The Verdict

Alameda-Contra Costa
TRIAL LAWYERS ASSOCIATION

Spring 2017

ACCTLA
2016 Trial Judges of the Year

Honorable Ioana Petrou
Alameda County

Honorable Barry Goode
Contra Costa County

Also in this issue:

The Importance of Trial Lawyers in the Time of Trump

2017 DUES NOTICE

Alameda-Contra Costa TRIAL LAWYERS' ASSOCIATION

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contents | spring 2017

departments

4 From the Editor
Jayme L. Walker

6 From the President
Marjorie Heinrich

7 Sustaining Members

37 Calendar of Events

42 Member News

features

8 CAOC Report

10 Activism for Progressive Lawyers in a Trump Era
Valerie T. McGinty

12 Fifty Shades of the Master-Slave Dialectic
Shawn D. Tillis

14 Winter Has Come: How the Trump Administration's Anti-Immigrant Policies Will Chill Access to the Civil Justice System
Robert Uy

18 *Get to Know Your Judges:*
Hon. Barry Goode, Hon. Ioana Petrou, Hon. Paul Herbert, Hon. Margaret Fujioka, Hon. Lupe Garcia, Hon. Jennifer Madden
Carole Bosch, Jayme L. Walker, John Hill, Winston W. Moody, Denise K. Top, Suizi Lin

22 Judges' Night
Oasii Lucero, Oasii Photography

from the editor

Jayme L. Walker

Greetings fellow trial lawyers. As the new editor of *The Verdict*, I wanted to kick off our annual Judges' Issue with a dual theme. First, we honor and get to know our trial judges of the year, our new judges and some judges with new assignments. Second, I asked our members for articles that would speak to the importance of trial lawyers in the time of Trump.

This dual theme is especially poignant considering this President's assault on the judiciary. All sense of decorum has evaporated under a leader whose juvenile tirades spare no revered institution or representatives of such institutions, not even the judges of the United States' courts. It's important in these times to remember our ethical duties to treat the courts and each other with respect. Even if we disagree with a ruling or we are zealously representing our client's interest against a difficult opposing counsel, it is important to maintain decorum and civility. The personal attacks levied by Trump against judicial officers should make us all resolved to maintain civility and decorum in our cases, especially when the person at the top fails to exhibit any sense of those qualities. We can disagree, debate and advocate without personal attacks and inflammatory words. We can thoughtfully challenge injustice without devolving into name calling and pettiness. If we as lawyers demand respect and civility in our profession and we exhibit it in our dealings with each other, we can make an important difference in changing the tenor of the conversation in a polarized world where compassion, thoughtfulness and the truth are under attack.

The importance of trial lawyers in these times cannot be overstated. Essential to being a trial lawyer in the time of Trump is engagement with our community and with the issues that affect our clients' access to justice. I want to thank our members for your continued membership in ACCTLA and encourage you to get more involved in both ACCTLA and other trial lawyer organizations, like CAOC and AAJ. That's why I asked the wonderful and inspiring Valerie McGinty to write an article on how to get more involved in organizations that are fighting Trump's discriminatory agenda and in organizations assisting those who need us most. Shawn Tillis's thought-provoking article on diversity and inclusion is also a testament to the importance of trial lawyers in a time of chaotic politics. Lastly, this issue would not be complete without an article on immigration law as undocumented immigrants have been Trump's first target in what will only become a long battle for trial lawyers.

Finally, I am thrilled to present to you personal interviews with our Judges of the Year, Alameda County Superior Court Judge Ioana Petrou and Contra Costa County Superior Court two-time winner, Judge Barry Goode. Our members also interviewed the new judges to the Alameda County bench, Judge Jennifer Madden and Judge Margaret Fujioka and Judge Lupe Garcia as well as Judge Paul Herbert who is new to the civil direct calendar assignment this year. Our judges all have inspiring backgrounds, care deeply about the courts and access to justice, and are some pretty interesting folks outside of their busy professional lives.

Inevitably in speaking to our judges, one of the concerns we hear time and again is the dire state of the judicial budget. It is troubling that two branches of government have been able to cripple the third, especially in a progressive state like California. The budget cuts in state courts which severely limit access to justice for our clients is one more reason to get involved in trial lawyer organizations and in talking to our representatives in the state legislature. As trial lawyers, we must fight for access to justice. It is exactly that access to the courts and the dedication of lawyers like us that halted Trump's discriminatory travel ban and will hopefully halt or at least slow the erosion of civil rights, environmental protections and other progressive principles. ◆

—Jayme L. Walker is a partner at Gwilliam, Ivary, Chiosso, Cavalli & Brewer. She exclusively represents plaintiffs in employment, civil rights, and personal injury cases.

Alameda-Contra Costa TRIAL LAWYERS ASSOCIATION

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This program is not just for newer attorneys, but also is available for seasoned practitioners who run into problems or simply want to bounce ideas off another seasoned practitioner. The mentors — who are all ACCTLA members — have varied degrees of experience in varied areas of the law, and can address your concerns regarding Motions in Limine, jury selection, problems that arise during trial or issues relating to proposed instructions, or questions involving any of the earlier stages of litigation.

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from the president

Marjorie Heinrich

Stronger Together

At Judges' Night back in January, my inaugural theme centered on the importance of working together, as if we are all part of the same team, so that our clients reap the benefits of working with an attorney that has access to the resources they need to succeed against well-heeled opponents.

Solo practitioners and multi-lawyer plaintiff firms have a lot to offer each other. Whether it be insight into a particular defense attorney or judge gleaned over decades of practice — or access to a costly network of experts, collaboration through an exchange of experiences and resources strengthens our organization, and the plaintiff's bar as a whole. Of course, the real beneficiaries of such a collaboration are our clients, who are served by the best to be offered by small and large firms alike.

This notion is especially relevant in light of today's political climate. In the era of Trump, both citizens seeking access to justice through the civil courts, and the members of our community who fight tooth and nail while representing them, are under direct attack. Our members will not only have to work together to keep this organization relevant and effective, but will have to work closely with our state and national advocates in CAOC and the AAJ to ensure we preserve access to civil justice — and our livelihoods. Already we have been faced with HR 1215 and Assembly Bill 965; and the Trump Administration has made no secret of its intent to roll back even the most fundamental of consumer rights.

I urge all of our members to volunteer to chair a CLE, to attend our meetings and socials, and while in attendance, to share their stories, insights, and resources with others.

"Synergy" is the creation of a whole that is greater than the sum of its parts. We can see the power of this concept reflected in the resistance forming and taking action through the efforts of millions of our fellow citizens. Let's get a whole lot of synergy going this year. By doing this, we are stronger, our clients are better served, and we can work to keep the unique institution of American civil justice healthy and vibrant. ◆

— Marjorie Heinrich is the owner of Heinrich Law, PC. Heinrich Law exclusively represents plaintiffs in personal injury, employment, and elder abuse cases. Heinrich Law serves Oakland and the great Bay Area (www.heinrichlaw.net).

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Publication in **The Verdict** is excellent exposure. Our readers are most interested in issues surrounding plaintiffs' personal injury, family, appellate, criminal and/or business law.

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Consumer Attorneys of California Update

2017 Justice Day

On May 2, 2017, CAOC headed to Sacramento and met with state legislators and key staff members for Justice Day to represent the interests of 39 million Californians. The goal of the annual event was to educate lawmakers and to advocate for the passage of legislation — or often, the defeat of proposed bills crafted by liability carriers and corporate interest groups — that will help protect state residents in the civil justice system. Last year, six CAOC-sponsored bills were signed into law and all tort reform bills were defeated.

Below is a list of seven bills that were sponsored by CAOC in 2017:

FORCED ARBITRATION

SB 33 (Dodd) which prohibited financial institutions from forcing customers to give up their legal rights when the bank has committed intentional fraud.

PROTECTING SENIORS

AB 859 (Eggman), which prevented the intentional destruction of evidence in cases involving physical abuse of elderly and dependent adults by providing stricter civil enforcement of the California's Elder Abuse Act by allowing elder abuse civil cases to be enforced using a preponderance of evidence standard when it is proven that intentional spoliation has occurred.

ENFORCING THE LEGAL RIGHTS OF IMMIGRANTS

AB 1690 (Assembly Committee on Judiciary), which clarified the Cal. Civil Code §3339, states that a person's immigrant status is irrelevant to liability issues, applies to consumer protection laws in addition to the listed labor, employment, civil rights and employee housing laws.

MAKING SURE THAT CIVIL JURIES ARE FAIR AND IMPARTIAL

SB 658 (Weiner), which addressed issues where judges are ignoring current law, states that in civil cases, in order to select a fair and impartial jury, each party has the right to examine prospective jurors without a blanket time limit.

GIVING DYING ASBESTOS VICTIMS THE RIGHT TO REFUSE

SB 658 (Monning) clarified that dying asbestos victims receive the benefit of current law that provides a presumptive time limit of a seven-hour deposition for dying victims.

HELPING CHILDREN WHO HAVE BEEN SEXUALLY ABUSED

SB 755 (Beall) was a vehicle to address abusive defense psychological exams of children who have been sexually abused.

ASSISTING PRACTITIONERS IN EVERY DAY COURT PROCEEDINGS

AB 644 (Berman) was co-sponsored by CAOC and the California Defense Counsel as a vehicle to address civil procedure and court function issues such as limits on depositions, meet and confer requirements prior to specified motions, the redefinition of drafts as work product and minors' compromise reforms.

CAOC opposed the following 2017 bills:

LIMITS ON CALTRANS CLAIMS

AB 965 (Kiley) limited non-economic damages against the Department of Transportation to $250,000 and provided that the liability of the department for economic damages shall be several only and shall not be joint.

LIMITS ON PAGA SUITS

AB 281 (Salas), AB 945 (Melendez), AB 1429 (Fong), AB 1045 (Fong), and AB 1430 (Fong). All five bills limit claims brought under the Private Attorney General Act.

ASBESTOS VICTIMS

AB 1056 (Kiley). Sponsored by the Civil Justice Association of California (CJAC), it limited claims for asbestos victims.

CONTINGENCY FEES

AB 1146 (Flora). Also sponsored by CJAC, it limited the use of contingency fee agreements between attorneys and public entities.

CONSTRUCTION DEFECTS

AB 1449 (Brough) limited construction defect claims against architects.

WAGE, HOUR AND EMPLOYEE CLASSIFICATION VIOLATIONS

SB 556 (Nguyen) and SB 662 (Berryhill) were spot bills that will be amended to weaken California's wage, hour, classification and employment laws.

CAOC-ACCTLA NEW LAWYERS DIVISION

NIGHT AT THE BALLPARK

The New Lawyers Divisions of CAOC and ACCTLA are headed to the Oakland Coliseum on June 16 to watch the A's take on the Yankees. Tickets are limited, so RSVP as soon as possible on the CAOC website. Thank you to Doug Merritt and Kathleen Brice of Ringler Associates and Judicate West for their sponsorship and continued support of the NLD's.

Activism for Progressive Lawyers in a

Trump Era

by Valerie T. McGinty

After the mourning, the ranting, the hand-wringing, the Facebook posting, and the marching, how can we progressive lawyers take action in the era of a Trump administration?

As one progressive activist recently observed, the Trump Administration may offer a rare opportunity for lawyers to be newly valued because, as we have already seen in the courts, it may be one of the few ways to effectively resist Trump's policies. The chance to utilize our legal training to improve the world in this pivotal moment is thrilling — but the options are dizzying. So which causes and opportunities are most worthy? Here are five that rose to the top.

First, reaffirm your commitment to our state (CAOC) and national (AAJ) trial lawyer organizations. These two organizations are the most effective progressive voices in their respective spheres and are working hard to protect the rights of everyday Americans — your clients.

For CAOC, you can join the Advocates Club for as little as $50 a month, which includes a ticket to the annual PAC event in San Francisco and ensures that CAOC remains a strong voice with the political agility to respond to any situation that unfolds. (To join, email samantha@caoc.org.)

For AAJ, you can also be a monthly supporter of its PAC for as little as $8.33 a month. (Go here to join: http://www.justice.org/node/171215.) In addition, there are often simple actions (like making one phone call) that provide critical support for AAJ's legislative efforts. (Go to www.takejusticeback.org and click on the "take action" button to see what you can do.)

Second, one very effective nonprofit that provides more than 43,000 low-income rural Californians with free legal assistance and education programs is California Rural Legal Assistance. In some areas where CRLA has offices, there is only *one attorney* for approximately every 27,000 poor people. In the 50 years since CLRA's inception, its litigation has improved the lives of millions of low-income individuals, including farm workers, single parents, school children, the elderly, people with disabilities, and entire communities. You can donate and learn more about volunteer opportunities on their website (www.clra.org.)

Third, Muslim Advocates is a national advocacy and educational organization that works to guarantee freedom and justice for Americans of all faiths. This organization uses the courts to hold accountable those who threatened the right of American Muslims. And it lobbies in D.C. to ensure that the concerns of American Muslims are heard by Congress and other political leaders. It has worked hard on halting Trump's recent executive orders banning travel from majority-Muslim countries. To learn more and to donate to this organization, go to www.muslimadvocates.org.

Fourth, One Justice is an organization that works with a network of nonprofits, firms, law schools, businesses, and individuals to strengthen the civil legal aid delivery system to better serve low-income clients. OneJustice was featured in a recent Daily Journal article for its Justice Bus Project, which "mobilizes and empowers volunteer attorneys" to "provide legal help to isolated and rural communities." The Justice Bus trips have departures from San Francisco, Silicon Valley, Los Angeles, Orange County, and San Diego. To volunteer or donate to One Justice, go to www.onejustice.org.

Last but not least, if you want to do something quick but effective, go to www.5calls.org. This innovative and volunteer-created website started by a husband and wife team. As soon as you select the issue you want to call on, it provides you with a script and the number to call. The front page of the website greets you as follows: "Make Your Voice Heard: Turn your passive participation into active resistance. Facebook likes and Twitter retweets can't create the change you want to see. Calling your Government on the phone can." ◆

— The Law Office of Valerie T. McGinty (www.plaintiffsappeals.com) represents plaintiffs on appeal with a focus on affirming plaintiffs' verdicts and overturning summary judgments. Valerie received CAOC's Marvin E. Lewis award last year and was a final nominee for CAOC's Consumer Attorney of the Year Award in 2015.

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Join us for the
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SECOND ANNUAL
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Sunday, July 23 - Noon

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Fifty Shades
of the Master-Slave Dialectic

by Shawn D. Tillis

"The first thing we do, let's kill all the lawyers."
Henry VI, Part II, Act IV, Scene II

Is your law firm as diverse as Trump's cabinet? That was just a little dig to make you continue reading . . .

No, but seriously, is it? Accounting for some overlap, Trump's cabinet is roughly 17 percent female and 17 percent ethnic or visible minority. Does your firm do better than that? Does it even do *as well* as that?

Let me ask you another question: how many of you know people who work with their hands for a living? When I say "know" I mean people that you actually hang out with, eat with, laugh with, and/or actually have substantive conversations with on a fairly frequent basis.

If all of your friends and acquaintances look like you and/or share the same or similar social caste, then you are living in an insulated world, missing out on a large chunk of life, and, moreover, are not equipping yourself for the fight that is surely coming.

I say this because, once again, truth and human decency are under attack. We are all imperfect beings but these two things — truth and decency — which we have cultivated and nurtured over millennia, ground and keep us from tearing each other apart. They are our rudders and without their guidance civil life devolves into a kind of chaos.

Truth and decency are under attack because, once again, a group of very wealthy, power driven men seek to impose their values on the rest of us. These men, who for whatever reason are resentful and vengeful, are now in power and determined to re-make the world in their own stillborn imagi(nations), and for their own enrichment.

Steve Bannon, whose college peers describe him as having once been a "Grateful Dead Fan, Jerry Brown Liberal" who would never hesitate to give the shirt on his back to a stranger, became a Reagan-worshiper after serving in the Navy during the Iran-Contra affair. During that period of his life he became disillusioned — the world and people were not perfect or dedicated enough for him and he decided that somehow the government was to blame in shaping this deficient national character.[1] In late February, Mr. Bannon told CPAC that Trump's cabinet picks are aimed at implementing "deconstruction of the administrative state." Many took this to mean a weakening of regulatory agencies and other bureaucratic entities. But many — including most French intellectuals — heard something more insidious. If Mr. Bannon had meant to convey a simple weakening of regulatory agencies, then, like a typical Republican, he would have used the term "de-regulate" instead of "de-construct." He giddily chose the latter on purpose: to de-construct something is to annihilate it by taking it completely apart and rendering it ineffective. And what better way to speed up this process than to appoint cabinet members who not only don't know what the hell they're doing, but don't believe in the legitimacy of the position itself or the tasks of the agencies they head, and who actively work to undermine them.

A person who is disillusioned with truth seeks to destroy all truth. Steve Bannon and his ilk are hell-bent on creating chaos and Donald Trump is the perfect head of state under which to accomplish this. Trump, who was never quite good enough for the Manhattanites, is pure id. For him integrity and consumption are one and the same. Everything in his path or world is there to be consumed; if it can't be consumed then it doesn't exist and is ignored. The administrative state — a regulatory entity of rules that is frequently tasked with saying "No" and "Stop" — is anathema to people like Donald Trump; best to destroy it.

The white working class — for whom the old opium "at least I'm not black" no longer cuts it — will be the genuine victims here because they are being used by the very people who are bent on destroying their social safety nets. However, instead of turning to the powerful for redress and accountability, they have again doubled down on directing their anger and frustrations towards black and brown people, "the *others*." They remind me of the allegory of the man looking for his keys under a streetlight:

A policeman sees a drunk man searching for something under a streetlight and asks what the drunk has lost. He says he lost his keys and they both look under the streetlight together. After a few minutes the policeman asks if he is sure he lost them here, and the drunk replies, no, that he lost them in the park. The policeman asks why he is searching here, and the drunk replies, "this is where the light is."

For many white working class people, even though blacks, Mexicans and Muslims are not the root cause of their problems, they, as the *other*, are still "where the light is." The perfect base for people like Trump and Bannon, they have been rejected — even scorned — by the elite and have become disillusioned. Now Trump and Bannon are the elite, and these people are waiting for promised jobs and respect. Of course, rather than doing something to really help this group, the Trump "administration" will continue enforcing the idea that being with people who look and think like them is the strongest and most patriotic virtue, and that together they will "make America what it was."

This is why I asked earlier about your firms' makeup and whether you know anyone who works with their hands, for, at bottom, the Trump administration is about exclusion. You can't fight against exclusion if your firms' and social circles are exclusive, since what feeds the working class' animosity against the elite the most is its hypocrisy. You can't fight exclusion if you live exclusion — even if it's non-intentional. People like Trump and Bannon thrive on such hypocrisy. Liberal hypocrisy is in part the source of their primary disillusionment with the world. They are only too happy to tear at such hypocrisy and feed its scraps to their base.

We must provide white working class people another alternative. We must live, practice law, and lead by example. Over the years, many have misinterpreted the meaning behind the "kill all the lawyers" line in Shakespeare's Henry VI. Many believe the line was meant to express some general antipathy towards lawyers. However, just the opposite is true. As Debbie Vogel states in her article *"Kill the Lawyers, A Line Misinterpreted,"* Shakespeare's line "The first thing we do, let's kill all the lawyers,"' was stated by Dick the Butcher in Henry VI. Dick the Butcher was a follower of the rebel Jack Cade, who thought that if he disturbed law and order, he could become king.[2] Thus, Shakespeare meant it as a compliment to attorneys and judges who instill justice in society.

Implicit in Steve Bannon's aim at deconstructing the administrative state is an antipathy for law and order and a thirst for undisturbed power. As trial lawyers, we are in his and the Trump administration's way. As trial lawyers we are street fighters, alley cats, and hustlers — the last to back down from a fight, and we hate bullies. We are uniquely positioned to fight against the excesses of the current administration.

However, sometimes we get full of ourselves and forget why the rebel Jack Cade wanted us out of the way and why Shakespeare held us in such high regard. For this fight that is surely coming, we must store up and get our own houses in order. We need to expand our social circles — especially to include in our firms the people who look like the people we represent in our practices, and not, like Trump and Bannon and their ilk, to only *pretend* to know them.

Instead of deriding Gen Xers and millennials we need to recruit and prepare them to take over. Say what you will about Republicans, they are successful at recruiting new blood and developing deep benches; the average age of the Republican House leadership team — which includes the Speaker of House — is 49. The average age of the Democratic leadership team is 77. The Republicans have several Governors under 50 years old; the Democrats only have one. The Republicans have nine Senators under 50 to the Democrats five. This fight is going to outlast the baby boomers' lifetimes so Democrats need to become better at recruiting a viable second line.

These are the types of things we need to do to prepare for the fight to come — and make no mistake this fight to restore balance is coming, it has to if civil society is ever to restore truth and human decency. When one goes up against a formidable opponent with all of one's might, there is always the risk of becoming like them and repeating their mistakes. The formerly oppressed become the new dictators and so on. In this fight I recommend we take a page from Dr. King and employ a strategy of non-violence. We must resist any temptation towards bullying others. If we want to restore truth and decency then we have, ourselves, to become more decent, open, and tolerant and less exclusive and comfortable.[3] ◆

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[1]Suebsaeng, Asawin. *"Steve Bannon in College: Grateful Dead Fan, Jerry Brown Liberal, Ladies Man."* The Daily Beast, March 14, 2017.

[2]Vogel, Debbie. *"Kill the Lawyers, A Line Misinterpreted."* New York Time, June 17, 1990.

[3]I owe Elizabeth Yates debt of gratitude for helping me edit this article.

WINTER HAS COME

How the Trump Administration's Anti-Immigrant Policies Will Chill Access to the Civil Justice System

by Robert Uy

Imagine for a moment that you are undocumented. You are currently working "under the table." Your employer doesn't pay you overtime, has threatened to take your passport and has you working on long twelve-hour shifts. He pays you less than minimum wage. He threatens to deport you if you speak out and talks about how others have been deported before for reporting him. You live in housing that he owns and you are scared to go out, thinking he may hurt you if you leave. You also have a criminal record where you got in trouble and took a plea. Now, imagine what you would do in this day and age. Would you be willing to speak out? For most immigrants today, the answer would be, "probably not."

This is the plight of millions of undocumented immigrants in the United States. Prior to the election of Donald Trump, Congress took unprecedented steps to create laws that would protect immigrants and protect worker's rights. The Victims of Trafficking and Violence Protection Act of 2000 was enacted by Congress and signed by President Clinton and re-signed by both President Bush and President Obama. This bill helped to create the U-Visa for victims of certain crimes who suffered from substantial physical and mental abuse and later, the T-Visa, which was meant to protect victims of human trafficking.

The U-Visa and T-Visa are avenues for obtaining status for people who are victims of crime and cooperated with law enforcement. If, for example, you could prove that you were a victim of a particularly serious crime, such as felonious assault or domestic violence and cooperated with law enforcement, you could be granted a U-Visa, despite being inadmissible. The U-Visa allows you to apply for a waiver for most, but not all, inadmissibility grounds under INA 212(a). The U-Visa became a lifeline for the most vulnerable immigrant populations. Due to the problems intrinsic in lower-income communities, many immigrants were able to get status by reporting crimes ranging from severe criminal labor violations to domestic violence. The U-Visa, along with a waiver, could easily solve most immigration issues.

The T-Visa, on the other hand, became available to those who were either forced into sexual exploitation or some other severe form of trafficking (including labor trafficking.) This also allowed a person to waive inadmissibility that was "caused by, or were incident to, the victimization." As a practical matter, for U-Visa applicants, what this meant — so long as you were a victim of a U-Visa eligible crime, and had not committed terrorist/security related crimes, were a Nazi, a spy, child abductor, member of a totalitarian party or a person who had renounced citizenship under certain circumstances — was that you could get a U-Visa. For T-Visa applicants, this meant that you could waive most inadmissibility grounds, save the ones listed above, if it was related to their trafficking situation.

The U-Visa and T-Visa were specifically created to encourage people to cooperate with law enforcement and to speak out against bad actors while minimizing the immigration consequences of making such a report. For many civil litigators, family law attorneys and employment attorneys, the U and T-Visa helped provide their clients with the comfort that they could assert their rights without fear of removal.

IMMIGRATION UNDER OBAMA

The Obama administration was unable to pass comprehensive immigration reform, but created certain stopgap measures, such as Deferred Action for Childhood Arrivals ("DACA") and its failed counterpart, Deferred Action for Parents of Americans ("DAPA"). The administration successfully pushed for changes that would allow H-1b visa spouses (H-4's) to obtain work permits; for the dismantling of Secure Communities (a program that rewarded localities that cooperated with DHS); and for the creation of a multi-tiered priority system for prosecutorial discretion and removal. DHS under Obama expanded parole in place for undocumented family members of armed forces members; extended optional practical training for students from STEM disciplines; and created a waiver to allow family members of US citizens and LPR's to leave the country and reenter, thus granting them the ability to gain status.

One hallmark of DHS during the Obama administration was the creation of a multi-tiered priority system for removal. DHS issued guidance as to who was first priority for removal. In the system, priority one included spies, terrorists, gang members and felons who committed felonies related to their immigration status. Priority two, by the end of the administration, included felonies, multiple misdemeanors and significant misdemeanors such as driving under the influence. It also included significant visa violators. Priority three included people removed on or after January 1, 2014.

DHS, during much of the administration, made it clear that it had no interest in wasting resources on detaining the physically or mentally ill, pregnant women, children or people caring for the infirm or small children.

During the Obama administration, there were two memos that were drafted that gave clear guidance to DHS officers and attorneys on how to process prosecutorial discretion cases. These public memoranda were extremely helpful to immigration practitioners as they gave clear roadmaps as to how to ask for prosecutorial discretion during the administration. In the memoranda, DHS officers were clearly instructed to consider the type of offense, sentence, humanitarian factors, hardship to family members, and family ties in the United States.

The Obama administration took steps to protect spouses and children of citizens and LPR's who were victims of domestic violence by reauthorizing the Violence Against Women Act.

While the Obama administration was not ideal in terms of immigration, significant changes were made to processes that allowed many people to obtain status or other relief. Many of the changes increased the access of immigrants to justice, as they ▶

knew that under the administration, if they reported crimes, labor violations, or domestic violence, they would be protected.

THE WINDS OF CHANGE

Unfortunately, the election of Donald Trump, upended much of the success of the Obama administration in immigration. Elected after running on an anti-immigrant platform, Trump has destroyed much of the previous administration's legacy.

On January 25, 2017, Donald Trump signed an Executive Order called "Enhancing Public Safety in the Interior of the United States," announcing an expansion of interior immigration enforcement. This was later implemented by the February 20, 2017 DHS memo by Secretary Kelly. This order and memo made every undocumented person a target for removal. In essence, anyone who was removable previously (ranging from people with aggravated felonies to people with criminal convictions, people inadmissible at entry, who committed fraud, who were removable on security grounds, etc.) were still removable; but now, people who had never been convicted of *any* criminal offense; anyone with *any* criminal offense that had not been resolved; and anyone who had committed *acts* that constitute a chargeable criminal offense; people who committed fraud or willful misrepresentation with any official were now considered a priority for removal. This order made it so that anyone who committed a chargeable "crime" was a priority. Therefore, since, illegal entry is a crime under 8 U.S.C. section 1325, every person who has entered without inspection is now a priority. The order also posits that any overstays are a national security and public safety risk. In sum, all undocumented people are now priorities for removal.

In order to enforce the change, DHS is now authorized to hire 10,000 new officers and agents and to create a large-scale deportation force. The administration has expanded the power of immigration officers. Immigration officers were given the power to use all statutory authority to effectuate removal. What this means is that little-used statutes such as INA § 238(a) may now be used to institute institutional removal hearings for detained individuals and officers may use INA 238(a) to remove aggravated felons without hearings. The institutional hearing program ensures that "felons" are identified prior to entering a correctional facility and before they are released, a removal hearing is conducted at a designated hearing site in the correctional facility and they are removed without ever being released into the community. The order and memorandum further encourage officers to use stipulated removal to remove people. "Stipulation" generally means an officer forced a person to sign and accept removal orders, under duress and without an attorney present.

The Executive Order and memo creates mechanisms for data tracking for localities to determine if they are complying with federal immigration law. Reports are to be generated about which localities comply with ICE detainers. These reports are likely to be used in the future to help defund non-compliant sanctuary cities.

Under the memorandum, all prior prosecutorial discretion memoranda have rescinded. As such, immigration attorneys no longer have an easy and clear rubric as to what to follow when requesting prosecutorial discretion. DHS officers on the other hand are now encouraged to arrest, apprehend, and initiate enforcement against any alien whom the officer has "reason to believe, has violated immigration law."

DHS is also going to be creating a new Office of Immigration Crime Engagement, which will track crimes committed by immigrants and their victims. This agency will likely fan anti-immigrant sentiment. ICE will also track statistics of cities and non-federal jurisdictions that do not comply with ICE detainers.

The memo also stripped non-immigrants of their rights under the Privacy Act. This act, which previously prevented the dissemination of public agency information about individuals without their consent, no longer applies to non-immigrants.

The final policy is the creation of a necessary pre-condition to diplomatic relationships. Essentially, the US will not have formal relations with any country that refuses repatriation of its citizens. This could have massive implications for countries that have refused mass repatriation.

Trump also signed an Executive Order that banned citizens of seven majority Muslim majority countries. These countries include Iran, Libya, Yemen, Syria, Somalia, Sudan and Iraq. This order was effectively a Muslim ban. The initial ban was a disaster leading to the detention of countless Muslims at entry, the denial of entry to many visa holders, and the heinous detention of legal permanent residents, many of whom were coerced into giving up their legal permanent resident cards. For many legal permanent residents, this was devastating as the wait to be able to get their green cards again could take decades in some cases or, in other cases, they are now ineligible.

Due to his previous order being enjoined, Trump has now signed Muslim Ban 2.0, which will now ban citizens of six majority Muslim countries (excluding Iraq) from entering the United States for 90 days. This also includes a 120-day ban on refugees from all countries and a cut to the number of refugees who can enter the United States every year. This new order has since been temporarily enjoined by the U.S. District Court of Hawaii.

WHAT DOES THIS MEAN TO US AS COUNSEL?

The Trump administration has taken a hard line against immigrants. Basically, all undocumented people are now a priority for removal and greatly expanded ICE's powers.

Overall, there will be a chilling effect on our immigrant client's access to justice. For example, a DACA student complained about the legal system and was arrested and facing deportation. A victim of domestic violence was at a courthouse getting a restraining order and was arrested at the courthouse based on an anonymous tip. What was once a relatively safe space, the courthouse is now a place where an anonymous tip can lead to your removal. Recently, in a letter to Attorney General Jeff Sessions and DHS Secretary John Kelly, California Chief Justice Tani Cantil-Sakauye, indicated that "Enforcement policies that include stalking courthouses and arresting undocumented immigrants, the vast majority of whom pose no risk to public safety, are neither safe nor fair." We should expect an increase in ICE detainers and also an increase in the number of sweeps done in jails and other prison facilities. In addition, undocumented and non-immigrants who cooperate with government agencies, will face a loss of their privacy rights and possible deportation.

President Trump's revival of Secure Communities will create a system whereby local law enforcement becomes charged with enforcing immigration law and will partner with DHS. It is almost a certainty that more immigrants will be placed in removal proceedings.

A municipality's refusal to cooperate with Secure Communities used to mean that ICE could not go in and request reports of people's status in jails and in their records. Now, it is likely that we will see more ICE presence in our jails. Before, where it was probable that an individual could be released after serving their time, it is now likely that they will be immediately earmarked for further immigration detention. The worst aspect of this is that immigrants may not be given access to full due process rights as the administration has indicated that aggravated felons will be subject to expedited deportation without a hearing and it will start working on instituting removal hearings at correctional facilities.

Previously if you were U-Visa or T-Visa eligible, you had every incentive to speak out as it was easy to obtain a U-Visa or T-Visa. In the current administration, it has increasingly become difficult. A necessary precondition for either the U-Visa or the T-Visa is law enforcement cooperation. Now, immigrants are between a rock and hard place: Do they cooperate and risk detention or do they remain silent? I expect that this will cause a chilling effect on wage and hour claims, wage theft, and civil trafficking claims.

In addition, the collection of data on victims of crime by immigrants will increase anti-immigrant sentiment. Further, the collection of data on non-compliant localities and municipalities will lead to the Federal defunding of many of those cities and states. What this means for us is that sanctuary ordinances, which have already been on rocky ground due to Federal Preemption of immigration law, will likely fall in cities without strong support for immigrants' rights. Clients will therefore have to think twice before they go to the police or work with a public agency or an attorney.

In the criminal context many attorneys will have to be concerned with the higher likelihood of detention. Since the new executive order makes all immigrants a priority for removal and the administration has a large focus on "criminal acts," criminal defendants will have a higher likelihood of being detained or face other enforcement. In addition, as Secure Communities takes hold, the possibility of further detention for persons convicted of a crime, after their criminal sentence, is likely to be pervasive.

CONCLUSION

We now have an administration where immigrants are being targeted. Muslim immigrants have taken the brunt of the initial orders, but the orders have now been expanded to address anyone who is undocumented. As attorneys, we should keep up to date with respect to any Executive Orders that are being issued. A client, who is not a priority one day, can quickly become a priority based on one act. Therefore, we need to make sure our clients are well counseled to avoid committing any crimes or lying to the administration. Attorneys with undocumented clients have to expect a chilling effect on the pursuit of litigation and recourse by their clients against bad actors. Due to the increased enforcement priorities, it seems as if the government is less interested in getting cooperation from undocumented victims than in removing them from the country. As such, we should try to keep abreast of any further immigration developments and inform our clients. In this administration, attorneys should become informed in the relevant law so that they may serve as a shield for their clients.

— Robert Uy is a Partner at Uy Law Group and focuses on Immigration and Family Law. He is on the Board of the Asian American Bar Association, the Advisory Board of the Filipino Bar Association of the Greater Bay Area, and a Parks and Recreation Commissioner for the City of South San Francisco.

Get to know your judges...

Hon. Barry Goode

by Carole Bosch

In the complex litigation department, Judge Goode manages a docket of 300 cases on average. He hears all class actions, all PAGA cases, all CEQA cases, all cases with eight or more separately represented parties, various complicated writ proceedings, many construction defect cases, and some securities cases — and he handles limited jurisdiction cases as well. Judge Goode explains that sometime after the courts consolidated in 1998, a limited jurisdiction department was created to replace the municipal courts' civil function. However, along with other colleagues, Judge Goode thought it would be more efficient for unlimited jurisdiction judges to handle the limited jurisdiction cases. Mostly collections cases that often get resolved by default judgment, limited jurisdiction cases take more of the clerk's time than they take of the judge's time. The reorganization allowed for better allocation of resources.

And court efficiency in light of dwindling resources is foremost on Judge Goode's mind. "If you reduce resources, you trade time for money. Litigants have to wait longer. We have become more efficient, but we can never be efficient enough to offset all of the cuts we sustained."

Budget cuts remain a big problem in the Contra Costa Superior Court. Judge Goode says that, "Local revenues have gone down significantly as a result of, among other things, the traffic amnesty program. Whether or not it is the right thing to do as a matter of public policy, the result is clear; our court has less money with which to serve the public." Stepping back, Judge Goode comments that the judicial branch is the only branch of government that has conducted enough studies to know what it costs to run itself. "We know we are not getting what we need to run the third-

branch of government in a first-world democracy. No other branch in government can say this as thoughtfully as the judicial branch can. But it is not resonating."

Judge Goode notes that in April 2013, the Judicial Council adopted the Workload Allocation Funding Methodology (WAFM), a new formula to determine California county court budget allotments based on a three-year average of filings by case type and court resources needed for those case types. Phased in over a number of years, WAFM is gradually replacing court budgets that were based on historical patterns dating back to the times when counties were still responsible for court budgets. WAFM aims to level disparities among counties arising from different historical levels of funding and disproportionate population growth. That has resulted in serious impacts in Alameda County, and recently, in Contra Costa, Judge Goode explains, "We are beginning to suffer a bit of that dislocation."

"I realized as an Assistant Presiding Judge how important the budget is," says Judge Goode. "When a fire goes through the forest and clears the underbrush, it improves the health of the ecosystem. Raging forest fires however destroy the ecosystem. And we suffered raging budget cuts." Judge Goode adds, "The state has an obligation to provide a proper judiciary. When it does not, the burden falls on litigants throughout the state. In many counties, litigants need to wait longer for hearings, for mediation, and for access to justice in many other ways. If a litigant disputing child custody has to wait three-to-six months for a court mediator, it is not right." In a nod to lawyers, Judge Goode comments on how the Contra Costa court has benefitted from the "incredible volunteer spirit of lawyers who serve as temporary judges, mediators, discovery facilitators and otherwise."

In the complex litigation department, Judge Goode attempts to offset some of the delays arising out budget cuts by spending of lot time managing cases. "Part of the art is to try to help people figure out what's going to help them resolve their matter," he says. "I want to understand the details enough to deal with the case properly. I tell lawyers, 'you live with the case, I just visit it.' So if you want to educate me about your case, I'm often willing to set a time to have you come in and talk about the case. Bring maps, pictures, documents; whatever will help. You do not need to bring an MSJ to 'educate' me." In class actions and PAGA cases, Judge Goode spends a lot of time on trial plans. In other cases, he helps parse out issues.

To that effect, Judge Goode appreciates lawyers who "know their case fully, have all the facts and law at their fingertips and know what to do with them. I like people who recognize and fairly represent what the law says about their position, who candidly acknowledge that this is an undecided issue of law or this is on the edge of what's been decided." He also values lawyers "who are zealous about their case, but are not so zealous about themselves."

On the flip side, Judge Goode finds that it does not help when counsel repeat their argument multiple times in a brief. "I tend to get it the first time I hear or read it," he says. "I am very conscious of the fact that the more time I give to one case, the less I can give to another. Don't say something three times. When you repeat things over and over, it's not helpful." His advice to lawyers: "Choose carefully and thoughtfully what to fight over. Stake your position on the high ground of your case and be willing to concede the things that do not really matter."

Bosch: What motivated you to become an attorney?

Judge Goode: It is no easier to explain than why I like vanilla ice cream. It was largely instinctual. As long as I can remember, I was interested in current events, politics, and public issues. The more I thought about those things, the more I realized that the law was at or near their foundation. By the time I was in high school, I had pretty well settled on becoming a lawyer. Growing up in a household in which there was a lot of emphasis on education and discussion probably had something to do with that.

Please tell ACCTLA members about your work experience.

I have been fortunate to sandwich a large chunk of private practice between two slices of public service. After law school I went to work for Adlia Stevenson III, who was then serving in the U.S. Senate. In late 1974 I moved to California and joined what was then McCutchen, Doyle, Brown & Enersen — where I stayed for about 25 years. I was a civil litigator. At first I did a variety of cases, including securities, contracts, antitrust, real estate, intellectual property, bankruptcy and more. In the mid-1970's I started doing environmental work (pro bono) and by the early 1980's three of us formed one of the first environmental law groups in the country. After about 1983 or 1984, I spent almost all my time doing environmental litigation. I litigated cases throughout California and around the country. For many of those years, I chaired the firm's pro bono committee. I also did some teaching, writing and lecturing.

In January 2001, Governor Davis asked me to become his legal affairs secretary. I did, and remained in that position until November 2003. There were three main strands to my work. 1) I was the in-house lawyer for the governor and the senior staff in the executive branch. 2) I headed the office to which all of the attorneys in the executive branch (other than the Attorney General's office) reported. Any legal problem in the state government that couldn't be resolved at the department or agency level made its way to my office. 3) I was the point of contact between the governor's office and the attorney general's office on all litigation the AG's office was doing for the state. If you are an attorney interested in public policy, it's the best job in state government.

So first I had an introduction to the federal government; then a fairly broad grounding in commercial litigation; then a concentration in environmental law; and then quite an education in state government. As a result, I have worked in the legislative, executive and judicial branches; both the state and federal government and in the private sector.

What has been your greatest accomplishment in your legal career?

I have been very lucky, and have gotten to do many challenging, interesting things. I suppose the most challenging was supervising the legal affairs of the state.

What has been your greatest accomplishment in your personal life?

In my personal life, it would be raising two kids who are now adults.

What do you like to do for fun?

Many things. My wife and I enjoy traveling, theater, reading and entertaining friends and family at home. Every year we go to a dude ranch for a week in the Eastern Sierra where we ride, hike and just relax with old friends. I have a big vegetable garden and enjoy doing masonry and other projects around the house and yard with my adult son who still lives in San Francisco. I am also an amateur historian and have been working on a research project that will either be an article or (on the five year plan) a book. ◆

— Carole Bosch is a partner at Minnard Bosch LLP.

Hon. Ioana Petrou

by Jayme L. Walker

Walker: I understand that your background is psychology and I thought that was an interesting background for a lawyer and judge. Did you have any particular area of focus?

Judge Petrou: I studied psychology as an undergraduate at Cal. I have always been fascinated by what makes people tick. I had no clue that I would be attending law school and so I did not study psychology with an eye towards the law. I didn't have a particular area of focus, although I took a number of classes regarding child development and theories of attachment. I also wound up working with a graduate student and helping her put together data regarding parental behavior and attachment. It was extremely interesting, and in a way, it helped me do a decent job, at least I hope I did a decent job, in my family law assignment.

My psychology degree provided some helpful background for the work I did as an attorney, because a lot of my time as an attorney was time spent investigating cases and trying to figure out what actually happened, who was telling the truth. That's always the perennial question, who's telling you the truth, both from their own view point and objectively.

And now as a judge I regularly do bench trials. So I am often called upon to be not only the arbiter of the law but also the fact finder in a case. I certainly don't feel omniscient, but I do feel pretty comfortable assessing what people are saying and trying to make determinations as to who is being truthful and what actually occurred. I am sure that studying psychology, coupled with years of investigatory work as a federal prosecutor and attorney, is why I feel comfortable.

You've been named Alameda County Judge of the Year for ACCTLA and your acceptance speech involved the importance of access to

justice. What are your thoughts about the decline of the civil jury trial and if you think that the fact that most cases settle is a problem that needs to be fixed?

That is a big question and I don't think we have enough hours to go into my thoughts about the decline of the civil jury trial. The problem is not simply that cases settle too much - in the vast majority of cases, the vast majority of the time, the people involved are best served by resolving the case. However, the right to trial has been eroded by many factors. It is hard to get cases to trial in a timely manner, in no small part due to inadequate court funding. When you get to trial, it costs a lot, in part because of how long they take. There is the increase in mandatory arbitration provisions. And, very unfortunately, the public has negative perceptions about jury duty despite the fact that once people serve they typically find it to be a positive experience.

One of the outcomes is that we wind up with case law that isn't as well developed as I would like to see because the disputes are not going through the appellate process. I'm very happy there's an appellate process. It's always interesting to me when an attorney will say something to me to the effect of "If you rule that way, I'm taking it up," as if that's going to dissuade me somehow. I welcome that because I don't always know if I'm right. I can't be positive all the time. There are times it's a grey area and it's great for the issue to go through the appellate process.

Back to the difficulty of getting to trial, there are so many factors. One is the courts are woefully underfunded. Alameda County is woefully underfunded. We have been seeing decreasing funding over the last few years and don't see a light at the end of tunnel. We've been doing with less and less, we have pretty much maxed out on finding and implementing efficiencies, and yet we are looking at continuing to have less. This upcoming Monday I have a dark day — my department is closed. Why do I have a dark day? Because we don't have enough funding to have the number of clerks we need and so we have rolling dark days through the civil direct calendar and complex/asbestos departments. We are closed on a day that we want to be open because we don't have adequate funds for adequate staff. And the staff we do have is stretched extremely thin. I think that there needs to be more public discourse looking at how the underfunding of the court impacts the ability to go to trial and impacts access to justice.

I think the attorneys have to look at themselves a little bit as well. You know, is it always in their client's best interest to settle when they're telling them to settle? We're all human beings with conflicting demands. An attorney who is successful and has a lot of cases is sometimes put in a difficult situation — you can't be trying five cases at once.

There is also the problem that trials simply take too long. It's difficult for jurors to be here for as long as they need to be here. It's difficult to get a diverse jury with lengthy trials and we all know that justice is best served by diversity. And it's difficult for the litigants to be here. I really hope that counsel start taking more and more advantage of expedited jury trial proceedings. I don't think it makes a whit of difference as to what the actual outcome is and so it's less time and money for the same outcome.

Have you presided over an expedited jury trial that was not a limited damages case?

I have not, although I really would like to as I think it would be a benefit for everyone involved. Counsel does not need to follow exactly what the expedited procedures are for the limited cases that are mandated to go the expedited trial route. You can decide amongst yourselves, we're going to limit it to two experts on each side, we're going to limit the number of challenges, or the number of jurors. You can pick and choose and you can maintain your appellate rights. I hear a lot of justified complaints about how long trials take, and then I want to turn the tables a little bit and say, okay, what can we do, how can we work together to make this a speedier and still fair and complete process.

I understand your background is as an AUSA in the criminal division, but I also saw that you had some background at private law firms. What kind of work were you doing at those firms?

After a brief stint at Proskauer Rose in San Francisco doing general litigation — they promptly closed the office after I joined — I moved to what was then a four office California law firm called Weisberg and Aaronson, which was acquired by Foley & Lardner. I spent my time doing a combination of employment and general litigation, primarily representing health care entities including hospitals, medical centers, and long-term care facilities. It started me down the path of health care in general, and ultimately I wound up being the health care fraud coordinator for the Northern District of California. For the gap between my job as an AUSA in Brooklyn (Eastern District of New York) and here in New York, I worked at O'Melveny & Myers and focused primarily on white-collar defense.

What are some of the challenged of being a judge and being in civil versus criminal versus family law, has that been a learning curve for you?

It's all a learning curve. I don't know that it's really civil versus criminal versus family as much as just a general learning curve about what is your style, how do you handle the emotional aspects of it, how do you move things forward in a way in that you feel comfortable, how do you get people decisions issued without all the information you want to have — because I think the worst thing is to not decide.

Regardless of the assignment, I really enjoy being part of the process whereby you help ensure that people can get here, that the doors are open, that they have an opportunity to be heard, and that the procedure is fair, no matter what the outcome is at the end, I want the litigant or attorney to feel like they had their say, they had their day in court, that they were heard and understood, even if they weren't agreed with or things didn't go their way.

At the ACCTLA dinner, you talked about trials as being a search for the truth. I think we can sometimes lose sight of the fact that it's a search for the truth, rather than just trying to win and that might contribute to some of the incivility that's been a conversation lately among attorneys and how that contributes to work stress and the lack of civility that sometimes can pervade our profession.

I really enjoy trial attorneys. I enjoy people who want to get up and tell other people's stories. I enjoy the public back and forth you have in a courtroom. But we all — and I'm going to let myself in because I used to be a trial attorney — we all have a certain amount of ego. You have to in order to walk into a public space, stand up, speak, argue, and wait to hear if you win or lose. So we all have a certain amount of ego or we wouldn't be in this profession. Sometimes that can get in the way when it becomes a personalized feeling of it's me against you — it's all whether I'm winning / I'm losing. That can quickly lead to the extremely unhelpful place of counsel attacking each other on a very personal level. It distracts completely from the case at hand and it's extraordinarily

continued on page 24

Judges' Night

Claremont Resort & Spa • Berkeley
January 17, 2017

Shawn Tillis, Nick Casper, Erika Jacobsen White, Jayme Walker

Congratulations to:

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Hon. Barry Goode

Alameda County Trial Judge of the Year
Hon. Ioana Petrou

Dorian Peters, Angelina Clay, Hon. Delia Trevino, Hon. Don Clay

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continued from page 21

unpersuasive, but it does happen, with regularity. I always try to in some way remind attorneys that it's not in their client's best interest. I think sometimes people feel like they have to be very aggressive or attack the other side because they're trying to do right by their client and they can lose sight of the fact that it is not doing right by the client. It's actually obfuscating the situation; it's making it harder for me to listen to the words I need to hear; it's making it harder for me to understand what actually happened; it's making me question whether you're giving me an accurate account because you're being so emotional about it.

We've been talking a lot about a lot of serious issues, so I think I'm going to try to lighten it up a little bit. I know you're a foodie, tell me about that?

There's no cuisine I don't like and as an Oakland resident I can have it all. I enjoy going to really fancy places and really not so fancy places. I cannot recommend any particular restaurants because of ethical constraints, but I would encourage everyone to support our wonderful local neighborhood restaurants even if I may go overboard. I sat down once with an accountant who tried to put together a family budget for me and who was absolutely horrified about how much money I spent on food. Yes, I'm still spending that much — and more. Sharing a meal is a wonderful way to spend time with people and I would much rather spend my money on that experience and joy than on objects. My furniture is run down, but my meals are great.

What books have you read recently?

I read a book every night. I don't sleep enough, but I do read every night. And I tend to not read a whole lot related to the law at night given how much I read during the day. But I really enjoyed Notorious RBG, a great mash up of serious scholarship and pop culture. My favorite of the past year or two was the series of books by Elena Ferrante known as the Neapolitan series. I have never read a more insightful or thoughtful examination of female friendship.

What kinds of music do you like?

All kinds of music. I like a huge array of music and it's been an important part of my life from playing piano as a child through the punk scene in my teens and 20s to just about everything now. I was spoiled by going to so many shows as I got used to seeing bands like Green Day with all of 40 other people. I still enjoy going to small venues although this last year I broke my small venue preference for Rihanna, Beyonce, and Prince. It was a privilege to see Prince's one man, and sadly, final concert tour.

I don't go to shows anywhere near as much as I used to, but in the upcoming weeks I am seeing both Social Distortion and Brandi Carlile. I've got a 15 year old. I know what's on the radio now and I think that's great too. I'm sure I'm going to become a grumpy old lady about some things, but probably not about music.

I liked the ska scene in Southern California with No Doubt…

I went to high school with Gwen Stefani. She was a year behind me and I was friends with her brother and my classmate Eric Stefani, who was originally in No Doubt. I was in Anaheim when that whole scene was going on. They were so great, right in the beginning. Super fun, but them too, I'd see them with about 40 other people. My younger brother had a band and he opened for No Doubt. Music has always been extremely important to me.

Well, thank you so much Judge Petrou. Congratulations on Judge of the Year.

I was deeply grateful and appreciative to get the award. Thank you. ◆

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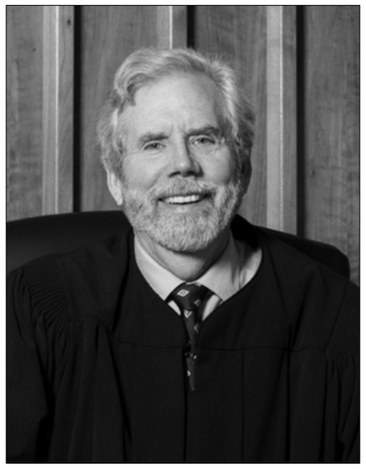
Hon. Paul Herbert

by John Hill

Roll up your sleeves and plan to go to work, if you have a case in Judge Herbert's court. He expects lawyers to be diligent in prosecuting their cases. What impressed me about Judge Herbert is that he was an experienced civil litigator/trial lawyer before being appointed and that he will be putting that knowledge to work in running his department. The good news is he also knows what it's like to be a busy trial lawyer and he will let the lawyers know about 11 days before the scheduled trial whether you are actually going out. Who wants to work all weekend and then not go out?

Hill: How long have you been a Civil Direct Assignment judge?

Judge Herbert: I began this assignment on February 1, 2017. This move is a mid-cycle judicial reassignment made necessary by the retirement of Judge Robert Freedman. I moved to this assignment from a misdemeanor criminal jury trial assignment at the Wylie Manuel Courthouse. I fully recognize the "very big shoes" I have to fill — following Judge Freedman in this assignment. He has well-earned the enormous respect of the civil bar and his judicial colleagues alike. He has also been extraordinary in his service as a mentor to newer judges, as a colleague in the conduct of the court's day-to-day business, and in his service to the court as an institution. We all miss him a great deal, but are happy for him in being able to enjoy his retirement.



As an attorney, what was your experience with respect to civil practice and civil trials? Has that been of benefit in this assignment?

In my civil practice at the Ropers firm, I was initially assigned to the firm's "Appellate Department." This department also handled all of the firm's insurance bad faith and coverage litigation. Consequently, most of my civil trials involved the litigation of insurance-related issues. But my department also handled the firm's class action cases, as well as the non-insurance defense cases assigned to the firm's "masthead" partners. Later, as a partner, I was part of the team that handled the firm's product liability cases on behalf of plaintiffs injured by the first generation of silicone gel breast implants. In subsequent years, after joining the Charles Louderback Law Firm [which soon merged with Payne & Fears LLP], I litigated a variety of employment cases for executives, as well as for employers.

So I have substantial background in civil litigation across many subject areas. It has been a great mix of experiences on behalf of plaintiffs and defendants alike. For example, my experience with insurance cases helps me to communicate effectively with claims representatives when I am handling civil settlement conferences. I understand how the handling of insurance claims and cases has changed over the last 35 years. Claims are often adjusted by claims committees or claims managers, rather than by the individual claims adjusters responsible for day-to-day servicing of the claim in question. In-house insurance defense lawyers now have much less discretion in determining whether cases will be tried or settled. Instead, authority for the disposition of claims now resides in the committee's decision. There is little or no room to move beyond a pre-MSC valuation for an individual claim already determined by the claims committee.

When you do set trials, how far out are you setting them?

Generally, I am setting trials about 10 months to one year away from the trial scheduling conference, after receiving input from all sides. My approach is to encourage and assist the parties to achieve a negotiated resolution of their dispute at the earliest possible date. Obviously, the parties are in control of whether a negotiated resolution is ever achieved. In my Case Management Conference, I will ask each side how much time they need to complete the discovery they believe will be necessary to sit down and bargain effectively for a negotiated resolution. And then I will set a settlement conference with one of our settlement judges in accordance with the parties' indicated overall time frame.

Next, I will ask each side how much additional time they need to complete any additional discovery (including expert discovery) to try the case. Based on the responses received from all sides, I set the trial date and other associated pre-trial deadlines. I do not try to jam them into unrealistic dates, but I encourage them to be efficient in the preparation of their cases for earnest settlement discussions; and thereafter to remain efficient in preparation of their cases for trial.

In terms of the preparation of the CMC statement, is there anything you want attorneys to know that would be helpful to you in your handling of the CMC?

Well, I do need to know when they are otherwise occupied with vacations and trials so I can make my best effort to accommodate them. The Judicial Council CM-110 forms required for the initial CMC is not helpful for subsequent case management conferences. Instead, I prefer the parties submit a "Joint Statement," provided in direct narrative format, using conventional pleading paper to update me on any scheduling issues, discovery status, upcoming motions, and efforts to settle the matter.

I expect the lawyers to "meet and confer" early in their cases and before each CMC. I want them to work with one another to facilitate the essential discovery that each side believes it needs in order to bargain for settlement. California Rule of Court 3.724 imposes an obligation on the parties/attorneys to meet and confer before the initial CMC on all key aspects of the dispute. But, in truth, most parties fail to do so.

I believe it benefits the clients and attorneys when the attorneys begin such communications early in the case. Ultimately, they are going to have to communicate with one another because the process demands it. For example, if a case isn't settling and the parties are preparing their trial submissions, under our Local Rule 3.35 the attorneys have a lot of things they must confer about before coming court. So they might as well "break the ice" and start communicating with one another at the early stages of the case. In addition, early communication fosters civility and professionalism between the attorneys, which I absolutely expect between all counsel in cases before me. Nothing disappoints me faster than bickering between the lawyers.

*Is there a way to find out **before** the scheduled first day of trial if your case is going to go out, so the lawyer can get his witnesses lined up and plan to work all weekend, rather than going to the beach?*

Yes. I always schedule a Trial Management Conference approximately 11 days before the trial date at which time I am able to provide the lawyers with a very good estimate of whether the case will start as scheduled. We also go over expected witnesses, motions in limine, use of audio-visual equipment, the handling of exhibits, and all other trial process questions.

What is happening with trials? What percentage of time are there no trials in a week and how often are cases that are set, continued? If continued, how far out are they usually continued?

Nearly, all unsettled cases are going out to trial on time. Most personal injury cases settle before trial, resulting in courtroom availability to try those cases that carry a higher likelihood of needing to be tried. Also, in the unusual situation where I have more than one trial going forward in the same week, one of the cases can be reassigned to one of our other civil trial departments. The direct calendar judges assume cases from one another in those circumstances to further assure cases go out on time.

What is your schedule for trials?

My jury trials run Monday through Thursday from 8:30 am until 2:00 or 2:30 pm, depending on whether the jury needs a short (30 minute) snack break. Court trials run Monday through Wednesdays 9:30 to 4:00 pm, and Thursdays 9:00 to noon. Thursday afternoons and Fridays are reserved for case management and "law & motion" hearings.

With respect to trials, do you strictly follow Local Rule 3.35? The rule states that it is to be followed, unless "modified by the judge to whom the case is assigned." Have you made any modifications? Is there any section or are there sections of the rule that you are particularly insistent that the lawyers follow and others that you are more lax on? Will you be publishing any modifications?

Yes, I strictly follow Local Rule 3.35. When setting the trial date, I also set the specific deadline for parties to file and serve all ▶

the submissions required by Local Rule 3.35, with hard courtesy copies to be sent to Dept. 20. Typically, I set this deadline about 18 days before the trial is to commence. I expect the attorneys to meet and confer regarding their respective exhibits, witnesses, any jury questionnaire, jury instructions, the jury verdict form, designation of deposition excerpts, etc. long before we sit down for the Trial Management Conference.

Presumably, by that point in the litigation, the parties have already tried, and failed, to resolve their dispute using the active ADR processes we planned together from the first phase of the case. In that event, I expect the parties to complete all trial preparation in the orderly progression essential to allow the trial to commence on the actual scheduled date. Rule 3.35 exists for this purpose. Otherwise, trials would stack up from week to week with no hope of getting them out on time. I think attorneys, parties, and witnesses are better served by understanding that their case is going to be tried on time, and I think they appreciate it.

CCP 222.5 states that a "court shall not arbitrarily or unreasonably refuse to submit reasonable written questionnaires, the contents of which are determined by the court in its sound discretion, when requested by counsel." How do you approach the request for written questionnaires?
I am fine if the parties want to use a questionnaire to assist with voir dire. I expect the attorneys to meet and confer about it in advance of the Trial Management Conference, so we can go over it together before the date set for trial to commence.

CCP 222.5 also states with respect to attorney voir dire "Specific unreasonable or arbitrary time limits shall not be imposed in any case. The trial judge shall not establish a blanket policy of a time limit for voir dire." What is your approach to attorney voir dire? Plaintiff attorneys feel that voir dire is especially important in view of the considerable efforts over the last many years by so called tort reform groups to bias the public against lawsuits.
I understand and appreciate the attorney's interest in participating directly in voir dire. I do not set a blanket time limit in civil cases, but I encourage attorneys to shoot for about 30 minutes per side. I will have questioned the panel of prospective jurors extensively before either side conducts voir dire. The attorneys will have gleaned considerable insight into each prospective juror's personality and mindset before the first attorney rises to question the panel members. I hope this enables

> I think attorneys, parties, and witnesses are better served by understanding that their case is going to be tried on time, and I think they appreciate it.

the attorneys to focus on those panel members about whom they have concerns. I'm also happy to ask any difficult or awkward questions that the attorneys would prefer not to ask the panel members.

I do care very much about our selection process not wasting the time of the panel members. So I prefer the attorneys not ask duplicative questions.

Where you do see inexperience or unartfulness in voir dire or other aspects of trial like qualifying an expert witness, how do you prefer to handle such situations?
My judicial philosophy is to let the respective lawyers try their own cases, and to stay "out of the arena" myself. I see my role as being an umpire, not as a participant, so I will likely refrain from taking lawyers into chambers to instruct them on how to fix their questions, etc. The exception may arise if we are wasting too much of the jurors time with squabbling over the form of a question, foundational issues, Evidence Code 352 objections, and the like.

Are MSJ's keeping you up nights? Do you have any help from research clerks? How much?
Not yet, but I am only a few months into this assignment. Each judge is allocated half-time of one research attorney, who works exclusively on law and motion matters. I pay particular attention to the motions for summary judgment, and look at them in advance to identify key issues.

Attorneys should focus on the preparation of the Separate Statement and the response thereto, being careful to cite all evidence in support of the assertions they make there. A wise appellate justice once told me "If a material fact isn't stated (and supported) in the Separate Statement, then it doesn't exist." Those are the documents in a summary judgment motion where "the rubber meets the road" so to speak.

Are discovery motions a problem in terms of demands on your time? Is the Pilot Discovery Facilitation Program referenced on your website helping at all?
Thus far, discovery motions have not unduly burdened my time. The standards for discovery are well established, so it does not take undue judicial time to rule on those motions. In conjunction with their obligations to meet and confer amongst themselves, I am willing to make myself available to the lawyers, without the need for a formal motion, to provide guidance on how their discovery dispute would likely be resolved by the court. The attorneys only need to jointly email my department at Dept.20@alameda.courts.ca.gov to schedule a conference call with me in such instances.

What can you tell the attorneys who practice before you how to be successful in your department? And on the other hand, what can you tell them would cause them to be unsuccessful in your department?
To be successful in my department — be prepared (including doing your legal research); be reasonable; be concise; be professional; be courteous (especially with court staff); and meet and confer with opposing counsel on all matters prior to seeking court intervention. I insist on attorneys acting with civility in my courtroom at all times, and will not hesitate to admonish anyone who fails to do so. I am particularly sensitive to this issue whenever jury members are present in the courtroom.

At the last bench/bar meeting, the PJ said that there are going to be insufficient staff for the courts on some days and days when the courts will be forced to be dark. Have you seen that yet and what impact has it had?
Yes, we have already been forced to reduce the hours that the Clerk's Office is open to the public, as well as initiate "dark days" in the civil departments due to clerk shortages. We are badly underfunded. I am forced to close my department one court day every two months so that my clerk can be available to other civil departments to cover absences due to illnesses and vacations. We are currently in a "hard" hiring freeze due to budget cuts imposed by the formula used to allocate funding among the various county court systems. Each year since 2014, more and more of our budget has been reallocated to shift money to counties in the southern part of the state.

The problem is compounded because laws enacted at the state level now prevent us from retaining more than one percent of our annual budget from one fiscal year to the next, which amounts to less than one month's payroll for our court. Until this law was enacted, we had been able to retain a strategic reserve to use to cover shortfalls in funding year to year. It is paradoxical that our state officials understand the benefit of our state government retaining and growing a strategic reserve of funding for the state's budget year to year to cover downturns in funding, but prohibit county courts from using that same prudent paradigm when managing our own budgets. So, instead, we are forced to reduce access to justice in a host of ways such as shortening hours in the Clerk's Office, darkening courtrooms certain days, and having persons "pay as they go" for access to documents on the court's website, at a time when people need access to justice more than ever. It is unacceptable and it is unsustainable going forward.

Are the national political divisions that seem more extreme than I've ever seen them having any effect on the process of the civil courts in any way that you are seeing? In the juries for instance?
Last year, when presiding over criminal trials, I observed the effect that the controversy over alleged police excessive force was having on prospective jurors during voir dire. So I will not be surprised if developments in national politics impact the courts going forward in many cases.

How optimistic or pessimistic are you that given all the financial problems the courts are facing, the political divisions in the country, the problem of lack of civility among some members of the bar, the increasing ideological divisions in the Congress when it comes to voting on judicial nominees, that the courts of the country can continue to administer the rule of law?
I think the crucial role the courts play in maintaining the rule of law will be enhanced during this period in the eyes of the public. I suspect the public may develop a greater appreciation for the role the courts play in checking the power of the other branches of government. To me, this period feels more like the 60's decade of activism than any time since then.

Certainly, the federal judges are going to have a lot of important issues they will need to rule upon during the next four years. But national politics are also having an effect on our county courts. Our Chief Justice recently wrote to the national administration and then spoke to our state legislature about the "access to justice" problems that arise from Immigration and Customs Enforcement "ICE" officers taking persons into custody in our county courthouses for being suspected of immigration violations. The persons being taken into custody at our county courthouses include witnesses and victims of crime who are coming to court to testify, in addition to persons charged with criminal offenses. Imagine the impact such arrests will likely have on the willingness of immigrants and other ethnicities to come to court to seek redress of ordinary disputes with their employers, landlords, or when they are victims of crime.

You are asking whether I am optimistic or pessimistic. I can only respond that I am uncertain. Nonetheless, I am glad that the courts, federal and state, will be here to moderate the turbulence that I expect our society will experience over the next several years. ◆

— John Hill has been practicing in the Bay Area for 47 years. He is the principal of the Law Offices of John E. Hill, APC, a nine-lawyer firm in Oakland that concentrates on serious personal injury, workers' compensation and employment law.

Hon. Margaret Fujioka

by Winston W. Moody

Moody: Thank you, Judge Fujioka, for doing this interview for us, and congratulations on becoming a judge. First, I'd like to ask you who your professional role models were when you were growing up.

Judge Fujioka: Thank you for the opportunity. When I think about role models, I think about people both personally and professionally who have inspired me to want to become a lawyer and to become a judge. And I would have to start with my family. I am part of a very large family in Los Angeles. I grew up there. My father was the youngest of twelve children, so I have lots of relatives, none of whom are lawyers or judges.

I think the event in my parents' life that really inspired me to want to go to law school is the fact that they were sent to internment camps during World War II. It was a difficult time. You know, you have to give up your home, your job, and your college education to be incarcerated for a good three-and-a-half, four years. I saw the pain and the hardship by talking to my dad about that and the fact that these were US citizens who were incarcerated, and it was justified by "military necessity." So that was eye-opening for me to learn about that aspect of my family's history.

Then my uncle Ted, who was 19 at the time, volunteered to fight in the 442nd, which was the all-Japanese segregated unit which fought for the United States in World War II. He wanted to be a lawyer someday. He was very bright, very accomplished, and he was killed in action in Europe, fighting for the country that had imprisoned his family. So, in some ways, my inspiration comes from him and

my parents and the sacrifices that they had to make to persevere and to pick up the pieces of their lives afterwards. And then of course, the loss of a life, of a dear family member, was devastating. That's what made me want to carry on that legacy, to go to law school, to become an attorney, to have the opportunity to make changes in the profession for the betterment of all.

Could you tell us a bit about the beginning of your legal career?

Sure. I started out as an administrative hearing officer in San Francisco and then I went to the Oakland City Attorneys' Office where I spent about 18 years doing both litigation and transactional work. And then for the last six years prior to my election, I was an administrative hearing officer for Oakland, Alameda, and San Francisco. I had the opportunity to hear a wide variety of cases on many different subjects, which was very exciting and also great preparation to be a judge.

Aside from becoming a judge, what do you consider to be your greatest accomplishments in your legal career?

I think the accomplishments would be my outside activities in terms of the presidency of the Asian American Bar Association and the National Asian and Pacific American Bar Association because I believe that it's really important to better your profession. That gave me the opportunity to improve the Bar Association, not only on a local level, but also on a national level, which was very exciting. Then, personally, it would be being a mom to two great kids and a wife to a very accomplished lawyer.

Do your kids have any interest in becoming attorneys?

Not because of anything we did, but our son is a second-year law student at Berkeley Law, and our daughter is a second year architecture student at Harvard GSD, which is the graduate school of design. They're both working very hard and are very committed to their own careers. I'm very excited for them.

Excellent. So, you've been on the bench for about two months now?

About two months, yes. Give or take a few days.

What are the initial challenges and learning curves associated with becoming a judge?

Well, certainly the learning curve is steep, because I was a civil practitioner and I'm handling criminal trials, but it has been a great experience. I have thoroughly enjoyed it and I think for many judges there is a learning curve, because it's impossible to be an expert in all five areas in which you can be a judge. The areas are civil, criminal, probate, family, and juvenile, and none of us, to my knowledge, are highly experienced in all of those areas. So, constantly learning is really the beauty of the job in that you're able to have the opportunity to expand your knowledge and experience and to become a better judge in having that opportunity.

How did the different positions you held prior to becoming a judge prepare you to be a judge?

That's a great question. I think when we all look back at our lives, we think about the experiences that have accumulated and have made a difference in who we are today. I would say the best recent experience has been being an administrative hearing officer, because I was able to oversee and preside over administrative hearings that are in many ways similar to trials where you would have represented litigants or represented individuals. They could be cases that last for weeks because of continuances or they could be cases that were handled in one or two hours, but there were often multiple witnesses that were testifying and parties who were upset. Once I had a case involving a taxi medallion RFP, request for proposals, that was being challenged and four of the top ranked taxi companies were competing for those medallions, which are highly coveted, and there were 50-60 people in the hearing room that had to be managed as well. These were very hard fought hearings, so that as a hearing officer gave me the ability to handle cases that are intensely litigated.

Prior to that position, did you have any thoughts of becoming a superior court judge?

My friends in the law had said, "you should apply" and "we think you'd be well suited to be a judge." I was enjoying what I was doing too much to decide at that point that I wanted to be a judge. But I think what really tipped the scale was how much I enjoyed doing the hearings and really feeling like you've given people their day in court, you've listened to their issues, and you've gained an understanding of how your decision will impact them. I think one of the most important things is knowing your community, and having lived and worked in Alameda County for over twenty-five years, I feel that I had that connection with people and I can understand where they are coming from. So it was very gratifying to be able to resolve disputes amongst your fellow residents.

What brought you up north from Los Angeles and what do you enjoy about Alameda County?

I came up for college at UC Berkeley and then went to Hastings Law School. I met my husband when I was in law school and we decided that we wanted to raise a family here in the Bay Area. Alameda County is a great county and I really got to know it during the campaign in addition to the time I spent as a Deputy City Attorney and the Mayor of Piedmont and all the work as an administrative hearing officer for Oakland and Alameda County. It is exceptionally diverse. It has great potential economically. It is well run, and I'll say that I have that experience having worked with employees at Alameda County. Fourteen cities, 1.65 million people, it is a vibrant county and I'm grateful that I had the opportunity and I still have the opportunity to serve the county.

Could you tell us about the overlap in the skills that it takes to be a successful mayor and a successful judge?

I ran for City Council in 2008, for re-election in 2012, both hotly contested elections, where I luckily received the most votes in both races, and then was unanimously elected Mayor by my fellow Council members for a two-year term. It was a position that I didn't really seek out, but people said, "you should run because you have good municipal law experience" and "it would be something that would really benefit the City by having a lawyer on the Council." So I did run and enjoyed serving, but I considered it my extra-curricular activity giving back to my community.

There are several skills that are very useful to being a judge. One of them is the ability to listen and to thoughtfully consider opposing arguments, because there are any number of issues that come up in a community and people feel very strongly about them because obviously they affect their lives. You have to be sensitive to that as well as be efficient with everyone's time, but I will say that people in Piedmont care a lot about their com- ▶

munity. They care about how it's run and they're very well educated and they come and speak at meetings, which is a great part of the democratic process. I think the skills of listening and grappling with tough, controversial issues have been really valuable for me as a judge.

What advice would you give for attorneys coming before you in court?
Be professional and be prepared. Your reputation is everything. I think being prepared is so important because lawyers that are in trial are obviously pulled in many directions and they have a lot on their mind and they're probably juggling other cases as well. So when they come into your courtroom, you want them to be the best advocate they can be for whatever side they are on and in order to do that, they have to be extremely well prepared and that takes time. It takes many, many hours. But, those hours will really benefit you as you go forward. I think you also have to occasionally step back and say to yourself, am I professional? Am I treating everybody with respect? Am I honoring the system? Am I cognizant of the jury because the jury is there trying to do their very best, away from their jobs, away from their families and I think we need to remember that. We want to be respectful of their time.

Do you have any advice for someone who is considering becoming an attorney?
I would say do your homework. Talk to lawyers, judges, law students, and go into the profession with your eyes wide open because becoming a lawyer means spending three years in law school, studying for the exam, trying to find a job, and it's a great commitment of time, energy, and resources, so you want to have made an informed decision.

Could you tell us more about your participation in professional organizations?
I was very active as I mentioned in the local Asian Bar as well as the National Asian Bar and I have been more active recently with the Alameda County Bar Association, which has been eye-opening and really interesting. I'd like to, when I can spare some time here from work, get more involved in Bar and Judicial activities. I think they're really important for improving the profession and just making our county better. I know that the ACBA has a mentoring program, which I was the beneficiary of, because when I was trying to become a judge, Judge Leo Dorado from our court was assigned to me as my mentor. I found that experience really valuable, learning from an experienced judge. Someday I would like to be a judicial mentor myself.

What do you enjoy doing outside of your work?
My family loves to travel and even though my husband has a very busy career himself and my two kids are immersed in their graduate studies, we try to take time every year for at least a week or two and travel somewhere together. I'm hoping that we will be able to keep that tradition up, even though they are in their twenties and have their own lives. That's what I enjoy most is really just being with my family and reconnecting with them.

Is there anywhere in particular that you haven't traveled that you'd like to go?
It's a big world out there. Although our family has traveled extensively to a lot of very interesting and some would say exotic places, there are still many countries that we haven't been to, so those are the ones that I'd like to get our family's feedback on and say well, let's take a vote, where do you want to go, and let's see if we can make it there in the next few years.

Is your husband a practicing attorney?
Yes, he is a partner and the head of the International Arbitration Practice at DLA Piper.

Do you have any advice for people who are married to attorneys?
Well, I think that when you are married to an attorney you do have the benefit of the understanding of the other person, because they understand the profession, the demands, the rewards, because they're experiencing it themselves. So I think in that sense it can be mutually supportive, but I would say that we don't spend a lot of time talking about what happens at the office. There are too many other things in our lives that require our time and attention.

We really appreciate your time, Your Honor, and again, congratulations.
Thank you. Thanks for coming. And I know that the ACCTLA had a candidate forum during the campaign, for which I never had a chance to say thank you because I was in Washington D.C. at a family event and I wasn't able to make it, but another judge sat in for me, one of my campaign co-chairs, Judge Ken Kawaichi (Ret.). I don't know if you were there or not, but it was apparently very well attended and I wanted to thank you and the organization for putting that on because I think it was a great service to the membership to learn about the election.

Absolutely. Thank you very much. ◆

—Winston Moody is an associate at Gwilliam, Ivary, Chiosso, Cavalli & Brewer focusing on personal injury and employment litigation. He is a graduate of the University of the Pacific McGeorge School of Law and the University of West Florida.

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Hon. Lupe Garcia

by Denise K. Top

Appointed to the bench by Governor Brown in June 2016, Judge Garcia filled the vacancy created by the retirement of Judge Cecilia P. Castellanos. Judge Garcia's rise to the bench was anything but ordinary. She began her career in a small, private law firm and then held an in-house position at Gap, Inc. for nearly 20 years. Her advice to those of us who aspire to take the bench: "don't self-limit." I had the great pleasure of interviewing her and here's more of what she had to share.

Top: I know we have a finite time together, so I don't want to intimidate you with this first question, but I want to start by going back to 8th grade — what did you want to be when you grew up?

Judge Garcia: A lawyer. Given where I grew up, I had first hand, direct experience with what I perceived to be discriminatory behavior by people in positions of authority. I grew up in Pacoima, California, which is a part of the City of Los Angeles. I observed authority figures — like my parents' employers and law enforcement — abuse their power. It was incredibly frustrating. I wanted to understand how best to respond and how these individuals could be taught to act differently. After a number of conversations with my dad's tax preparer and talking about my frustrations, he suggested I become a lawyer. He told me as a lawyer I could argue cases to make sure people were protected by the laws, I could help make laws, and change how laws are written and enforced. I could be at the center of all of it, if I went into law.

How would you describe yourself during law school?

Frazzled. I was working and going to law school. I had a number of odd jobs, but the most memorable was working for Pahl and Gosselin Law Offices in San Francisco. I enjoyed studying the law. I found law school challenging on many different levels and requiring different skills. Balancing priorities and multi-tasking were skills I developed there that serve me well today.

What was your first job after law school?

I was an associate at Lafayette & Kumagai, LLP which is a boutique litigation firm now located in Oakland. I worked there for about 4½ years with a focus on employment litigation representing management.

What was the most important thing you learned as a new associate that you carry with you today?

"He who frames the issue wins." From Gary [Lafayette] and Susan [Kumagai]. We wrote many a MSJ in employment law and I learned it's all about framing and developing the right narrative. Gary and Susan were great mentors and remain great mentors to me to this day. I don't think I could have learned from anyone stronger in terms of litigation. As defense counsel, you are trying to paint a really different picture than the plaintiff, which is hard to do when you represent a large entity that you are trying to humanize.

What took you from a small, private defense firm to Gap's Office of General Counsel?

My clients were primarily in-house counsel, so I had a window into the work they did. With litigation, you are not working for an end product, but rather an end result. After 4½ years in litigation, I wanted to be involved in avoiding litigation. My motivation for becoming an attorney in first place was to help ensure people in positions of authority were respectful and treated people fairly. I wanted to be on a proactive side of doing what I perceived as right. So, going in-house seemed like a great next experience. I randomly cold-called a number of companies in the Bay Area and Gap, Inc. called back and ultimately offered me a job.

What was the biggest challenge for you going in-house?

The biggest challenge was learning to flex my style in terms of my clients. When litigating for someone they are in a hole, and they want to get out, and get out as cleanly as possible. When on the proactive side, you're working to influence a direction for company policies and or procedures. This requires advising clients on options and guiding them to the best outcome. It's about how you communicate your ideas to get buy in from the company to move them forward. It is somewhat of a different muscle than what I was used to in running litigation.

How long did you work for Gap, Inc.?

17 years.

What do you think was your greatest accomplishment during your tenure at Gap?

Overall, the biggest accomplishment was working in collaboration with leaders at Gap Inc. to maintain a high level of integrity in the way the company does business around the world. The company has been recognized for being an ethical organization and having policies and practices that support its ethical operations. No company is perfect, but I am proud of the work our leaders have done to live the company's values and not merely pay them lip service.

After going in house, you were committed to staying involved in civil rights matters — how did you become involved with the Lawyers' Committee for Civil Rights and what was the extent of your involvement?

I joined the Lawyers' Committee for Civil Rights of the San Francisco Bay Area (LCCR) in 2009, after Lauri Shanahan (formerly of Gap, Inc.) transitioned off the board. Initially, I was asked if I would be interested in becoming a general member. I joined as a general member and eventually transitioned onto the board. I enjoyed my time with LCCR and providing support through my in-house skills. For example, shortly after joining the board, I helped develop a multi-year strategic plan. Generally, nonprofits struggle with developing and executing strategic plans, which are important factors considered by many funders. I also offered a different perspective as a woman of color with both law firm and corporate experience, which I feel benefited LCCR at that time. LCCR was an opportunity for me to give back and support people doing what I always wanted to be a part of, which is to change the way people's behavior can be at times — not fair and not respectful of differences.

Giving back is an important way for me to stay connected to how I view myself and being part of a broader community of doing the work that has always been at the core of who I am.

When did you know you wanted to become a judge?

I always thought about being a judge, but at some point, I convinced myself that it wasn't possible because I wasn't a District Attorney or Public Defender. It was truly a limitation self-imposed.

I joined the Board of Trustees for the California State University (CSU) in 2012, after being appointed by Governor Brown. It was a lot of work, but worth it to connect in that way with the students. The majority of students at the CSU are first time college students, which is similar to my story. I found so many similarities in my life path with the students there. Being in service to the State of California was an amazing experience and drove my desire to merge public service with the law. After many conversations with my mentors and friends, I figured it out. I can't say enough about having mentors and sponsors in life, either through formal or informal relationships. I wouldn't be here today if not for them.

I applied to become a judge in late 2015 and was fortunate enough to have the Governor believe I could do this work. I was appointed in June 2016.

What has been the biggest learning curve for you in your transition to the judiciary? ▶

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There have been so many. [Chuckles.] Family law is completely new to me from a substantive law perspective. Managing a calendar is challenging, but I am getting better at it every day (most days anyway). We have a heavy calendar. On Friday I had 30 matters on calendar between 9:00 a.m. and noon. I made it happen and my clerk even high-fived me. Most matters are law and motion or requests for domestic violence restraining orders. Managing the short cause calendar is tough because in theory folks should have 15 to 20 minutes, but I want to make sure I make thoughtful decisions. It's a delicate balance.

People come here [to the family law court] because they can't find another way to solve their problem. They are looking to you [the judge] for help. I try hard to make sure they leave feeling that even if they didn't get exactly what they wanted, they felt heard and weren't rushed out the door. That, to me, is the most important thing a judge can do — have people feel acknowledged and respected, even if the judge is not in agreement.

What do you enjoy most about your current position?
Just helping people. Being in a position to help.

What has impressed you the most about the attorneys who appear in your court room?
I'm impressed and always appreciate counsel who show up prepared with a level of professionalism and civility towards the other side (attorney or pro per) and someone who is going to reduce the level of emotion in the situation. I've seen attorneys who add to the emotion in the room, which I don't find productive for counsel, the parties, or the court for that matter. In family law, there is a lot of high emotion, so it's important for lawyers to know how to present that emotion at the appropriate time — create the narrative, be compelling. Those that have a skill to deescalate the situation help the court focus on what the issues are to move the parties forward.

What advice do you have for attorneys in plaintiff-focused and civil rights firms who aspire to take the bench?
Don't self-limit. We have in Governor Brown someone who thinks out of the box and won't be tied to traditional norms. We need people on the bench who offer and can bring a diverse perspective on issues of all types. Those dealing with civil rights see more than a fair share of diverse perspectives and issues at the root cause of what ends up in our court rooms. Those same issues surface in family law, juvenile, and criminal cases. Civil rights experience, in my humble opinion, would add tremendous experience to the bench.

What advice do you have for those who will continue to appear before you and your esteemed colleagues?
The level of preparation is critical because it allows you to focus on issues before the court and address them. In family law, it's important to know how to de-escalate emotion. Professional conduct. Also, I suggest being mindful — especially with judges new to you — that the judge is weighing credibility not just of the parties but of counsel. There's a fine line between zealous advocacy and needing to check ourselves on the integrity spectrum. It would do our profession a big service to check that balance between zealous advocacy and professional integrity. ◆

— Denise K. Top is an owner and founding `partner of Top | DePaul LLP, a boutique Bay Area employment law firm dedicated to fighting for civil and workers' rights.

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CALENDAR OF EVENTS

Tuesday, May 9, 2017
Spring Social • Sequoyah Country Club

Tuesday, May 16, 2017
Board Meeting

Saturday June 17, 2017
CAOC/ACCTLA A's Game

Sunday, July 23, 2017
BBQ • Oak Picnic Area of Roberts Regional Recreational Area (noon)

Thursday, September 7, 2017
MCLE • Location TBD

Tuesday, September 19, 2017
Board Meeting

Thursday, October 12, 2017
Fall Social • Lafayette Park Hotel

Tuesday, October 17, 2017
Board Meeting

Tuesday, November 21, 2017
Board Meeting

Thursday, December 7, 2017
MCLE • Location TBD

Thursday, January 18, 2018
Judges' Night • Claremont Hotel & Spa

Hon. Jennifer Madden

by Suizi Lin

Lin: What was your motivation to become an attorney?
Judge Madden: I knew that I wanted to be an attorney when I was a teenager. I was always intrigued by the entire court process, especially trials. My mother was a legal secretary for a couple of years for two lawyers who practiced family law and bankruptcy law. I frequently talked with her about the cases that the lawyers handled and it seemed very interesting to me. In particular, criminal law has always seemed fascinating, so I knew when I was in high school I wanted to be a prosecutor. I wanted to work to help victims, in particular women and children who were victims of abuse. I recently came across my personal statement for law school admissions where I wrote about wanting to be an attorney and eventually a judge. My passion for the law has been a very consistent thread throughout my life.

Well you learn early on, so I wanted to ask you to tell us a bit more about your childhood.
I was raised primarily by a single mother and my grandparents in the Central Valley. We never had much money, so it was definitely a situation where the focus was on academics as a way to get out of my situation. My mother was very no-nonsense and stressed academic excellence above all else. I thought she was too strict at the time, but I now thank her for that. Failure wasn't an option, so I really excelled in school and loved to learn. I knew that I wanted to attend a University of California (UC) school by the time I was in middle-school. My mom said that I marched home one day and told her that I wanted to go to a UC. She didn't even know what that was, but quickly found

out and got me involved in a lot of the pre-college activities to make sure that my application was competitive. I was active in a lot of sport and activities. In many ways, it was a typical childhood but coupled with a lot of financial hardships.

Growing up, who were your role models?
My mother was definitely a role model. She was someone who made a lot of sacrifices for me, day in and out. She was very hard working and consistently made a way for things to happen on a very limited budget. She had a very strong work ethic, she always allowed me to be an individual and I was never told that I could not do something because of my background. She encouraged me to try different activities and supported every venture that I undertook.

Do you have any legal role models; lawyers or judges that who you would like to emulate?
I am lucky to have started my legal career in Alameda County, where we have excellent bench officers and equally impressive lawyers. As a new lawyer, the bench was welcoming, patient and very willing to help me as a young attorney. To be honest, law school doesn't teach you much about being a litigator or trial attorney, so the learning curve was serious as a young lawyer trying to sharpen my skills. The person who has stayed with me the whole time was Judge Brenda Harbin-Forte.

She's a great judge.
She's a great judge and an even greater person. She's is someone who mentors many people and she cares deeply about diversity on the bench. I care about that issue now and cared about it a lot as a student and as a lawyer. I first met Judge Brenda in college and reconnected with her as soon as I started practicing. I've worked with her when I served as the President of the California Association of Black Lawyers (CABL) when we discussed and pushed for inclusion on the California bench. To this day, she's someone who is a staunch supporter of diversity and an excellent mentor. Furthermore, she's a prime example of a judicial officer who works very hard on the bench, but also does a lot of work in the community.

What advice would you give young people, thinking about becoming a lawyer?
I would say "Do It." A lot of times when I talk to lawyers, they tell me that they would never want their child, or someone who they know, to be a lawyer. That surprises me because I think the practice of law is a noble profession and it was an amazing profession when I had it. I would tell them that they need to get as much experience as they can. When they're applying to law school, apply to as many schools as possible so that you have options. When you're in law school really take advantage of the internships, the externships and all the different activities that the school has to offer. I went to Boalt and was involved in trial practice classes, student government, Law Students of African Descent, moot court and was on two journals. It was important for me to have those extra-curricular experiences to really complement my legal education. I would advise them to get as much experience as possible and seek out as many mentors as early as possible. Don't just seek out someone who looks like you. You want mentors who come from different backgrounds, who can bring different things to the table when they are guiding you. Don't be afraid to ask people to mentor you and don't be afraid to ask people for help. Time permitting, most lawyers and judges are very happy to help young people. Ask us out for coffee or ask us for even thirty minutes of our time and definitely use the knowledge and experience that we have to guide what you want to do.

What organizations are an active member?
I'm active in Charles Houston Bar Association and the California Association of Black Lawyers (CABL). I've been past president of both organizations and a life member of CABL. Off and on I'm a dues paying member of the Alameda County Bar Association and Women Lawyers of Alameda County. I also do a lot of community service that's non-legal related. I have done Habitat for Humanity Builds in India and I am a nineteen-year volunteer with an organization called Charlotte Maxwell Complementary Clinic. We help low-income women with cancer who fall below the federal poverty guidelines with free alternative medicine and support. I'm also very passionate about working with youth.

Let me ask you this, if you weren't an attorney or a judge now, what profession would you have chosen?
If I excelled at math, I probably would have gone to medical school. Maybe something related to travel, because that is a passion of mine.

So, well one of my questions is what do you like to do with your spare time, if you had spare time, I mean what do you do to relax?
Work/Life balance is definitely important. I love to spend time with friends and I love to travel far and wide. Not only do I like to travel within the United States, but I like to travel internationally. Some of my favorite spots are Paris, Greece and New York.

Any destination that would be your dream destination right now?
South Africa and Thailand are definitely two on my list. I also want to go to Japan.

Well, hopefully you'll get there soon, because they're wonderful places. Well, let me ask you, what was going through your mind when you won the election to become judge in Alameda County?
Well, it was a pretty amazing night. I was with some friends watching the results. I knew that the first time to check results on-line was about 8:00, so I checked it at about 8:15. I didn't tell anyone else in the room I was doing it. I went off to a corner and checked it, and of course it was the first reporting, but it looked good. I checked it throughout the night, so over the next three hours I kept on checking it and it was really surreal. It was a moment when you've imagined yourself in this role for decades and decades, so when you realize that it happened, it was nothing short of amazing. That night and the day after the election was a barrage of calls and emails…I am still on cloud nine.

Well, they made you hit the ground running…
Yes, yes they did.

So, tell us about your assignment.
I handle a variety of limited jurisdiction civil cases in Hayward. My assignment includes small claims matters and unlawful detainers. I've already had two unlawful detainer jury trials, so that was definitely interesting being on the other side of things. I do civil law and motions, civil harassment restraining orders and domestic violence restraining orders as well. It's a mix of a lot of different civil issues, but very busy and very intense at times. I'm definitely learning a lot. It is a nice change from solely handling criminal cases for almost 20 years. ▶

Without naming any names, are there any cases that you've handled that you wish you'd handled differently?
As an attorney?

Yes.
Let me think about that….

We can also flip the question: are there any cases that really stick in your mind where it really hits the heart, hits your gut, where you're kind of conflicted about it but you know you had to do the right thing?
Well, many of the cases that I dealt with when I was assigned to the juvenile justice center were hard cases. Our recommendations and ultimately the decisions of the court could make a big difference in the life of this child. I was constantly struggling to figure out what the best option was for the child while balancing the issue of safety for the community. Our files contained a lot of information about the child, his/her family and all of the challenges that the child faced. Many were dealing with incarcerated parents, parents with substance abuse issues who were absent and challenges at school. As you may know I did a lot of work with human trafficking victims. These young ladies could be charged with serious crimes, but then they were also victims of the crime of trafficking. We constantly had to be concerned about their safety and violent exploiters who were a threat. It was challenging to engage with some of the different agencies that touched that child's life and convince them to think outside the box and be creative. Luckily, I had an excellent working relationship with the public defender Andrea Brown and we really created an innovative system of care that was different than how a lot of these cases were handled nationally. We assisted in the development of the Girl's Court and the Young Women's Saturday Program, which were both new approaches and innovative. We did good work and I am proud of that time in my career. Many of those cases still stay with me.

They can be really heart-wrenching.
They are heart-wrenching, but that assignment definitely made me a better lawyer and arguably a better person. I was allowed to be creative and luckily I worked in a District Attorney's Office that was not tied to traditional approaches for new challenges. Juvenile justice is truly about working towards rehabilitation and to really achieve that, in my opinion, you have to think outside of the box.

I was constantly struggling to figure out what the best option was for the child while balancing the issue of safety for the community.

You may have already answered this question, but is there a case that you are extremely proud to have worked on?
Yes, let me think about that, there are so many in a 19-year career. There was a case that I was assigned when I was in the Domestic Violence vertical unit. The victim was a teenaged girl who was severely assaulted by her boyfriend. This was over thirteen years ago, but I still vividly recall the first time that I met with the victim and her mother. Her mother was extremely worried about her daughter testifying and I thoroughly explained the court process and what they could expect. Ultimately, the case resolved once we were sent out to a trial court. The amazing thing is that I kept in touch with the victim and her family over the years. One of my proudest moments was seeing her graduate from UC Berkeley with honors. I actually helped write a letter of recommendation for Graduate School. I'm proud of the way the case was handled, but also very happy with the fact that I maintained a relationship with her. She is a special young lady. Typically, cases resolve and you never see the victim again. You never kind of see what happens after your interaction. So, flash forward thirteen years later, to still have a relationship with her and to still see her flourishing and really rising above what happened to her as a teenager, that's something of which I am proud. There are many cases that I'm proud of, but that's one that stands out for me.

It's always good to see a positive impact you've had on somebody's life.
Absolutely.

Well, speaking of positive impact, what advice would you give either young attorneys or even seasoned attorneys who will appear before you?
I would stress the importance of being prepared. I'm sure that all judges say this, but as an attorney, especially as a young attorney, what is emphasized to you is to prepare, prepare, prepare. Know your case, know the law, expect a judge to question you about the law and be prepared to respond to those questions. I'm also sensitive to the fact that there are things that happen in trial that are unexpected, right? As a trial attorney, witnesses are late or don't come at all, the schedule may get thrown off and things happen at the last minute unexpectedly. Just let me know, as most scheduling issues can be rectified. I am relatively flexible. It's also important to stress that when attorneys come into court, it's important to be civil to each other. It is very uncomfortable when there is a lack of professionalism. When the attorneys and litigants come to Department 507, please be gracious to my staff and to each other. You absolutely have to be a zealous advocate, however, I think when things devolve and become unprofessional, that's something that I don't like. I want attorneys to be professional towards each other at all times.

Well, I want to say once again, congratulations on winning. We look forward to your long and illustrious career.
At least 20 years.

At least 20 years! I don't know if you wanted to end with anything for our readers? Whatever you want, it's a free form.
Well, I'm happy to be here. I am exactly where I would like to be. I've had a long legal career in Alameda County and I was so fortunate in getting my first real legal job at the Alameda County District Attorneys' Office. We have an outstanding group of lawyers in our area — smart, hard-working and dedicated to their respective fields of practice. Now that I'm on the bench, I definitely see things from a different perspective and I love it. As you said, I'm looking forward to a long, illustrious career on the bench and I look forward to seeing your readers in my court. ◆

— Suizi Lin is the principal of the Law Office of Suizi Lin, representing the injured in automobile collisions, motorcycle collisions, bicycle incidents, dog bites, premises liability and governmental torts. She was president of ACCTLA in 2016 and is a graduate of Loyola Law School, Los Angeles and UC Berkeley.

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Attorneys at Law

Every few days, new court decisions affecting California attorney conduct are filed. We summarize these cases on the ***What's New*** page at **www.fishkinlaw.com**

Lindsay Slatter was on the team of attorneys that established the civil liability of a government entity whose police officer raped an arrestee, Mary M. v City of Los Angeles (1991) 54 Cal 3rd 202. Jerome Fishkin argued the successful quantum meruit case to the California Supreme Court, Huskinson v Wolf (2004)32 Cal 4th 453. Together they represented Sergio Garcia, the first undocumented immigrant to be admitted to practice law, in Re Garcia (2014) 58 Cal 4th 440.

MEMBER *news*

$10 MILLION MESOTHELIOMA VERDICT AWARDED FOR DEFECTIVE ASBESTOS CEMENT PIPE

CertainTeed Corp. Misrepresented and Concealed the Health Risks of Handling and Working with its Product

On Friday, February 24, 2017, an Alameda County jury awarded a $10 million mesothelioma verdict to Michael and Cindy Burch, represented by the Oakland law firm Kazan McClain Satterley & Greenwood, in a personal injury case against defendant CertainTeed Corporation. Michael Burch, 65, was diagnosed with pleural mesothelioma in May of 2016. Cindy Burch is his wife of 46 years. The jury in *Michael B. Burch and Cindy Burch v. CertainTeed Corporation, et al.* (Case No. RG16819332, Alameda County Superior Court) found that the asbestos cement (AC) pipe manufactured by CertainTeed was defective, and the Company knew the health risks of its product but failed to warn of those risks, fraudulently misrepresented, and intentionally concealed the health risks.

About the Mesothelioma Verdict

Attorneys Justin Bosl and Arcelia Hurtado of Kazan Law represented the Burch family in the seven-week jury trial in Alameda Superior Court. After the jury rendered its mesothelioma verdict, Bosl stated, "CertainTeed misrepresented and concealed the health risks of handling and working with its AC pipe. As a result, Michael Burch was exposed to asbestos while cutting, drilling, and laying AC pipe. We are pleased with the jury's verdict and award, which will give Mr. Burch greater peace of mind."

Burch's exposure to asbestos occurred in the 1970s while working with AC pipe for J.C. Plumbing Company and Valley Engineers throughout California. His work involved cutting and beveling AC pipe primarily manufactured by CertainTeed using various hand tools and a 12-inch abrasive disc saw, which created extremely dusty working conditions. The dust contained the cancer-causing mineral asbestos. Burch unknowingly breathed deadly asbestos dust at work on a daily basis, but was never warned that the dust could cause him to contract the incurable disease mesothelioma. The jury heard evidence that CertainTeed knew asbestos caused cancer as early as 1962, but did not begin warning about cancer hazards on its pipe until 1985. On the contrary, CertainTeed advertised that its pipe was a "nonharmful use of asbestos" despite its knowledge that this was false.

About Mesothelioma

Mesothelioma is a specific type of cancer with only one cause: exposure to asbestos. Construction workers are one of the groups most at risk for asbestos exposure. Carpenters, pipefitters, roofers, cement masons, electrical workers, bricklayers, and heat insulators are just a few of the trades where workers have been known to develop mesothelioma from past exposure to asbestos. Despite the growing awareness of the health risks and reduction of the cancer-causing mineral in construction products, asbestos has not been banned and is still legal in construction and other products available today. Mesothelioma takes a long time to develop, taking 20 to 40 years or longer. Some people get this cancer from even a brief period of exposure to asbestos. Spouses, children and others living with someone who works with asbestos are also at risk of developing mesothelioma.

OFFICER KILLS FELLOW DETECTIVE DURING PROBATION SEARCH

Kellie Smith, et al. v. BART, et al.
USDS – Northern District of California
Honorable Thelton E. Henderson
October 20, 2016 (Settlement Conference)

On January 21, 2014, Bay Area Rapid Transit (BART) Detective Sgt. Thomas Smith, Jr. led a group of BART detectives and officers in a probation search of a residence in Dublin, California. The search was part of an investigation of a suspect who committed a series of armed robberies and burglaries on BART-owned property.

The entry team approached the residence and performed a "knock notice." It was determined that the door was unlocked and it was believed that someone was inside. Defendant Detective Michael Maes announced *"Police. Probation Search,"* and the team made entry into the home to clear it for suspects. Detective Smith entered first and traveled left, into a bathroom/laundry area. Defendant Maes entered second, but did not follow Detective Smith and moved forward, into the residence. Defendant Maes, and other personnel, cleared other rooms of the apartment, but were unaware of Detective Smith's location. None of the officers verbally communicated with Detective Smith, who entered as the lead for the search.

Defendant Maes stopped near the entrance of a bedroom toward the back of the apartment. He was positioned in front of the threshold of the bedroom doorway. He then observed a shadowy figure and a raised gun emerge from the closet. Without giving a verbal order/warning or retreating from his position, he fired a single round from his gun.

The figure emerging from the closet was actually Detective Smith and he was struck by Defendant Maes' bullet. It turned out that the bathroom/laundry area that Detective Smith first searched connected to the bedroom.

Plaintiff Kellie Smith, a former BART PD officer, alleged that BART failed to provide proper training on building and probation searches to her husband, Detective Smith, and other BART detectives. Plaintiff asserted that BART management was aware of this lack of training because Detective Smith specifically requested training for his detective unit. Detective Smith also requested assistance from SWAT and/or other tactical units to aid in conducting searches because those personnel had received extensive training on performing building searches in a safe manner. It is alleged that these requests were repeatedly denied by Defendant Deputy Chief Benson Fairow.

Plaintiffs also claimed that Defendant Maes' shooting of Detective Smith was an excessive and unreasonable use of deadly force. Defendant Maes committed tactical errors during the search, including but not limited to not announcing his location, failing to turn on the lights, and failing to follow basic room clearing techniques. These errors led to his unreasonable use of deadly force that was applied without warning or retreat, even though there was ample opportunity to do so. Plaintiffs asserted that forensic evidence established that Detective Smith's firearm was not pointed at Defendant Maes at the time of the fatal shot.

Plaintiffs also brought claims under California's Bane Act (Cal. Civil Code §52.1) seeking an injunction to prevent BART from forcing employees to perform tactical operations without having the necessary training. The injunction also sought to force BART to implement changes to training and policies that would promote officer and public safety.

Defendants contended that Detective Smith and all other BART PD personnel that were present during the search had the necessary and proper training to perform these basic law enforcement activities. Defendants presented evidence that Detective Smith was offered specialized training on conducting building searches, but was unable to attend the training.

Defendants further contended that Detective Smith voluntarily took command of the search and changed the scope of the search once the entry team arrived. BART claimed that it instituted a policy where detectives were only allowed to enter a residence to perform a search if they were able to gain voluntary compliance from the resident.

Injury

Detective Sgt. Thomas Smith, Jr. suffered one fatal gunshot wound to his chest.

Result

At the mandatory settlement conference, BART agreed to pay $3,100,000 to Plaintiff Kellie Smith and her minor daughter. As part of the settlement, the BART Police Department has also revised existing training policies in order to allow for officers to get more training and for an improved process of requesting training and ensuring that officers get necessary training. The Honorable Jacqueline Corley was the settlement conference judge.

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Congratulations!

ACCTLA Board Member Richard Phelps, who organized the David Ball seminars for ACCTLA, has been awarded Mediator of the Year by the San Francisco Trial Lawyers Association.