reasonable chance it would be accepted by both sides. And mediators should *never* make formal proposals without the prior agreement of both sides to entertain one. The reason is lawyers may have a strategic reason for *not* wanting one if they have little confidence in a successful outcome. A party that would likely reject a mediator's proposal might be concerned the other side would regard the number proposed as something that is "reasonable" and this would somehow influence any future settlement negotiations. Although meditator's proposals are not meant to "value" the case, there is always the risk they will be perceived as doing so.

The timing

Because mediator's proposals are not the ideal way of settling a case, the device should never be deployed too early. I only float the idea to the two sides if there has been traction in negotiations, but momentum is flagging and time and patience are running out on the day. Sometimes, though, one of the parties makes the suggestion first.

I'm less likely to want to make a proposal at the end of a half-day mediation than a full-day one. After only four hours, I'd be more likely to want to encourage the parties to mediate further.

Eight hours is not a long time

Sometimes it takes six to eight hours to get to the point where I feel the negotiation is ripe for a proposal. This connects with the more general issue of why mediations take time. At the end of an ultimately successful marathon mediation, parties might wonder why it took eight, 10, or more hours to get to the point of "yes." Why couldn't everyone just have agreed to that after a couple of hours? The answer, of course, is that it is a process. That sounds a bit vague, but yet it is true. It is not a matter of grinding the parties down, even if it may sometimes seem like that. (Okay, yes, maybe there can be a bit of that in reality.) Rather, it is a matter of allowing them to think and talk through their options. That takes time. And maybe the investment of time makes the parties more vested in a productive outcome.

Eight hours of mediation may seem like a long time. But one year of litigation spans 8,760 hours in a person's life. So mediation, even if it seems to drag out, is still speedy by comparison. And a mediator's proposal should never be interjected prematurely as a shortcut when that relatively efficient process has not had time to play out.

Judging when the time is ripe for a mediator's proposal can be an art. But sometimes, admittedly, it is simply a matter of the clock. If a study were ever to be made about the timing of mediator's proposals, I would wager that most are made after 4 PM. Perhaps less so if they are made on a second day of mediation.

All of that said, there are straightforward cases where the time may be ripe after three hours. So it all depends.

Ethical quandaries

Sometimes, immediately after the parties have agreed to entertain a proposal, but before the mediator has made it, there can be some gentle lobbying by the two sides. And that's fine. Usually, it is to try to make the proposal sweeter to the lobbying party, although that can miss the whole point of what the proposal is meant to be.

But I recall one occasion when it was almost the opposite. A plaintiff's lawyer in a contract dispute texted me: "By the way, just so you know, we'll take whatever you come up with." This made me wonder whether I should propose something only nominally higher than the defendant's last offer, as being the number least likely to be rejected by both sides. I had been planning on making a proposal somewhat closer to the defense end of the bracket than to the other, but not *that* close.

I wondered whether it would be ethically proper to use that confidential statement by plaintiff's counsel to make a proposal substantially lower than anything I had contemplated. In the end, I proposed a number a bit lower. Both sides said "yes."

After the settlement was final, I told the plaintiff's counsel that I had thought of offering something barely higher than the last defense offer after getting his text. And he then replied: "Oh, we wouldn't have taken *anything*. Only anything

that was reasonable!" So that goes to show why mediators should always apply their best judgment in deciding how much of what the parties tell them to take at face value.

A similar quandary can arise when the defense, during the course of the mediation, has told the mediator how far their settlement authority extends. That would be highly confidential information when stated. But, on the other hand, *everything* told to a mediator is confidential unless a party has said it is not. So in some respects, mediators will *always* have to formulate proposals with confidential information in the back of their mind.

These are tricky issues. But I think where a mediator has knowledge of the scope of settlement authority, that information—while pertinent—is not necessarily dispositive. It is just part of the cauldron of factors. Sometimes, the proposal might be lower than the settlement authority. Conversely, it might be higher if the mediator thinks the number provided is inadequate and probably not the absolute ceiling.

How to deliver mediator's proposals

As with many things in mediation, there is no rule book when it comes to making mediator's proposals. But my practice is to make them in writing, not face to face. The reason is that if you deliver the proposal orally across a table or in a Zoom, you run the risk of getting some immediate reaction that may either prejudice the eventual decision or invite discussion when the time for discussion is—at least for now—past and what is needed is a decision.

So I typically email the proposal to counsel, even if it is an in-person mediation with everyone in the same building. I don't send a single email to both sides, just in case someone "replies all" with a response, breaking the confidentiality. Rather, I send separate emails, even though they say the identical thing.

Framing the proposal

Deciding how to deliver the proposal is straightforward. The harder issue is the level of detail it should contain. In a case where the only negotiation is about money, and the defendant is in a position to pay within a short period, that should not be a problem. The mediator need just state the number and a few standard headline terms, such as releases and so forth. But, even then, the mediator should consider—based on their understanding of the case—whether there might be deal-breaker issues in the small print, such as confidentiality clauses, and, if so, whether those should be covered in the proposal. An incomplete mediator's proposal misses the mark.

It gets much harder to frame the proposal when the negotiation involves multiple issues, not just a dollar amount. The more areas covered by a proposal, the greater the likelihood that it will be rejected because one party is very unhappy with something, even if they are okay with the bulk of it.

So there can be a balancing issue when framing a proposal. On the one hand, it should be sufficiently comprehensive that it covers all material issues. But, on the other, it shouldn't contain more terms than necessary, lest it makes it harder for the parties to return unconditional "yes" responses.

There's no simple solution. There are some things best left to be ironed out once the parties are writing up a formal agreement. But mediators should avoid any temptation to paper over potential dealbreakers in order to obtain a "yes" that, when it comes to memorializing the details, might then melt away. So, again, as with so many things in mediation, it all depends. Mediators need to read the rooms in order to make their best assessment.

And that is why mediators sometimes need to take some time to formulate their proposal. Even settling on a number requires a lot of deliberation. But writing up a more complex proposal can require stewing on the details for a couple of hours or more.

Reasons

Another issue when framing the proposal is whether to provide reasons. I recently heard a presentation by a mediator I highly respect in which he explained he often does provide some sort of a written statement explaining the basis for the proposal. Maybe he is onto something, if it helps "sell" his proposals.

But I've never done that. My concern is that it potentially invites argument when what is required is a decision. And it gets away from the fact that the basis for the proposal is not meant to be what is "fair" and "right." Rather, as discussed earlier, the proposal is—at least, in my practice—simply an assessment of what is least likely to be rejected by both sides. And given that this assessment is based on what the mediator has heard in the two rooms, it could be difficult to provide a candid set of reasons without breaching confidentiality.

That said, before making the proposal, I may have had conversations with the two sides to somehow try to lay the ground for my proposal to have a soft landing. A mediator's proposal is the culmination of extended discussion, so its basis should not be a total mystery or shock.

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Derrick, *continued from page 10*

Time for response

Sometimes, mediators ask for a response to the proposal while the session is still underway. The parties might have 30 minutes, or an hour, to consider it. But the idea is to have a decision before the mediation concludes on the day. This is especially common with in-person mediations. There can be something compelling about the idea that by the time everyone present steps outside to breathe fresh air, the case could be settled.

Often, however, it makes sense to give the parties more time. For example, the lawyers might favor a settlement, but may need time to persuade their clients why it makes sense. And where an insurance company is the effective decision maker for the defense, the carrier representative at the mediation may need to get additional settlement authority. As much as mediators may stress that the proposal is not how they value a case, some loss adjusters find it useful to present it as such in their discussions with higher ups when trying to get additional funds for a settlement. And especially with time differences, it may not be practical to do that on the day.

Therefore, many mediator's proposals call for response a day or several days later. It's important that there *is* a deadline for the response. The proposal should not just be left hanging. But what the deadline is—30 minutes, a day, three days, or whatever—should be up to the parties. The mediator might suggest a timeframe, but should not try to impose one. Even though the mediation has moved into this phase, it is still a mediation—not something more like an arbitration. The parties should still control the process.

Requests for clarification

The way a mediator's proposal is meant to work is that the lawyers don't communicate with the mediator after receiving the proposal until they deliver their reply. But what if one side doesn't understand something or feels a material term is missing? Ideally, this shouldn't happen. Avoiding it is one reason why mediators should take time in crafting proposals.

Nonetheless, sometimes it does happen. And in that case, a mediator—once contacted—might send a revised version of the proposal to both sides. But raising a legitimate question should not be an excuse for a party to negotiate the proposal. There can be fine line between the two.

The response

The parties should, ideally, respond by the deadline. But sometimes they don't. Some mediators treat this as a rejection of the offer and report "no agreement." That seems a bit brutal. There may be purely logistical issues for the delay, or an email may have gone astray.

However, a mediator should be wary about emailing counsel for the non-responding party to inquire when or if a reply might be forthcoming. To do so would send a strong hint that the other side has probably accepted, because otherwise you wouldn't bother to inquire. And that would violate the confidential nature of the process. So—if the other party has indeed said "yes"—the best practice is for the mediator to discuss the situation with *that* party before deciding what, if anything, to do or whether just to wait a little longer.

Mediators should think about other ways in which they should avoid inadvertently signaling to a party that said "no" that the other had said "yes." For example, if the deadline to respond is 6 PM, and one party sends a "yes" at 2 PM and the other party says "no" at 5 PM, shortly before the deadline, a mediator should wait until 6 PM before reporting "no settlement." The reason is that a response immediately after the 5 PM "no" night lead the party that submitted that response to infer that *its* reply killed the deal—implying that the other side had *probably* already said "yes." So it makes sense to have a standard practice of *never* reporting a "no" until the agreed deadline is up, so no such tea leaves can be read. Only two "yes" responses should be reported sooner.

Ideally (again), the mediator eventually receives two unqualified "yes" responses. But (again), the system doest't always work like that in practice. Sometimes, both responses might check the "yes" box, but one of them will nonetheless include annotations fine-tuning some of the detailed terms. Under the strict rules of the process, that is a counter-offer and, therefore, a rejection, even if it is labeled as a "yes." And that is why it makes sense to omit detail in the proposal that might be best left to the process of writing up a formal agreement.

But when such "yes, *but*…" responses are received, mediators shouldn't be in too much of a hurry to declare "no settlement." However, it takes some diplomacy to handle this. The problem is that while the side asking for the tweaks might consider them mere details, the other side—having given an unconditional "yes"—may think otherwise. One solution is to tell the party wanting the changes that they, too, need to make an unconditional response. But that could risk either ending up with an unnecessary "no" or a "yes" that may later fall apart. And perhaps some of their tweaks are likely to be uncontroversial.

So another option would be for the mediator to ask the party wanting the changes for permission to share and discuss their response with the other side before reporting

on the outcome of the proposal. The risk is that the other side might be annoyed by the qualified response and will then use this as an opportunity to come up with their *own* wish list of tweaks. This is especially so if that party had grimaced in order to say "yes" and had only reluctantly stuck to the requirement for an unconditional response.

And so there can be some back and forth negotiation at this stage. A settlement seems in the works, but yet it is fragile and tempers can fray. But at this point, the parties are likely close enough such that, with a combination of diplomacy and optimism, the mediator can—hopefully—defuse any tension and steer the parties to full agreement.

Post-"no" options

If the mediator's proposal is not accepted by both sides, the parties do not generally continue in a formal, active mediation right away. Doing so would, in a way, defeat the object of the proposal. But mediators do not necessarily give up. Sometimes improved offers follow, with a settlement being reached with some further informal shuttle diplomacy. The rejection of a mediator's proposal shuts the door. But there is no rule that it can't be opened again. Nor, however, is there any guarantee that it ever will be reopened.

Finalization if "yes"

The receipt of two unconditional "yes" responses does not, in itself, constitute a binding agreement. It is the equivalent to the point in a mediation where the parties have orally agreed in principle to settle a case but haven't yet signed a term sheet, let alone a formal agreement. So, as is always the case, there should be some speedy action to cement the deal with something legally binding.

Conclusion

Mediator's proposals can be an effective way of achieving settlement when the parties appear to be log-jammed, but the neutral believes agreement is still possible. However, they can be tricky, especially in complex cases. Still, if mediators come up with well-crafted proposals, and if the parties stick to the rules of the process, departing only when *strictly* necessary, stress points can be avoided. Although I have been highlighting problems that can occur in the process, proposals are frequently successful with no need for the mediator to do anything more after delivering one—other than a report unconditional agreement. ■

John Derrick is a Santa Barbara-based mediator who recently joined the panel of neutrals of Alternative Resolution Centers (ARC), one of California's longest-established ADR providers. He is also a Settlement Master for the Santa Barbara Superior Court and a CADRe/CMADRESS panelist. He is co-chair of the ADR Section of the Santa Barbara County Bar Association and a former editor-in-chief of California Litigation. Before focusing fully on ADR, he had an appellate practice. www.johnderrickADR.com

What is An MAI Appraisal?

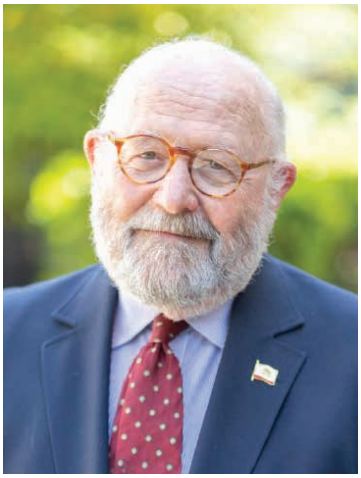
By Michael Neal Arnold, MAI, MRICS

There is no defined "MAI Appraisal". Some think of it as an appraisal report of a certain format. Others might say it is a valuation carried out adhering to particular standards. Finally, some think it refers to a valuation and report completed by an appraiser with the MAI designation. Of the three, the third comes the closest to being accurate.

The MAI designation was established almost 100 years ago by the American Institute of Real Estate Appraisers (precursor to the modern-day Appraisal Institute). The Institute and the designation were a response to the impacts of the Great Depression and the emerging recognized need for objective and professional assistance in evaluating real estate. The early leaders of the Institute looked to the Royal Institution of Chartered Surveyors in Great Britain as a model for a professional appraisal organization. The Institute refined professional standards for appraisal practice, developed a Code of Ethics, and established requirements for professional membership. The MAI designation originally identified a person as being a "Member of the Appraisal Institute". From the beginning earning the designation required a combination of education, experience, and peer review. It quickly became seen in the legal, financial, governmental, and accounting communities as the "gold standard" in professional valuation and appraisal.

With the passage of time, a certain style of reporting emerged among MAI appraisers. It was narrative in format and divided into sections that included the premises of the appraisal, a description of the property, and a discussion of the valuation. While it was never defined in any formal way as an MAI Appraisal, it was often identified as such by users of appraisal services. The basic underlying outline of the report is seen in narrative reports to this day.

Today, appraisers in the United States are governed by the Uniform Standards of Professional Appraisal Practice (USPAP), a document published by the Appraisal Foundation and recognized by the Appraisal Subcommittee of the United States Congress. All state licensing agencies (e.g., Bureau of Real Estate Appraisers in California) are required to adopt USPAP as the applicable standards for professional appraisal.



Michael Neal Arnold

The first standard of USPAP is focused on developing an opinion of value. The second standard is concerned with reporting the results of the valuation undertaking. While, in practice, an appraiser may be working on the report as the valuation progresses, the valuation and report are recognized as separate.

Standard 2 of USPAP is subtitled, "Real Property Appraisal, Reporting". There is no required format for an Appraisal Report. However, Standard 2-1 does include General Reporting Requirements. There are only three;

Each written or oral real property appraisal must:

a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

b) contain sufficient information to enable the intended user(s) of the appraisal to understand the report properly; and

c) clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions and limiting conditions used in the assignment.

The rest of Standard 2 addresses, in some detail, what information must be included in an Appraisal Report. This includes identifying the client and any intended users, identifying the subject property, identifying the intended use, the interest valued, and the type and definition of value. It includes stating the date of value and the scope of work undertaken. The Appraisal Report must include sufficient information to indicate that the appraiser complied with the valuation standards included in Standard 1 of USPAP. Finally, the report must contain a value conclusion and a signed Certification.

Generally, an appraisal report format falls into one of four categories. These are; the oral report, the form report, the letter report, and a narrative report. Each report format has its place, but they are not automatically interchangeable. Often, it is the intended use of the appraisal that determines which format is most appropriate.

An oral report can seem illusive. In its purest form, there

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Arnold, *continued from page 14*

is no tangible evidence of a report. However, per USPAP, the same standards apply to an oral report as to any written report. That certainly includes the above cited general requirements along with the other items required in all Appraisal Reports. Perhaps the most common form of oral report is expert testimony in a deposition, hearing, or trial. Even when a formal written report is not required, many appraisers feel a letter or memo report format (Restricted Appraisal Report) is good to have as an adjunct to the oral testimony.

While there are various iterations, a form report generally refers to a report designed for use by lenders in considering residential value in mortgage underwriting situations. It is this report that the typical consumer is most likely to have encountered. However, the reports are designed for and by lenders (Fannie Mae and Freddie Mac). They are standardized and uniform so that reviewers, underwriters, and loan committees can readily find information that is needed for consideration of real estate as security for a mortgage. Much of the report consists of boxes to be checked and blanks to fill in. The language in the report is often cryptic and not readily understandable to the casual reader. Many professional appraisers feel that these reports are inappropriate for any use other than for a lender. They risk being in violation Standard Rule 2-1b. When the user is anyone other than a lender, the reports likely do not "contain sufficient information to enable the intended user(s) of the appraisal to understand the report properly".

A letter report is probably the least common of the reporting options. It is often used in situations where the intended user is knowledgeable about the property and the valuation process. The letter report is succinct and includes the basics with little that is superfluous to the value of the property. An offshoot of the letter report is the memo report which is really only a variation in style. The letter report is frequently labelled a Restricted Appraisal Report which puts the reader on notice that it may not be readily understandable to anyone other than the intended user.

Finally, there is the narrative report. As indicated above, this report is the direct descendant of the earlier discussed "MAI Appraisal". It can vary in length and detail, but it is the most inclusive of the reporting options. Generally, the report format leads the reader from laying out the underlying premises of the valuation, a description of the property with photos, a consideration of highest and best use, and the valuation section that can include two or three of the "approaches" to value. Ideally it is a stand-alone document that can be read and understood by typical consumers. With modern technology, narrative reports are not much more difficult to produce than the form or letter options.

In making the distinction between the valuation and the report, it is important to point out that the scope of work for the valuation may be exactly the same regardless of the reporting option. All reports should include a Scope of Work. The Scope of Work is included to inform the reader as to what was, and what was not, done in the valuation. A shortened reporting format does not mean the valuation was limited in any way. And, a limited scope valuation can be reported in a lengthy narrative document. As stated above, the intended use of the appraisal is often the determining factor in deciding which reporting format is appropriate. ■

Mr. Arnold is a principal at Hammock, Arnold, Smith & Company. They are a general practice appraisal firm providing valuation and evaluation services to a variety of clients including corporations, government agencies, the legal and accounting communities, financial institutions, private individuals, and others.

Betty Johnson, Kristin King, Elsa Larsen, Mandy Mona, Paul Hayes, Stephanie Sivers, Anthony Drewry, Karine Wegrzynowicz, Wendy Kipperman, Brooke Darnall, Daniel Lopez, Paola Delgadillo

2024 Past Presidents' Luncheon

Current and past presidents of the Santa Barbara County Bar Association formally introduced and welcome newly-admitted attorneys to the practice of law at the Past Presidents' Luncheon, held on May 16th at the University Club.

Marietta Jablonka, Judge Donna Geck, SBCBA President Erin Parks

Michael Colton introduces Stephanie Sivers

Jenn Duffy introduces Brooke Darnall

Jenn Duffy introduces Karine Wegrzynowicz

Joe Howell introduces Paola Delgadillo

Michael Colton introduces Elsa Larsen

Anthony Drewry, Judge Anderle, Paul Hayes

Betsy Johnson is introduced by James Griffith

Martin Bauer introduces Wendy Kipperman

Spring 2024 Swearing-In Ceremony

Honorable Thomas P. Anderle swears in newly-admitted attorneys in Department 3 of the Santa Barbara Courthouse at a ceremony hosted by the Santa Barbara Barristers.

Congratulations! The SBCBA wishes these attorneys the best of luck as they begin their new journey.

Anthony Drewry, Kristin King, Betty Johnson, Adria Griggs, Mandy Mona, Elsa Larsen

Santa Barbara County Bar Association
SBCBA

SBCBA Unveils New Look

The SBCBA is delighted to present our new logo, a tribute to the beauty and significance of our courthouse. We hope our new logo will not only capture the architectural elegance of our historic building but also signify our commitment to justice and community service here in Santa Barbara. ■

Woosley, *continued from page 7*

his successful legal career, R.A. transitioned to a role as a mediator. R.A. is known for his acumen, patience and perseverance in resolving cases that otherwise would be destined for trial.

Judge Anderle also enlightened the crowd, as only he can, with mention of R.A.'s mostly behind-the-scenes role as a discovery and partition referee and all of the assistance he provides to the Court.

R.A. represents the best of our legal community. A skilled and ethical attorney. A skilled and effective mediator. A skilled and fair discovery referee. R.A. is generous with his knowledge, time and experience. Truly one of a kind, R.A. was, and is, completely deserving of this prestigious award.

The evening would not have been complete without the presence of R.A.'s wife, Barbara, who was already well aware of R.A.'s love of her, rescue animals, and helping others. R.A. is an example not only of a distinguished member of our profession but has distinguished himself with an enviable personal life as well.

Given R.A.'s sheer number of years in the legal profession, it goes without saying that the who's who of Santa Barbara judges and lawyers were in attendance. The Court was well represented by the Honorable Donna Geck, Presiding Judge Pauline Maxwell, Retired Judge George Eskin and, of course, the previously mentioned Honorable Thomas Anderle. Judge Anderle's long-time judicial secretary, Marilyn Metzner, was also notably present and a welcome sight.

Attorneys spanning the decades were present at this great event. Sighted were Bob Patterson, Brad Ginder, Ann Anderson, Tyrone Maho, Chad Prentice, Mike Silvers, Amando and Catherine Berriz, John Richards, Mishelle Sotelo, Larry Golkin, Brad Brown, Mark Flores, Jocelyn Montanaro, Renee Norstrand, Channe Coles, Mark Flores, Erin Parks, Ray and Martin Pulverman, Stephanie Sivers and James Sweeny. Sorry for those I missed, I would have taken notes (and maybe one less margarita) if I had known I would be asked to write this article! ■

Marilyn Metzner, Elizabeth Diaz, Judge Anderle, Judge Geck, Presiding Judge Maxwell

Neural Data Privacy

By Robert M. Sanger

Robert M. Sanger

As if we did not have enough to worry about, how about privacy of our neural data? It turns out, this is a real concern among those who are involved in neural therapeutics and neural research. This concern has prompted action on the part of some national and state legislatures, including that of California. It is a concern that affects everyone and, therefore, hopefully will be of interest to civil, transactional, and criminal practitioners alike. This *Criminal Justice* column will discuss what neural data is, why it is potentially vulnerable, and what other countries, other states and, now California, are trying to do about it.

Neural Data

Neurotechnology "broadly refers to any device using neural interfaces to read and/or write information from and/or into the nervous system."[1] These devices are presently in use to improve conditions in patients with Parkinson's disease, epilepsy, spinal cord injuries, mood disorders, protheses, and who may have deficits in high-order cognitive disorders, such as language, memory, and attention. To be effective, the technology involves collecting data from individual patients and not only using it in a feedback loop but amassing that data for treatment and research purposes. Neurotechnology is continuing to develop and work in conjunction with Artificial Intelligence (AI) to expand to other areas.

Aspirationally, the leading organization studying and promoting neurotechnology, currently lists the "potential to effect almost everyone in society at large," with the following projected uses listed on their current website:

- Education: Neurotechnologies could open the doors to enhanced learning and cognition among students or trainees.
- Workplace: Work life could experience a paradigm shift, with neurotechnologies supporting enhanced learning, as well as efficiency.
- Military or national security: Neurotechnologies could help enhance physical abilities like coordination or motor skills in military applications.
- Sports: In addition to enhancing physical abilities, neurotechnologies could potentially monitor physical well-being.
- Consumer applications: Eventually, neurotechnologies could enable commercial devices, like phones, powered by mind control. Neurotechnologies could also potentially enable features like a thought-to-text writing function, or virtual and augmented reality devices assisted by brain control for purposes of entertainment.[2]

A lot of this is in development including thought-to-function neurotechnology and performance enhancement. Even this short list contains some entries—such as the ones pertaining to enhancing physical abilities in sports or motor skills in military applications—that immediately present ethical (and, perhaps, practical) issues. The multitude of issues regarding entering the "bionic" person into sports or war are staggering.[3] However, those are matters for another time—for now, the more modest question is whether there should be privacy protections for neural data.

Vulnerability of Neural Data

In order for neurotechnology to be effective in people, there has to be some form of interface between the technological devices or systems and the human body, particularly the central nervous system (CNS), peripheral nervous system (PNS), or autonomic nervous system (ANS). For instance, the electroencephalogram, is a non-invasive, older neurotechnology that collects and records neural data from the human brain. The current neurotechnology, for the most part, is invasive, such as neuro modulation, neuroprotheses, or brain-machine interfaces. Some are unidirectional, either receiving information or directing bodily functions. Other, newer technology, is "closed loop" which gathers data and provides therapeutic or stimulating signals in real time. All of this technology results in the collection of neural data from and about the individual human subject.

Depending on the neurotechnology employed, the neural data may reside in a local computer, a hospital or research center mainframe, or, more likely, the cloud. It may be accessed by medical professionals attending to the particular

patient or research subject, by hospital staff, by researchers, or by others. It may be subject to subpoena in litigation related to or wholly unrelated to the donor of the neural data or subject to Freedom of Information Act (or state Public Records Act) requests by journalists, infotainment producers, or curious and possible unsavory members of the public.

Such disclosure can, in turn, reveal personal information about medical, physical or mental health issues. The effects of disclosure of such personal information can result in the use of that information to solicit products and services, to interfere with a person's employment, to extort a person, or to embarrass the person publicly or in their private relationships. The disclosure can have effects lasting long in the future extending to distant generations.

Neural Data Legislation

Most jurisdictions have some sort of privacy laws. In California, Article I, section 1, of the State Constitution expressly provides for a right of privacy. In addition, the legislature enacted the California Consumer Privacy Act (CCPA), codified in Civil Code §§1798.100 et seq.. However, California does not currently expressly cover neural data under the CCPA. That may change.

Meanwhile, both houses of the State of Colorado passed a bill amending their Colorado Privacy Act to protect biological data which expressly includes "neural data." The Governor of Colorado, signed the bill on April 24, 2024, which will amend the state codes 90 days from the date of execution unless a contrary referendum is placed on the ballot.[4] Minnesota has a proposed bill to preserve "cognitive liberty" and to require notice and consent of the consumer to share neural data.[5] In 2021, Chile amended its constitution to protect cerebral activity and information derived from it.[6] Brazil[7] and Mexico[8] each have legislation pending to amend their respective constitutions protecting neural data and neuro rights.

On February 15, 2024, California State Senator Josh Becker introduced Senate Bill 1223 to amend California's CCPA and specifically to amend Civil Code section 1798.140 to add neural data and neurotechnology to the extensive protections of the CCPA regarding other personal or sensitive data. The specific definitions are:

> (t) "Neural data" means information that is generated by the measurement of the activity of an individual's central or peripheral nervous systems that can be processed by, or with the assistance of, neurotechnology.
>
> (u) "Neurotechnology" means a device, instrument, or a set of devices or instruments, that allows a connection with a person's central or peripheral nervous system for various purposes, including, but not limited to, reading, recording, or modifying a person's brain activity or the information obtained from a person's brain activity.

The autonomic nervous system is not expressly included. One would also have to assume that the definition is not restricted to neuronal activity if and when it is discovered that glial cells are more explanatory of brain activity than accounted for by the traditional neuronal model.[9] But, given the extent of the central nervous system overall in brain activity, including the brain activity transmitted through the all-encompassing Vegus (or Tenth Cranial) nerve, the definitions in SB 1223 probably cover the field. However, lawyers may be litigating the parameters of SB 1223 in the context of the CCPA as scientific distinctions, real or contrived, are developed.

The CCPA, as it currently reads, grants consumers rights with regard to personal information in general and some specific categories listed in the Act. Two of the subsections, as it is now, arguably protect neural data even without amendment. Civil Code section 1798.140(v) currently protects biometric information and section 1798.140(ae) protects sensitive personal information. The proposed amendment in SB 1223 to add neural data, while it may be redundant, is a decisive step to call specific attention to an important issue with the hope of avoiding at least some confusion and litigation in the future.

Nevertheless, with regard to the implementation of the CCPA as to all data, vigilance is required, the more so if it is amended by SB 1223. The CCPA is an "opt-out" statute with regard to the commercial use and sale of information (Civ. Code § 1798.120). It also contains a five-year statute of limitations for administrative actions (Civ. Code § 1798.199.70) and administrative rules are still being developed.[10] Given the scope, diversity, and sheer volume of neural data, implementation of the CCPA as to this data will be a particular challenge. The California Privacy Protection Agency (CPPA) has a full-time staff and the Agency holds regular public meetings to develop regulations implementing the existing CCPA. Neural data will present additional challenges to the CPPA if SB 1223 is enacted.

Conclusion

The efforts of the California Legislature to enact SB 1223 and the other legislation in Colorado, Minnesota, Chile, Brazil, and Mexico are good faith efforts to keep up with science and technology. In addition to the collection of neural data itself, AI is being used to employ, redeploy, and manipulate that data. As mentioned, there are many consequences of neurotechnology, especially as aided by

AI, that are potentially problematic. At the very least, we can make the special effort to preserve privacy of the data while we work through all the other ethical and practical issues related to these evolving scientific areas. ■

Robert Sanger has been practicing as a litigation partner, now principal shareholder at Sanger Law Firm, P.C., in Santa Barbara for over 50 years and is a Certified Criminal Law Specialist (40-year Certificate: Ca. State Bar Bd. of Legal Specialization). Mr. Sanger is a Fellow of the American Academy of Forensic Sciences (AAFS). He is an Adjunct Professor of Law and Forensic Science at the Santa Barbara College of Law. He is an Associate Member of the Council of Forensic Science Educators (COFSE) and is Past President of California Attorneys for Criminal Justice (CACJ), the statewide criminal defense lawyers' organization.

The opinions expressed here are those of the author and do not necessarily reflect those of the organizations with which he is associated. ©Robert M. Sanger.

Endnotes

1 IEEE Brain, "Future Neural Therapeutics: Technology Roadmap White Paper, Version 2," (December 2020) p. 14.
2 IEEE Brain, "Neurotechnologies: The Next Technology Frontier," at https://brain.ieee.org/topics/neurotechnologies-the-next-technology-frontier/ (visited June 1, 2024).
3 In addition, to the obvious question of a level playing field, there are ethical issues regarding residual risks, informed consent, the Kantian means/ends dilemma, misappropriation of technology, and the consequences of responsibility for the future.
4 It will amend Colorado Revised Statutes, 6-1-1303 (24)(b) and (24)(c); and add (2.5), (16.7), and (24)(d) to the same section.
5 Minnesota 93rd Legislature, HF 1904.
6 Number 1 of Article 19 of the Political Constitution of the Republic, Law number 21.383.
7 Bill 29/2023 and Bill 522/2022.
8 Both Bills seek to amend Mexico's Constitution, Articles 16 and 73, respectively. See, Beth Do, Maria Badillo, Randy Cantz, Jameson Spivack, "Privacy and the Rise of "'Neurorights' in Latin America," Future of Privacy Forum, (March 20, 2024); https://fpf.org/blog/privacy-and-the-rise-of-neurorights-in-latin-america/.
9 As noted over the years, it is my opinion that glial cells may have a significant if not greater function than firing neurons and the CNS, PNS and ANS in mind/brain activity. There is recent support for this: "In local brain circuits, diverse neuronal subtypes are embedded in an organized puzzle of other cellular players *such as microglia* and astrocytes, which not only modulate but could actively control the concert of information processing. In this regard, astrocytes have been revealed as master regulators of synaptic activity, with diverse functions impacting the computational capacity of synapses and neuronal ensembles." (Emphasis added) Andrade-Talavera, Y., Fisahn, A. & Rodríguez-Moreno, A., "Timing to be precise? An overview of spike timing-dependent plasticity, brain rhythmicity, and glial cells interplay within neuronal circuits." Nature, Molecular Psychiatry 28, 2177–2188 (2023).
10 See regulations to date: Title 11 California Code of Regulations sections 7000, et seq..

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Generosity, Money, and Happiness

By Robin Oaks

Robin Oaks

As legal professionals we "give" to our clients—our time, attention, and mental and physical energy—to help with legal conflicts and issues. This article explores the science of generosity (i.e., "giving") and looks at the current research on money and happiness to consider factors that contribute to legal professionals' well-being. According to the University of Notre Dame's Science of Generosity Project, generosity is defined as "giving good things to others freely and abundantly."

We typically think of pro bono work as giving legal services for little or no monetary compensation. At its root, pro bono stems from the Latin phrase "pro bono publico," which means "for the public good." Does generosity beyond pro bono work play a role in sustaining our legal community and can adopting a mindset of "giving" reframe what success truly means in legal practice—and our lives?

Generosity, Relatedness, and Legal Practice

Based on research studying money and happiness, people generally are happier when spending money on others rather than on themselves. Also, studies have shown that when we spend money on having experiences or building experiential connections this contributes more to well-being than buying material things.

Larry Krieger, an attorney, and Ken Sheldon, a psychologist, conducted a seminal study of 6200 lawyers and judges about life satisfaction and legal practice. They found that when it comes to "happiness"—and reframing success as legal professionals - that the highest and most significant correlations with life satisfaction involved being authentic (feeling engaged at work and aligned with values) and relatedness (meaningful connections and receiving and giving support). These factors correlated with lawyer happiness far more than prestige or income.

Doing for and connecting with others reduces the likelihood of job burnout and contributes to physical and mental health. In U.C. Berkeley's Greater Good Science Center's White Paper on the Science of Generosity,[1] the studies cited confirm the wide range of health effects when we "give good things to others." Some benefits include lowering blood pressure and cortisol levels and increasing immunity and longevity.

To maximize the mental and physical effects that derive from generosity, people need to feel and know that their giving will have a positive impact on the recipient. Research has shown that providing details about how, what, and who a charitable donation will benefit increases the likelihood that people will donate time or money for a cause. In the legal setting, mental and physical benefits and motivation to perform optimally can be cultivated by frequent communications with associates and employees about how their legal work benefits clients (beyond monetary gain or winning a case).

Any discussion about giving should note that while generous people in work settings are often appreciated and promote business success, these "givers" may be at greatest risk for "generosity burnout" (a topic to be explored at a later date). While *reactive* helping ("people pleasing" and always saying "yes,") is exhausting and drains energy, *proactive* giving (giving with awareness of mental and physical limits, and setting clear boundaries, when needed) can be energizing.

PRACTICE

1. Talk to employees that you supervise or collaborate with about the specific benefit their work is giving to clients (and their legal matters) beyond any monetary profit or win.

2. Give your time, attention, and/or money to a specific charitable cause in our community and find out the details of what and who your contribution may affect positively (sharing with others what you learn).

3. Look at your monthly accounting sheet and do a well-being audit. Reflect upon whether you are spending money on experiences or material things. Does your money flow in a way that reflects what you value? Consider how a mindset of "giveaway" might add to your life satisfaction—and that of others.

Income and Emotional Well-Being

Daniel Kahneman, who just recently passed away, won the Nobel Prize in 2002 for his landmark work that created the field known as *behavioral economics*. Kahneman's research revealed that what people do with money is less often guided by rationale thinking, and more often by emotions and unconscious considerations. Significantly, Kahneman (and Angus Deaton another Nobel Laureate) also over a decade ago conducted research concerning the relationship of income and happiness. Although people with very little money were less happy than others (for a variety of reasons), Kahneman's research found that once a yearly income of $75,000 was reached, further increases in income appeared to have no significant effect on experienced happiness.

However, in 2021, research by Professor Matthew Killingsworth significantly contradicted Kahneman's longstanding study, and suggested that maybe money does buy—or at least impact—our happiness. Killinsgworth obtained 1,725,994 reports from 33,391 U.S. adults by texting them three times a day for several weeks and asking them to respond to the question, "How do you feel right now?" He correlated this data with income levels and found happiness continues to rise as income increases (up to $500,000 a year level, which was the limits of the dataset).

To resolve this conflict, in 2021 both Kahneman and Killingsworth engaged in an "adversarial collaboration in search of a coherent interpretation" to reconcile their contradictory results.[2] Their joint research and reanalysis published in March 2023 confirmed that both Kahneman's and Killingsworth's prior research were correct and incorrect, in part. The flattening pattern (no effects on happiness after $75,000-$100,000) only happened for the *least* happy people. For the majority of others (mid to high scoring happier people), happiness appeared to steadily increase with income (but only slightly so because as income increases it has a diminishing *influence* on happiness). The research revealed the extent to which money affects happiness differs for people depending upon the levels of emotional well-being they felt.

As Killinsgsworth noted, "If you're rich and miserable, more money won't help." Money does not *cause* happiness and a myriad of factors contribute to life satisfaction. In fact, research has shown *seeking* money and making it a primary goal has been found to negatively impact life satisfaction. Studies have shown that seeking money compared to having it diminishes the likelihood of cultivating meaningful relationships at home and work, which is a clear factor that impacts our happiness and feelings of living a good life. Generosity, health and wellness, supportive connections and belonging, and feeling our work is meaningful and valued, all contribute to our sense of satisfaction and success far more than financial gain alone.

Giveaway

Recently, I attended several ceremonies in New England with an Indigenous Medicine Woman, and one ceremony involved the ancient ritual practice known as a "Giveaway." A "Giveaway" involves a family in mourning expressing gratitude for a deceased person's life by giving to everyone gathered at the ceremony whatever the living family members feel are their most valued possessions. Generosity has been studied behaviorally in many species and may actually be an evolutionary adaptation that has helped promote survival of species—including our own. Through the giving of something cherished in physical form, a "Giveaway" supports others, and the person who has passed is remembered through the symbolic ritual of community connection.

Experiencing the "Giveaway" ritual, I was reminded deeply of how we are sustained through a interconnected web of life that gives abundantly to us. Yet, only by recognizing our responsibility to choose wisely how to be givers—contributing to the greater good - can benefits be derived for all. As legal professionals, if we adopt a mindset that our legal practice is about positively and generously impacting the "public good"—in the *spirit* of "pro bono publico"—we thereby enrich our livelihoods—and the lives we touch in the process. ■

Robin Oaks has been an attorney for nearly forty years, and for twenty-five years has provided legal services focused on independent workplace investigations and mediation. She is certified in and has studied a wide range of healing, emotional intelligence, cognitive fitness, and mind-body practices. She is a well-being consultant and offers confidential professional life coaching sessions for legal professionals seeking to optimize potential, restore balance, and thrive during stressful life changes and challenges. Contact: Robin@RobinOaks.com or 805-685-6773.

ENDNOTES

1. https://ggsc.berkeley.edu/images/uploads/GGSC-JTF_White_Paper-Generosity-FINAL.pdf
2. Income and emotional well-being: A conflict resolved | PNAS; Does more money correlate with greater happiness? | Penn Today (upenn.edu)

Verdicts & Decisions

Monarrez v. MacBrunk

LASC, Stanley Mosk Courthouse

CASE NUMBER:	19STCV00074
TYPE OF CASE:	Personal Injury—auto versus pedestrian and dog.
TYPE OF PROCEEDING:	Jury trial
JUDGE:	Hon. Gregory W. Alarcon, Dept. 96
LENGTH OF TRIAL:	5 court days
LENGTH OF DELIBERATIONS:	25 minutes
DATE OF VERDICT OR DECISION:	March 13, 2024
PLAINTIFF:	Eva Monarrez
PLAINTIFF'S COUNSEL:	Jonathan Roven
DEFENDANT:	Robert Mac Brunk (this is the correct spelling, not the case title)
DEFENDANT'S COUNSEL:	Royce J. Borgeson (lead trial counsel); Jeremy L. A. Hill Edwards (second chair)
INSURANCE CARRIER:	State Farm Mutual Automobile Insurance Co.
EXPERTS:	Plaintiff: Dr. Stephen Grifka (otolaryngologist) Dr. Samuel Gillespie (audiologist) Dr. Michelle Conover (neuropsychologist) (did not testify at trial) Defendant: Dr. Robert Wilson (orthopedic surgery) Dr. Barry Ludgwig (neurologist) Dr. Charles Hinkin (neuropsychologist) Dr. Marc Cohen (otolaryngologist) (did not testify at trial) Dr. Michael Brant-Zawadski (radiologist) (did not testify at trial)

FACTS AND CONTENTIONS: Defendant's car struck Plaintiff and her dog at low speed while Plaintiff was walking across the street. The collision knocked Plaintiff to the ground in front of Defendant's car where she allegedly struck her head on the tarmac and lost consciousness. Plaintiff saw Defendant's car continuing to run her over as she fell. Plaintiff alleged that, when she regained consciousness moments later, Defendant's car had come to a stop over her body with the wheel stopping just short of her head.

SUMMARY OF CLAIMED DAMAGES AND MEDICAL TREATMENT: Plaintiff claimed traumatic brain injury, constant tinnitus, and post-traumatic stress disorder, as well as spinal injuries. Plaintiff's dog also suffered a broken hip.

Plaintiff was in another car accident in April 2018, prior to the subject accident in September 2018. As a result of the prior accident, Plaintiff received treatment from a chiropractor and consulted with a neurologist and a pain management doctor, although she did not have any injections. Plaintiff also had a brain and spinal MRIs before the subject accident.

After the subject accident, Plaintiff continued under the care of her chiropractor and neurologist and had more MRI imaging. Clinical testing showed Plaintiff suffered from new onset of constant tinnitus in both ears. Plaintiff began therapy sessions and underwent clinical neuropsychological testing, which resulted in a diagnosis of chronic post-traumatic stress

disorder secondary to the subject accident, as well as somatic symptom disorder. Plaintiff's neuropsychologist initially concluded Plaintiff did not have a brain injury, before later changing her opinion. However, Plaintiff did not pursue treatment for her alleged brain injury. Plaintiff was in another car accident in December 2019 that exacerbated her spinal injuries.

SUMMARY OF SETTLEMENT DISCUSSIONS: Plaintiff's evaluation of the case throughout trial was a multiple of the policy limit. Plaintiff rejected Defendant's offers of the policy limits and proceeded to try the case over causation of tinnitus.

RESULT: BY A VOTE OF 12 TO 0

Plaintiff sought $59,000 for her medical bills and $330,000 for future care. She asked the jury to award her $200,000 for past pain and suffering and $300,000 for future general damages.

Defendant argued Plaintiff in fact did not have a brain injury and had not met her burden on causation of tinnitus. Defense counsel asked the jury to award no future special or general damages, $20,000 for medical bills, and $70,000 for past pain and suffering.

The jury returned a verdict in favor of Plaintiff in the amount of $110,000, as follows:
$5,000 property special damages (for the dog's treatment);
$30,000 past medical special damages;
$0 future medical special damages;
$75,000 past general damages;
$0 future general damages.

Plaintiff failed to beat Defendant's first section 998 offer of $125,000 and the Court awarded Defendant's full post-offer expert costs of $69,204.

Motions

Kingston, Martinez & Hogan LLP is pleased to announce that **Andrea M. Anaya** has been certified by the California State Bar as an Immigration and Nationality Law Specialist. Andrea is a Partner at Kingston, Martinez & Hogan LLP. She received her law degree from The Colleges of Law, Santa Barbara in 2016 and completed her undergraduate studies at the University of California, Santa Barbara. She is a first generation Mexican American and a California native. She is a member of the American Immigration Lawyers Association and the Santa Barbara County Bar Association.

* * *

Mandy Moua has been named an associate at the Santa Barbara law firm of **Cappello & Noël LLP**. Moua joined the firm in 2018 as a paralegal and became an associate upon passing the California State Bar exam in 2024. Moua conducts legal research, drafts legal documents, and assists attorneys in all stages of litigation for the firm's cases.

"Mandy's is a classic example for all those who strive to one day become a great lawyer," said managing partner Barry Cappello.

"Sacrifice, hard work, juggling multiple tasks, college graduate, legal assistant, paralegal, office coordinator, night law school, all with a smile, a 'can-do' demeanor who then passes the State Bar her first time. We are lucky to have her," he said.

Moua received her J.D. from Santa Barbara College of Law. She is a member of the Santa Barbara County Bar Association.

The Intellectual Property Section and the In-House Counsel & Corporate Law Section of the Santa Barbara County Bar Association present:

Michael Jackson: The Tax Trial of the Century

If you think "dramatic" and "entertaining" are unlikely adjectives to describe a Tax Court case, think again! Our speaker will start with a look back at the events leading up to the epic "Tax Trial of the Century" between the Estate of Michael Jackson and the IRS. We'll then address the legal and valuation issues covered at trial, including valuation of Jackson's music catalog, his 50% interest in a music publishing company, and his name and likeness rights. This case had it all—drama, hype, credibility issues, lies, fantasy, costly trial mistakes, and even a 20-year-old heavily used Honda.

Speaker:

Michael A. Perlmutter, JD, CPA, CVA, ABAR

Michael Perlmutter is an attorney, CPA, and Certified Valuation Analyst. As a former IRS Estate Tax Attorney, his personal journey included examining Michael Jackson's estate tax return, presenting at IRS appeals and assisting IRS litigators in the Jackson estate's epic court battle against the IRS, and being called to testify at trial by the estate *against* the IRS's own expert. Following a distinguished career at the IRS working on high-profile, high-value examinations, valuations, and audits, Michael transitioned to private practice and founded Perlmutter Law and Valuation, a valuation consulting firm, and the Valuation and Litigation Group, which specializes in business and intellectual property valuations as well as royalty compliance audits. He is a frequent presenter to attorneys and financial professionals on valuation issues.

CLE:

One hour credit

Date

Wednesday, July 24

Time:

12 noon – 1:15 PM

Cost:

$15.00

Location:

Virtual Presentation Via Zoom

Reservations:

To receive the meeting link via email, please respond by Friday, July 19, to Marietta Jablonka at sblawdirector@gmail.com AND to Chris Kopitzke at ckopitzke@socalip.com

Mail checks by Friday, July 19,
payable to Santa Barbara County Bar Association,
15 W. Carrillo St., Suite 106, Santa Barbara, CA 93101
Or contact sblawdirector@gmail.com for link to pay online

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2024 MCLE Series Schedule
12:15-1:15 p.m.

Date	Topic(s)	Credit Hours
May 22	*David Mann of the Other Bar* – A Conversation on Attorneys and Substance Abuse (Competence Credit)	1.0*
June 26	*Jennifer Lee* – Technology in the Practice of Law (Technology Credit)	1.0*
July 24	*Dr. Keisha Clark* - Recognition and Elimination of Bias (Elimination of Bias Credit)	1.0*
August 28	*Doug Ridley* – The Complete Attorney (Ethics Credit)	1.0*
September 25	*Civility in the Legal Profession – It's Importance & Why We Need It* (Civility Credit)	1.0*
October 23	*Robin Oaks* - Professional Burnout Among Lawyers & How to Address It	1.0*

* Indicates California State Bar Specialty Credit

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Santa Barbara County Bar Association
SBCBA

Santa Barbara County Bar Association Awards

The SBCBA calls for nominations for 2024 awards for recognition of outstanding attorneys, law firms, and judges in our community.

Richard Abbe Humanitarian Award
This special award honors a judge or attorney who evinces exceptional qualifications reflecting the highest humanitarian principles as exemplified by the late Justice Richard Abbe.

John T. Rickard Judicial Service Award
This award honors one of our judges for excellence on the Bench and outstanding contributions to the judiciary and/or the local court system.

Pro Bono Award
This award recognizes an individual attorney who has donated at least 50 hours of direct legal services to low income persons during the previous calendar year.

Frank Crandall Community Service Award
This award honors a local law firm's best efforts in providing pro bono services to community non-profit organizations. Factors considered in bestowing the award include:

- Existence of a firm policy encouraging pro bono services;
- Percentage of firm attorneys performing pro bono work;
- Nature and quality of pro bono work and hours per attorney;
- Leadership of community projects and services benefiting low-income persons.

The Thomas P. Anderle Award for Judicial Excellence
This Award should be viewed as recognition of a distinguished career on the Bench, as well as contributions to the community and the practice of law. The following factors should be considered:

- Judicial Ability and Experience; Dedication and Diligence;
- Judicial Temperament, Demeanor, Independence, Integrity and Fairness;
- Knowledge of the Law, Legal Ability and Scholarship;
- Contribution to the Improvement or Education of the Legal Community;
- Contribution to the Community at Large and to the Practice of Law;

The SBCBA's Jamie Forrest Raney Mentorship Award
This award honors an attorney who has made a significant difference in the careers of other attorneys through ongoing mentorship regarding professional growth, principals of professionalism, ethics, and law practice management, as did the late Jamie Forrest Raney.

Please submit your nominations to Marietta Jablonka: sblawdirector@gmail.com by August 31, 2024. Please include specific facts to support the award's criteria for each nomination.

Santa Barbara County Bar Association

Santa Barbara County Bar Foundation
a 501(c)(3) non-profit

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Help support a student pursue a legal career in Santa Barbara County

Costs to prepare for the LSAT & apply to law school ~ $2,621

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Donations can be made by **check** payable to SBCBF, send to P.O. Box 21523, Santa Barbara, CA 93121. Please write "DEI Scholarship" on the memo line
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Application deadline:	September 1, 2024
Selection notification:	October 30, 2024
Program participation:	Scholarship recipients can attend either of the biannual training dates, within three years of being selected.

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* * *

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Price, Postel & Parma, a long-standing law firm in Santa Barbara, is seeking a litigation associate with superior credentials, at least 3-4 years of significant litigation experience and a current license to practice in the State of California. This is an outstanding and unusual opportunity to practice law with experienced trial attorneys and swiftly move into position of significant responsibility in the Firm. Compensation is commensurate with skills, education and experience. A current license to practice in California is required. Salary range for qualified candidates is $115,000 to $225,000. Please submit a cover letter and resume detailing your experience to Craig Parton at cparton@ppplaw.com..

* * *

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SAVE THE DATE

for These Fun SBCBA Events!

September 27th
Golf, Tennis and Pickleball Tournament

November 7th
SBCBA Annual Dinner and Awards

For more information on classified advertising rates, or to submit a classified ad, contact Marietta Jablonka, SBCBA Executive Director, at (805) 569-5511 or sblawdirector@gmail.com.

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THE OTHER BAR NOTICE

Meets at noon on the first and third Tuesdays of the month at 330 E. Carrillo St. We are a state-wide network of recovering lawyers and judges dedicated to assisting others within the profession who have problems with alcohol or substance abuse. We protect anonymity. To contact a local member go to http://www.otherbar.org and choose Santa Barbara in "Meetings" menu.

SBCBA SECTION CHAIRS

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frankochoa@destinationadr.com

John Derrick (805) 284-1660
jderrick@icloud.com

Bench & Bar Relations:
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Marisa Beuoy (805) 965-5131
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In House Counsel/Corporate Law
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ckopitzke@socalip.com

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Cindy Brittain (323) 648-4657
cbrittain@karlinpeebles.com

Well-Being
Robin Oaks (805) 685-6773
robin@robinoaks.com

July

2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4 Independence Day	5	6
7	8	9	10	11	12	13
14 Bastille Day	15	16	17	18	19	20
21	22	23	24 SBCBA **MCLE**: "Michael Jackson: The Tax Trial of the Century"	25 National Intern Day	26	27
28	29	30	31			

The Santa Barbara Bar Association is a State Bar of California MCLE approved provider. Please visit www.sblaw.org to view SBCBA event details. Pricing discounted for current SBCBA members.

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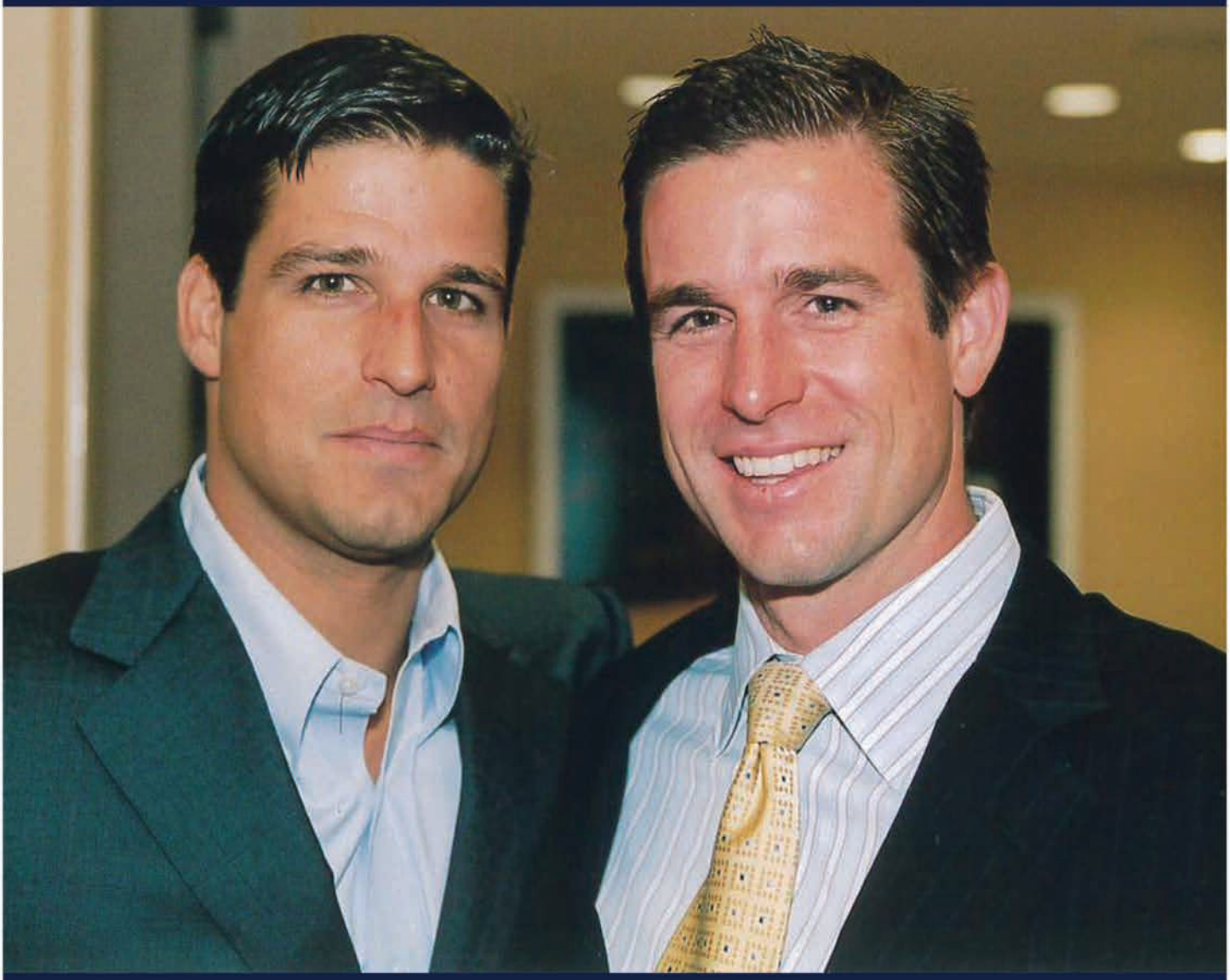

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