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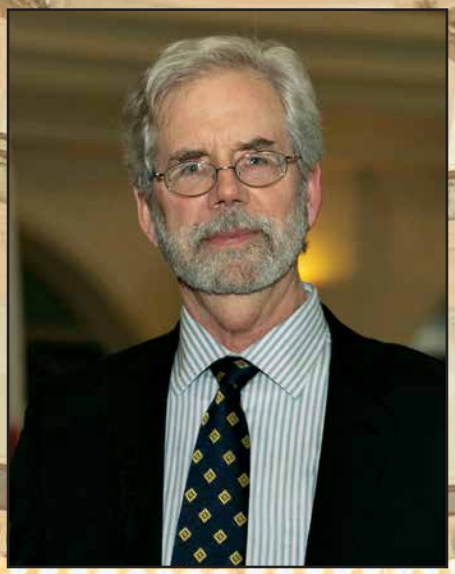
Spring 2019

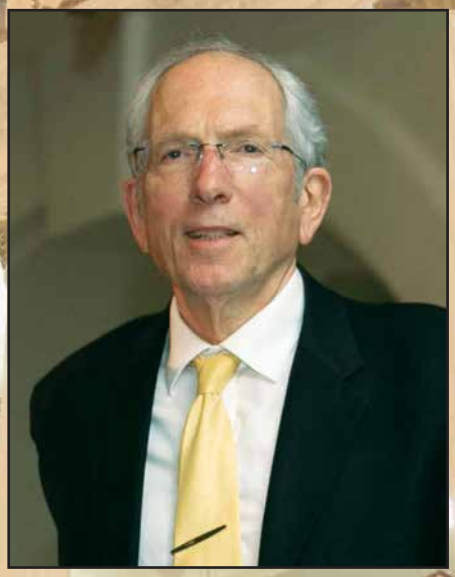
Judges' Night at the Rotunda

Hon. Paul M. Herbert



Alameda County Judge of the Year

Hon. Edward G. Weil



Contra Costa County Judge of the Year

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from the president



Erika Jacobsen White

My Esteemed Colleagues and Friends:

I am delighted and honored to serve as the President of ACCTLA this year! As I reflect on our Past Presidents, and the many titans of our profession who preceded me, it is both a humbling and daunting task. I count myself as lucky to have the privilege to lead an organization comprised of members who are not only tremendous trial lawyers, but who I count among my friends.

Thanks to the hard work and leadership of our Past President, Marjorie Heinrich, our immediate Past President Michael Gatto, Rick Simmons and our Executive Director, Mariana Harris, Judges' Night was a huge success! We saw over 250 members of the bench and bar turn out for an incredible evening at the Rotunda that was punctuated by an inspiring speech from Mayor Libby Schaaf. As discussed in more detail in this issue, we hear from our Judges of the Year — the Honorable Paul D. Herbert and the Honorable Edward Weil — who model the kind of values that we need at this critical moment in time. They each exemplify sound judicial temperament, integrity, intellectual curiosity and dedication to professionalism that stands as an example to our legal community and to the public alike. I am grateful for the hard work that my colleagues put into creating such a meaningful evening.

As I reflected during Judges' Night, ACCTLA has been a home for me both professionally and personally. The relationships that I have formed through ACCTLA have held me up, pushed me to grow and have seen my humanity in ways that continue to sustain me. The trial lawyers in ACCTLA believe in fighting for the underdog with the hope of helping people navigate a system that is often stacked against them. Fundamentally, that's what holds us all together.

This year, as we recommit to our shared values of diversity, professionalism and education, I invite you to become part of our story. Come to a board meeting. Attend our socials and events. Expand your practice through our MCLEs. Become an active member of our listserv and our community. To that end, I want to highlight a couple of key agenda items this year:

First, in order to meet our goal of moving our organizational thinking outside of the mindset of "diversity" that benefits white cis-male hegemonic norms

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and into a mindset of dismantling the cognitive dissonance of oppression, we will be holding a board training on diversity and inclusion sponsored by *Neha Sampa of GenLead/BelongLab*. We will also be holding an MCLE designed not only to help you understand key anti-discrimination laws impacting your practice, but designed to help you implement meaningful tools in your business model to be a change-agent in redefining norms around inclusion and diversity.

We will also continue our partnership with the Minority Bar Coalition and will be hosting a Diversity Mixer this summer with the MBC, which I strongly encourage you to attend. Additionally, I am pleased to announce the Board just passed a resolution to amend our By-Laws to include a commitment to diversity and inclusion! This is just the beginning, and there is much more that we can and need to do. I invite all of you to be part of this important work.

Second, this year we will work to deepen the collegial and professional nature of ACCTLA, making it a foundation to draw on for mentorship and inspiration in your practice. To that end, we will continue our traditions of hosting a Spring and Fall Social to honor our Judges of the Year. We invite you to bring your family to the annual Summer BBQ, where you can relax and deepen connections with your colleagues. Additionally, we will also welcome our broader membership to attend as we honor our Past Presidents early this summer — which will be an excellent opportunity to reflect on where we've been and where we are going.

When I opened my own practice, I was met by many of my colleagues in ACCTLA with invitations to think through the practical and legal issues we all face. I was viewed as a partner in carrying the torch of civil justice — and many mentors stepped up and volunteered their time freely and continue to root for me to succeed. This kind of professionalism lifts all of us up and improves the overall quality of the lawyering that we bring before the bench and to our clients. Let's work together to expand our participation and membership in ACCTLA in this spirit.

Finally, I reiterate my plea to our membership made during Judges' Night: Let us be critical of how we operationalize the judicial system so that it can continue to work as a tool of liberation, equality and justice, rather than a tool for oppression. Be an ally in dismantling corruption and actively support an independent judiciary that reflects the kinds of values that will re-instill public confidence in our profession. We live in dangerous times for our democracy, and we must raise the bar we measure ourselves against as trial lawyers to not only achieve personal successes, but to fight to actualize justice for those with the least access among us. In the words of Frederick Douglas in 1886:

...where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe.[1]

I look forward to my year of service. ◆

— Erika Jacobsen White is the principal of Jacobsen White Law, where she represents employees, sexual assault victims and the injured. She has been designated as a Super Lawyers "Rising Star" every year since 2012. She believes in fight hard not only for results, but in empowering her clients through the judicial process.

[1]Frederick Douglass, "Southern Barbarism," 24th Anniversary of Emancipation, Washington, DC, 1886 in Philip Foner, ed. The Life and Writings of Frederick Douglass, Vol. 4, 434 (New York: International Pub., 1950).

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A publication of the Alameda-Contra Costa Trial Lawyers' Association
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Editors
Jennifer Fiore • 415.550.0650
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Contra Costa County Judge of the Year



Hon. Edward G. Weil

by *Scott J. Lantry*

This year marks the 10th anniversary of Judge Weil's appointment to the Contra Costa Bench, where he has served in almost every assignment. Judge Weil's strength is in managing and resolving complex civil litigation, which by no coincidence is his current assignment. Given Judge Weil's studious application of law to fact, any party to a difficult legal dispute — especially one of first impression — would be most fortunate to be assigned to Department 39, the Honorable Ed Weil, presiding.

Consider Judge Weil's Statements of Decision. Uniformly, they are thoughtfully analyzed, well researched and accompanied by citation to authority. Judge Weil "shows his work," and the parties who appear before him know exactly how his reasoning led to his conclusion.

When meeting a professional person with an intellect like Judge Weil's, it is not uncommon that they might have a bit of an ego. Such is not the case with Judge Weil. He has a well-deserved reputation for humility. He is so humble, in fact, that his acceptance speech at ACCTLA's Judge Night Gala lasted no more than five minutes. As such, it is necessary that we expound upon Judge Weil's comments by delving deeper into his background and recording the thoughtful advice he gave to a grateful bench and bar. To that end, my interview with Judge Weil follows.

Good morning Judge Weil. For my first question, I would like to confirm a rumor that I heard: is it true that you are an active skydiver with over 2,000 jumps under your belt?
Yes, that is true. Lawyers seem to think it is a little weird that I am a skydiver, while other skydivers think it is weird that I am a judge.

What was your first job out of law school?
From 1980 to 1984 I worked as a trial attorney with the U.S. Department of Housing and Urban Development ("HUD") in Washington, D.C. [author's note: In this capacity, Judge Weil was able to apply not only his training in the law, but also his Master's Degree in City and Regional Planning.]

If my memory serves, Ronald Reagan was elected the same year you began working at HUD. What was that like?
Yes, Ronald Reagan assumed office as president the year after I began my career with HUD. However, that did not result in immediate changes to HUD's policy priorities; instead, I found that the Carter-era policies continued to live on for a while.

You said that you were a trial attorney for HUD straight out of law school. What kind of cases did you handle?
I was very fortunate to land a position with HUD shortly after law school, where very quickly I found myself trying cases in U.S. District Court, including as lead trial counsel. Among other things, I handled so-called "site selection" cases, whether HUD was being sued either (a) by residents, cities, and the like, in an attempt to block HUD's low income housing development plans; or (b) civil rights groups in an attempt to require HUD to move forward with more low-income housing development plans. A common misconception is that the Department of Justice handles all litigation on behalf of the federal government; such was not the case during my time at HUD, where we handled some of our own litigation in-house, or in conjunction with the Department of Justice.

Talk about being put in the middle! Did you find that residents and cities had invidious or discriminatory motivations in connection with moving to block low-income housing?
The acronym NIMBY ("not in my back yard") is applied appropriately to certain of these cases. As in any litigation, the parties moving to block low income housing had any number of motivations, some of which may have been improper.

Where did you work after you left HUD in 1984?
From 1984 to 1988 [author's note: coinciding with the second term of the Reagan administration] I worked as a Staff Attorney with what is now called Bay Area Legal Aid (at the time, it was known as the San Francisco Neighborhood Legal Assistance Foundation).

Did you find yourself suing your former employer, HUD?
Yes. I was involved in 2-3 lawsuits against HUD during that time, and we enjoyed good success in those cases. As one example, we teamed up with the National Housing Law Project as part of a nation-wide class action to enjoin a decision, taken under the Reagan administration, to discontinue mortgage insurance coverage provided by HUD for low-income housing. One result of this insurance coverage revocation was to deprive HUD of its regulatory oversight of the operation of that housing, to the detriment of low income tenants. We successfully enjoined this action, securing tenants' rights with respect to mortgages valued at over $400 million.[1] In this capacity, I also represented individual tenants who were being evicted without cause in U.S. District Court litigation pending before Judge William W. Schwarzer.

How were you able to secure Federal Court jurisdiction in landlord-tenant cases?
On the grounds that the evictions were contrary to federal statute — hence, federal question jurisdiction.

I see from your bio that you worked at the Environmental Section of the California Attorney General's office for almost 20 years. What did you learn in that capacity?
Well, I learned a lot about toxicology. A number of my cases involved questions related to exposure to toxic chemicals — airborne, water borne, etc. — in cases that were brought pursuant to Proposition 65. I remember particularly one deposition of a toxicological expert; that one lasted four days.

Did you work with Erin Brockovich?
No, but I met her employer, Edwin L. Masry. [note: played by Albert Finney in the 2000 movie "Erin Brockovich"]

Any cases in particular that you can recall?
I argued two cases before the California Supreme Court on behalf of the AG's office. In one of these cases,[2] we filed an amicus brief in connection with an anti-SLAPP suit. Recall that the original intention of the anti-SLAPP statute was to prevent developers from suing individuals and consumer's rights groups on the basis of comments made at public ▶

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hearings in opposition to development plans. The question before the Court in Equilon was whether the party moving for anti-SLAPP relief was required to prove that, when a party [author's note: in this case, an oil company] brought a lawsuit against a consumer group that expressed its intent to sue the company, the company had the specific intention to "chill the exercise" of its constitutional free speech or petition rights. On behalf of the AG's office, we advocated that this element was not required to bring an anti-SLAPP motion, which was an issue of first impression. The Supreme Court adopted our position.

During your acceptance speech for the Contra Costa Judge of the Year award, you shared with us some words of wisdom that you accumulated during your decades as a lawyer and a judge. Do you recall what those were?

Yes, I have my notes right here... First, I must say that many of these comments are not original with me. I heard them said by other lawyers and jurists, and I am not sure who should be credited with the original authorship of these words.[3]

Here are some of my comments:

Every time you try a case (as a Judge), you make one temporary friend and one permanent enemy.

As a judge once said to me: "your job is to educate me, even when I resist it."

Be careful about what you write for the Court. As a lawyer, I sometimes thought my writing was clever and helpful. However, with my perspective as a judge, I realize that sometimes it was neither clever, nor helpful.

I enjoyed trial advocacy — I enjoyed advocating for a cause — but I enjoy even more my task as a judge: to search for the "right answer."

I have benefited greatly from Contra Costa County's practice of rotating judges among the many different assignments — family law, probate, civil, criminal, etc. — as it gives judicial officers the flexibility they need to approach changing circumstances. Although I find my current assignment [Complex Civil Litigation] fascinating, my friends and family much prefer my stories from my days in the family and criminal assignments.

I am not judging moot court. Do not take winning as a validation of what you have done, nor should you consider losing an indictment of what you have done.

Regarding that last comment, I am reminded by the words of Rudyard Kipling, where he suggested that we should "meet with triumph and disaster and treat those two imposters just the same." ◆



— Scott J. Lantry is a Senior Associate with Whiting, Fallon, Ross & Abel, LLP, where he exclusively practices Family Law in Contra Costa and Alameda counties. He has been named a Rising Star by Northern California Super Lawyers.® His published cases include In re Marriage of Macilwaine (2018) 26 Cal.App.5th 514 and Banga v. Gundumolgula, 2013 WL 3804046 (U.S. Dist. Ct., E.D. of CA). Although he does not jump out of perfectly good airplanes, he does ride motorcycles.

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[1]Author's Note: in 1980's-era dollars!

[2]*Equilon Enterprises LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53.

[3]Author's Note: I remember seeing an internet meme that said "Not all quotations you read on the internet are correctly attributed — Abraham Lincoln."

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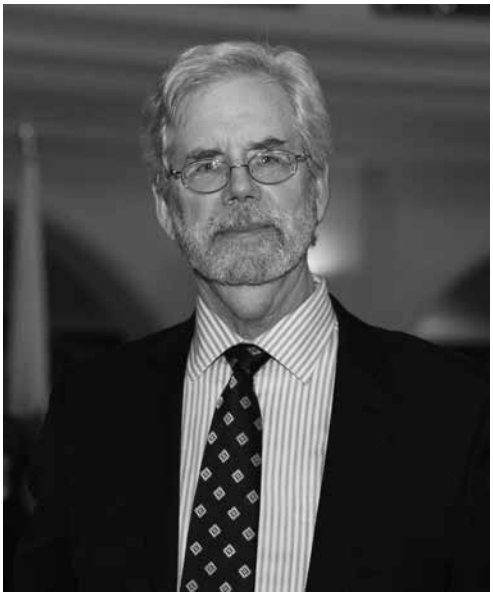
Alameda County Judge of the Year



Hon. Paul M. Herbert

by Shawn Tillis

ACCTLA's 2018 Judge of the Year, Hon. Paul Herbert is a soft spoken, yet equally remarkable and inspirational figure.

Judge Herbert is the "11th in a family of 12" brothers and sisters. His mother, whom he admires tremendously, ran the "organization of our family." She'd organize the kids into "work parties" to get chores done and let them know that they needed to handle their business before they could go out to play. Being one of many in a busy household, he learned early on that individually, *"None of us was the center of the universe."* And he learned how to listen, because, as he puts it, *"When you are the 11th of 12, you don't speak first."* Thus, growing up in the Herbert household, cooperation was not only essential, but also a survival skill.

Before and after graduating from U.C. Berkeley, Judge Herbert worked as a hospital ward clerk in the surgical ICU at the University of California Medical Center in San Francisco, where he became part of a group of ward clerks that organized to negotiate a pay increase with management. As one of the leaders of the group, he investigated pay rates at hospitals in the area and successfully negotiated with hospital management to secure a fair pay raise. This singular encounter with collective bargaining and the success of their negotiations, confirmed his interest in advocacy on behalf of others, which led him to attend law school.

After graduating from U.C. Hastings law school in 1982, Judge Herbert first worked for Justice Allison Rouse as part of a pilot program at the California First District Court of Appeal where each justice in Divisions Two and Three were allotted a second staff attorney. Nine months later, he transferred to a regularly funded staff attorney position at the Fifth District Court of Appeal. There, he would meet his future wife Diana, who at the time worked as the assistant clerk/administrator. While at the Fifth District Court, Judge Herbert worked as a staff attorney for Justices George A. Brown and Wickson Woolpert.

In 1986, Judge Herbert went into private practice with the defense firm of Ropers, Majeski, Kohn, Bentley, Wagner & Kane PC. There he spent 15 years as a litigator, 11 of which as an equity partner. Judge Herbert was molded by his experiences at Ropers Majeski, where he was able to bring all of his prior life experiences, skills, and intellect to bear.

Because of his experience at the courts of appeal, he was asked to work on the kind of cases that fell outside of the firm's traditional areas of litigation. The firm's partners assigned him to their appellate department, which as it happened, also handled the firm's plaintiff class action cases, as well as the noninsurance defense cases. Along with Charles Louderback, he led the firm's "Breast Implant Team" that

represented some 180 individual women suing the manufacturers of the first generation of silicone breast implants.

While working at Ropers, Judge Herbert was assigned to work directly with the firm's "Masthead" partners and to observe them in all phases of their cases. He worked very closely with titans including Gene Majeski, Bob Kane, and Bruce Wagner, as well as notable plaintiff attorneys with whom Ropers sometimes collaborated in plaintiff class action cases, including such greats as Joe Cotchett. To Judge Herbert, these experiences were priceless because he got to observe and note not only their tactical and strategic skills but, more importantly, their professionalism—how they comported themselves towards one another both in and outside the courtroom.

After 15 years at Ropers Majeski, the Judge returned to the First District Court of Appeals where he worked as a senior appellate attorney for Justice Mark Simons. His experience with Justice Simons — an "intellectual powerhouse" — rekindled in him a desire to become a judge. However, his goal would have to wait. You've heard of the guy that says "the rent is too damn high!" Well, back then, for Judge Herbert the tuition was too damn high! To help finance his children's education, he went back into private practice. Between 2005 and 2011, he again partnered with Chuck Louderback at the Louderback Law Firm, which later merged with Payne & Fears, LLP. In 2011, Judge Herbert partnered with Bob Frassetto at Frassetto Herbert, LLP in Oakland, before being appointed to the bench by Jerry Brown in August 2013.

Judge Herbert's expectations for lawyers who appear before him are simple: be prepared; be concise; be reasonable; and above all be courteous and civil to your opposing colleagues. To him, the maxim "your word is your bond" is more than aspirational; it is the foundation upon which your reputation will stand or fall within the legal community. During trials, Judge Herbert sees himself as a judicial umpire who follows the law and promotes fairness, while remaining in the background to let the lawyers try their cases. However, he will interject if he determines that a lawyer has violated a motion in limine or if the parties are wasting too much of the jury's time on collateral issues.

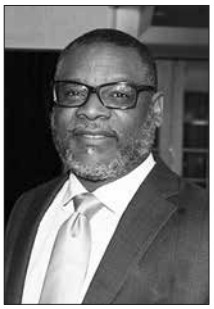
Given his experiences growing up in the Herbert household, as well as working as a judicial staff attorney and now judge, Judge Herbert is a big fan of ADR — to avoid wasting time and money and creating fait accompli trial situations — and he encourages parties to engage in ADR as early as possible. He also encourages parties to meet and confer on discovery disputes as often as possible and will not hesitate to make himself available without need of a formal motion. His diverse experience working on both sides of the aisle and as a judicial staff attorney allows him to see and understand both sides of litigation, and engenders trust when resolving cases and disputes.

Judge Herbert and his wife Diana have three children: Kristen, Gregory and Kimberly. He is a devoted father and husband and speaks adoringly about his family. He describes them as "*the center of my world.*"

When not on the bench, Judge Herbert loves swimming, and road and mountain biking. He jokingly said, "*I was in good shape before I got this job.*" However, his "hiding in plain sight" passion is dancing! He has a family tradition where he takes each of his kids on a special trip of their choosing. One year, while returning with Kristen from France, he watched "Dirty Dancing Havana Nights" during the flight, which inspired him. After arriving home, he promptly informed his wife that they had to try salsa dancing. They took classes and later competed for several years at local events such as the Marin County Fair. His wife still competes with a ladies salsa troupe. When pressed, Judge Herbert admitted that his lifelong love for dancing even included "disco" during the 70s. I think there may be a pinch of Patrick Swayze/John Travolta still lurking somewhere, deep inside his heart.

One thing Judge Herbert wants to see more of from the Bar is mentorship. He said that based on how the practice of law is changing, attorneys are getting less trial time and, hence, mentorship is even more crucial than ever. He described Gene Majestic and Robert F. Kane at Ropers as two of his greatest mentors. He admired their lawyering and professionalism tremendously. He also described Judge McGuiness (who was judge of the year in 2012) as his mentor on the Alameda bench, and remains deeply grateful for the guidance Judge McGuiness continues to provide, which we should note.

Towards the end of the interview, Judge Herbert said that he was really humbled by his selection as judge of the year because of the relatively short length of time he has been on the bench. Well, Judge Herbert, we are inspired by your civility, thoughtfulness and intellectual rigor. You have never shied away from diving into an experience to help someone and to learn and grow as a lawyer, jurist, husband and father — and for that you are a mentor to all of us. ◆



— Shawn Tillis, a partner at Winer, McKenna, Burritt & Tillis, LLP, focuses on employment harassment and discrimination, doctor and mental health care professional sexual abuse and malpractice, and catastrophic personal injury and wrongful death cases. He is a graduate of U.C. Santa Cruz and Golden Gate University Law School. He is a member of the Board of Directors of the Federal District Appellate Project and President-Elect of ACCTLA.

The Honorable Danielle Douglas



by Ariel Brownell Lee

Danielle K. Douglas was appointed by Governor Edmund G. Brown Jr. on July 16, 2014. Judge Douglas was a Deputy District Attorney in Contra Costa County from 2000 to 2013 and was most recently an Assistant District Attorney at the San Francisco District Attorney's Office. She attended undergrad at Missouri Western State University and McGeorge School of Law.

Good Afternoon, Judge Douglas. Thank you so much for taking the time to meet with me today.
You're welcome.

Let's get started with some background on you. Can you tell me a little bit about your family . . . your parents, your grandparents, your children. Who has had a big impact on you?
My grandparents; that's interesting. None of my grandparents graduated from high school. My grandfather was born in Mazatlan. My grandmother was born here, but she was the only one of eight children to be born here. Her mother came over pregnant with her; the rest were born in Spain. They actually went through Hawaii where they had to live and put in labor for a number of years in order to get citizenship. They both ultimately ended up in South San Francisco.

My dad's parents were raised in Texas, essentially share croppers. My grandparents moved to the Bay Area when they were 18 or 19 to get off working the farm. Do you know what high wire is?

Power pole work?
Yeah, but you'd be the one to cut back the trees. It was dangerous work. But there weren't that many jobs for African American men in Texas at that time so he took that job here. He worked in Foster City while it was all under water. He was part of the crew that pumped out the water and built the roads.

The impact they had on me is my work ethic and how important school is, and how important it is to have a skill or a trade. I always thought of law school as a trade. It doesn't really prepare you to do anything, but go into the legal profession. I know there are lawyers that will probably get mad when they hear that I said that; but, it's really just a three-year vocational program in order for me to have a good job.

Both of my parents graduated high school, but didn't go to college. I am the first one in my family to go to college and I am the only one in my family to get a higher education. My younger sister actually graduated college the same day I graduated from law school.

Why law?
You know, it's funny. I say it's an accident, but wasn't it Freud who said there are no such thing as accidents? I say that because growing up, my grandfather would always tell me I was going to be a lawyer. I was always arguing and asking questions. It was interesting because we don't have any lawyers in our family. I don't know that anyone really knew what that meant, to be a lawyer. He would say that, but no one

would then say, "*And this is how you do it.*"

I originally went to school at a community college, taking paralegal courses. And then I transferred to a 4-year college, and I was still not sure what I would do. I still wasn't thinking law. I was a criminal justice major and thought I'd be a probation officer or go into law enforcement, or the Department of Corrections doing legal processing. I also did a legal studies certificate where one of my professors was a lawyer and she finally just said, "*You think like a lawyer, you need to go to law school.*"

So, did you finish your paralegal certificate?
I did!

Let me ask about your kids. You have three?
Yes, 28, 19, and 8.

Do you have any advice for working mothers in the profession?
Find a balance. You learn to make good use of your time. Know your limits. Prioritize. Don't be afraid to tell the judge that you need an accommodation. Opposing counsel may try to jam you up, knowing you're a new mom. Don't be afraid to tell the judge your limitations. For example, tell the judge if your child isn't sleeping through the night and you can't do morning trials because you aren't sleeping. Ask for two afternoons. Don't be afraid to ask! What's the worst that could happen? Some may say no, most will say yes. However, tell us in advance. What I don't appreciate is for an attorney to say, in the middle of a trial, "*Judge, I have to leave at 2:30.*" Tell us early and be honest. Don't be ashamed to take shortcuts. My 8-year old asks for my phone in the morning. And I give it to her. Don't feel like you have to do it all. Ask for help. Ask for more time. Don't be ashamed to ask the judge for an extension.

Do you think it was easier having kids as a judge or an attorney?
Attorney. It's funny, because people will disagree with me. As a prosecutor, I felt I had more flexibility in my day. I could tell the judge I had to leave by 3:00 for a doctor's appointment. I wasn't a constitutional officer then. This all goes back to my work ethic. Even if I could "get away" with leaving at 3:00 now, my Catholic guilt wouldn't allow it. I generally don't leave before 5:00. Sometimes I'll have a doctor's appointment at 4:45 that my clerk has to yell at me to leave for. My clerks get mad at me because I've canceled so much vacation time because I want people to have their day in court and give them that finality. It all goes back to my focus on the importance of access to justice. That was important to me long before I was supervising.

I think being a judge can be more stressful than being a DA That's because I feel that being a DA is only really stressful when you're in trial. There's a little more variability. There are high and low stress moments. Being a judge, however, is a constant stress. You have to make the decision every single day.

And that keeps you at a constant level of stress?
Exactly. I heard a judge once say in her retirement speech that being a judge means making the best decision that you can, having all the facts and the law in front of you that you know. So, how comfortable can you feel all the time? Especially in family law, where so often you are reliant on the litigants to bring all that information in. So many times you'll hear, "*Well, if you'll just pick up the phone and call the teacher...*" But I can't do that. They don't always understand what our job is. And that's what's stressful. Your decision will affect the litigants' lives and their children's lives.

Do you think making the decisions in family law is more stressful than making the decisions in criminal law?
100% more. It's weird because in criminal you put people in prison, which is serious, and I take it very seriously. However, in criminal, I don't find the person guilty. The jury does. I decide what evidence comes in and then turn it over to 12 people from the community that assess the credibility. In family, I make the decisions. There aren't 12 people from the community, there's one person. We all come from our different backgrounds and how you are raised can affect your decisions.

What's an example?
I've heard the argument, "*Judge, there are three kids sharing a room.*" Depending on your background, you might think that's terrible. But, if you come from a background more like mine, you might think, "*They have their own room! The whole family isn't sleeping in there.*" Your perspective shapes who you are as a judge and the decisions you're making about individuaI lives. I think some judges have a real knack for the custody issues and some have a real knack for the property allocation. We all have things that come easily and things we need to work harder on to make decisions. It's good to have these varying experiences and skill sets.

Would you say there's a lot of collaboration between the judges?
Yes and no. We are a very cohesive and respectful group. But we don't necessarily always have time to collaborate. There are days where I don't leave my chambers and I don't see any of the other judges. Every so often we'll have lunch and discuss some trends we're seeing. It's really nice to get together and hear what's happening in the other departments. ▶

Do you know any of the current judges from your days as a prosecutor? Because I know they all have a background in criminal.

I appeared in front of every single one of them.

Really? What was that transition like for you?

Strange at first. But they were all so welcoming. This is a very good bench. I was pleasantly surprised. There were some judges I thought might be standoffish because they thought I'd been too aggressive in front of them and that was not my experience at all. Everyone was so welcoming, saying it was great to have me on the bench. There was no elitism. They were all helpful and seemed happy to have me as a colleague. It's interesting because I can relate to them as someone who appeared in front of them and as a colleague. I think it makes me a better judge because I've seen how every judge on this bench handles a calendar and a tough situation.

Who would you say were your mentors when you took the bench?

Judge Kennedy was one of the judges I would call in the beginning to ask for advice. He is the most patient man I know. I always said if I were going to be a judge I'd want to be just like him. Within six months I said, "*Okay, well I'm going to be kind of like him.*" Now I just say I'm going to admire him. He's in a league of his own.

Judge Landau is probably my number one mentor. It's funny because I took over her caseload. She is the one that encouraged me to put in for the bench. I did a trial in front of her and when it was over and the defendant was sentenced, she asked me to come back to her chambers. I thought I was in trouble! But she took me back and asked when I was going to fill out my application. I wasn't even thinking about it then. It was 2012, there was a spot opening and the timing ended up being right. Part of me coming to family law was I thought I'd be under Judge Landau's wing. Then I found out she was leaving and I was taking over her caseload. She is such an encouraging force for women on the bench. She always stresses the importance of knowing your weaknesses and strengths, and collaborating with others whose strengths are your weaknesses.

How many active cases do you have?

I actually don't know. I asked when I first came to family law and found out there wasn't an answer. It's hard to keep track because what is an active case? You can have a case you don't see for two or more years and then suddenly it pops up with a post-judgment custody issue. I do know that they're assigned to us based on the last number of the file, so they can tell me that we have an even caseload.

Let's talk about your position as Supervising Judge in Family Law. How did you become SJ? What are your responsibilities?

You would have to ask Judge Baskin why I am Supervising Judge. The impression that I have is that they'd like all judges to have experience supervising. There are 38 of us, so there's some sort of rotation. Barry [Baskin] is very big on bringing in new judges because they bring in new perspectives. If you are supervising, then you participate in the executive committee meetings. In these meetings, all the SJs make decisions regarding hiring, the court budget, technology decisions, things like that. Judge Baskin likes fresh ideas. He wants new people and voices in these meetings.

Is it a one-year position? Or two?

It's as long as the PJ says it is; Judge Baskin will be PJ for two years. I think it's common for the PJ to keep supervisors on who they work well with.

Have you worked with Judge Baskin before?

I hadn't worked with him; I had appeared in front of him. I joke with him now and tell him he was one of the biggest surprises to me when I came to the bench because he is a very reserved judge who ended up being one of the most welcoming judges when I took the bench. He quickly became one of my mentors, and that was a pleasant surprise. I did not think he'd be someone I would be calling for advice. He really went out of his way to give me guidance and advice. He even talked to be about being a single parent and the necessary balance that comes with that. That was when I realized how much I liked him. It's uncommon for a male judge to be so understanding about the difficulties of raising kids as a single parent.

Do you think he had a bit of a wall up when you were an attorney that came down once you were a colleague?

I think being a judge is hard. We can get in trouble so easily. There is a balance between being professional on the bench and still making attorneys and litigants feel welcome. We have this debate all the time . . . "*Can judges have a sense of humor?*" *(Ariel chuckles)*

You laugh, but I've gone to trainings and the answer is actually "no." If you make a joke, and someone thinks it's not funny, well now that's behavior unbecoming of a judicial officer. I think it is more difficult than people know to be a judge and follow the canons of ethics while still being a relatable person and not come across as someone who is elitist or aloof. That's part of the stress.

Would you say it can be a bit lonely, especially for a social person?

It can be in that you have a new set of colleagues. As a former DA, I can't go to their parties and hang out and talk the way I used to because I can't fraternize with ▶

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individuals who might appear before me. Even my lawyer friends who aren't DAs, I can't necessarily go out with them because they could appear before me. It definitely changes who you can socialize with. And how you can socialize.

Is that a problem at your daughter's school…since there could be potential litigants who are parents there?

I don't worry about that too much. I have a rule I live by; that is, treat people with respect. I do that and have yet to have a problem. That's not to say every litigant likes me, but I do treat them with respect. I have only run into a litigant once. So, it's not something I worry about too much.

One problem I do run into regarding my daughter's school is that judges can't solicit funds or raise money. My daughter was just selling pasta at her school. Well, I can't help with that. I can only ask other judges or family members. I can't ask friends because that would be seen as donating money because I'm a judge. My daughter will get excited and say, "I'm going to win prizes!" And I'll have to tell her, "No, I'm sorry, you're not."

What are some Do's and Don'ts in your courtroom for the lawyers?

Do be prepared! Especially with case law, In family law I find lawyers just say, *"do this,"* and don't tell me why. If, after you explain the facts and what you want, I ask for a roadmap on how to get there, I am not being sarcastic. It's a sincere question. Some attorneys will sputter and say they don't understand what I mean. What I'm asking is, what does the law allow me to do? Put me on the path. Name the factors required, say the other side hasn't met their burden, etc. Some attorneys think that judges know every piece of case law off the top of our heads. Tell us the standard of proof. Tell me how you're applying the facts to the law. Don't just restate the pleadings. I read them.

Don't file gigantic late pleadings and expect me to have to read them. If you file something on a Friday at 3:00PM and come in Monday at 8:30AM, don't expect me to have read it, or even received it. Do you think the file clerk runs upstairs to get me a late filing before I leave? No. If you file something at 3:00PM on a Friday, I get that on Wednesday. So, do give courtesy copies. Walk them in to the department. My bailiff and clerk know what to do with them. Don't try to sneak them in my box. Even email it to my clerk. If you have a 30-page late filing that I get the morning of, you're going last. When I get to it, I'll look at how many things are on my next calendar and I'll let counsel know that I can go take a 10-minute break and read it, and then call you or we can pick another date. So, if you file late, it may affect if you're heard that day.

If you had to summarize your goal(s) as supervising judge, what would they be? Is there a theme?

Access to the courts, access to justice, and the efficiency of the courts. I want to do this both for self-represented litigants and attorneys. I know everyone is juggling a lot, and I want to streamline the process. I'm from criminal law, so I'm used to cases being resolved within one year from filing to sentencing. I know one year is probably not realistic in family law, but I also don't think divorces should take four to six years, especially when the marriages weren't even that long.

We're discussing implementing a tickler system to remind litigants of the next steps. A common theme I see with self-represented cases is they really stall after service of the Preliminary Declarations of Disclosure. We're going to try and help by increasing the self-help resources. We want to put a series of short how-to videos on court websites. These would cover topics like how to read a paycheck, what forms to file start-to-finish, what the Preliminary Declarations of Disclosure are, things like that. The Facilitators are going to work with the IT department to record them. The judges may even record some videos, like how to understand the tiered mediation system.

How is the tiered mediation system working out?

I think it's working well. Agreements among represented litigants are up. We really concentrated on getting buy-in from the attorneys in Contra Costa County. We have not had the same problems that other counties reported, where the issue with the tiered system was the attorneys. The attorneys here appear to be on board. They're prepping their clients appropriately, they are appropriately requesting a tier two and tier three; that is, not in every case. The attorneys get that if they come in on every case saying they need tier two and tier three that they're going to lose. For us, the self-represented individuals are the ones where we're not seeing as many agreements as we'd like. They're seeing it as, *"Well, if I don't win in mediation, then I'm going to go before the judge and win."* They still have that mentality of winning.

What we're hoping to do to make this more effective for self-represented litigants is to put together a video explaining that you don't get a second mediation before the judge. The judge is not a mediator. The judge is going to listen to your points and make an order, but it's not a mediation. A lot of times, I think, the self-represented litigants are surprised because the judge will say, *"Okay, I will hear your side, and here's the order."* And they'll say, *"Oh, well we want to discuss this."* We don't discuss it, absent some little changes to accommodate work schedules.

So, you want them to understand that you're not going to put together a complex schedule like they'd get in mediation?

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Cassie Springer Ayeni is the President of Springer Ayeni, A Professional Law Corporation. www.benefitslaw.com She represents people with disability, medical, and life insurance benefit claims under ERISA, and was a 2018 recipient of the Minority Bar Coalition's 41st Annual "MBC Unity Award." Cassie was selected as a "Top 100" attorney in Northern California in 2015-2018 by Super Lawyers Magazine, and "Top 50 Women" attorney in Northern California by the same publication in 2014-2018. She is an active leader in the American Bar Association Labor & Employment Law Section and Employee Benefits Committee, where she has repeatedly spoken at conferences, served as track coordinator, and co-chaired numerous committees. She is currently the chair of the Membership and Marketing Committee for the Board of the Alameda-Contra Costa County Trial Lawyers Association.



Erika Jacobsen White is the founder of Jacobsen White Law, P.C. where she represents victims of employment discrimination, sexual abuse, civil rights, and personal injury matters throughout California. Her career-long commitment to representing real people facing tough challenges in their lives has resulted in significant results for her clients at trial, mediation, and arbitration. Erika currently serves as the President of the Alameda-Contra Costa Trial Lawyers' Association. Erika has lectured and written on employment discrimination, social justice, and civil rights issues extensively, and is a frequent speaker at community events, universities, and high schools on civil rights issues. In 2016, she taught as an Adjunct Professor at San Francisco State University's Criminal Justice Studies Program. Erika was also recognized as a Super Lawyers "Rising Star" from 2012-2017, and a Super Lawyer in 2018.



Allyssa Villanueva is a Litigation Attorney with Benjamin Law Group, P.C. Allyssa serves as an appointed member of CELA's Diversity Outreach Committee. Allyssa has also been a CA Bar exam writing tutor for women and non-traditional law students since 2017. Allyssa has a demonstrated commitment to labor and employment law, including serving as co-president of the Employment and Labor Law Student Association, and working at UC Hastings' Individual Representation Clinic. She also worked at the Labor and Employment Law Division of the Oakland City Attorney's Office and completed an externship with Magistrate Judge Donna Ryu of the U.S. District Court -Northern California. Her current work at Benjamin Law Group, P.C. includes Plaintiff-side FEHA claims, personal injury, and contract disputes.

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Judge John Kennedy, Suizi Lin, Judge Barry Baskin and Judge Margaret Fujioka

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Exactly. And that's what I tell them before they go. If there's something about your schedule or child that is unique, you really need to work that out in mediation. You don't have to agree about everything, but there are certain things you might really want to agree on because you'll have more flexibility than the judge will. We don't have the time or the ability to make personalized orders for every single case. When we're making orders, it's in 20 minutes on a short cause, and we're considering what's enforceable. So, I encourage all self-represented litigants to go to mediation, make the necessary adjustments, and don't think of it as winning or losing. Think of it as putting together a parenting plan you can live with that's going to satisfy your child's needs and your needs.

Considering all that, as I mentioned before, we're thinking about putting together a video explaining mediation and why it's important to come to agreements if you can, and what will and will not happen when you come back to court so they can have a realistic expectation about what going to court is like.

The goal is really to empower the self-represented litigants to make their own decisions regarding custody and property division, and to get them divorced. That's why we're increasing self-help hours. Right now we have two full days and two half days. We would like to get it to at least four full days; the ultimate goal is five full days of self help being open at the desk. The first step is to go through triage. What are you here for? Are you in the right place? Do you need to fill out forms? If you need to fill out forms, they'll either give them the forms or tell them to go to the law library, fill out the forms, and bring them back.

How does the current court budget affect your ability to put these plans into action?

It's better than it has been, but not great. They have allocated more money. But here's the interesting thing — they've allocated more money for the self-help projects, but it has to be something new. So, we can't take money and put it into things that we were already doing. We have to take funding and create new programs. So, one thing we're doing is we're updating the classes we had to help individuals to qualify it as a new program. What we've done to make it new is get more computers to allow litigants to type their paperwork whereas before they had to hand-write all the forms.

How often are these classes being offered?

Not as often as they should. Right now, they're twice a month. We are hoping to offer them more often soon. We do have a Spanish language drop-in to make up for the fact that our drop-in downstairs does not always have someone who is Spanish speaking. So two times per month, they offer the Spanish speaking clinic to help. They'll walk you through the entire process so the litigants leave with the packet and what all the steps are. They learn what to do if the other party doesn't respond. It's a flow chart. This is only offered in Spanish due to the uncertainty around guaranteeing a Spanish speaker at the window. I always tell Spanish speaking litigants to just go to the class to make sure they don't waste their time going to the drop-in window, only to find out there isn't a Spanish speaking Facilitator that day. English speakers can go to the drop-in hours with the Facilitator. Pittsburg also has two-days a week of Family law drop in, as does Richmond. This is to help litigants who may have transportation issues getting to Martinez.

It sounds like access to the courts is a big focus.

Yes. That's fair to say. It makes it easier for us as judges. A lot of time, self-represented litigants will request a CMC after serving their PDDs. This isn't helpful or efficient.

Because they want you to finish the divorce for them?

Exactly! And it frustrates them because



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there's only so much we can do. It's always on the short-cause calendar, and we can't give them legal advice. It's almost as if they're using the CMC as a clinic. So, we want to set up the clinics they need to get their divorce done.

What's the most common issue you see that self-represented litigants need help with?
Usually there isn't a lot of property to divide. Usually the issues are selling the family home or spousal support.

Child custody also?
Usually no. This is why: When someone files their petition, the Facilitators are good about telling the litigants to file a request for order to deal with custody right away. So they'll file the RFO, come before us, go to mediation, and then we make our orders. They are generally permanent because there isn't any change in circumstance by the time of trial. Not liking the order isn't a change in circumstances. When I ask what is different now from when the order was made, there is generally silence. We purposely do custody first. Trials can take six to nine months. They need custody decisions before that. If there is a custody issue that needs a trial, the judge will make temporary orders and reserve for trial. But if you don't hear the judge reserve for trial and you get orders, they're probably going to be permanent.

So, if the only issue on the table is spousal support, I actually print the [CA Fam. Code] 4320 factors and give them to the litigants. I tell them that in order for the judge to make a permanent spousal support, I have to go through the factors. I tell them I can't use the "guideline" number. I encourage them to fill out the chart I give them and bring it to the settlement conference to explain why they think a certain amount is appropriate.

Anything else in the pipeline?
We have a new workshop too. It is related to child custody and parentage. It is new to our budget; we received money specifically to address these issues. The money came from AB 1058. Essentially, I envision the workshop helping the unmarried couple with a child to figure out how to be established as legal parents, absent a voluntary declaration of parentage or names on birth certificate, and establish custody. I imagine it will be mostly fathers attending the workshop. I'm excited about it because you'd be surprised how many adjudications of paternity cases we get where the kid is six or eight. The father will say he didn't know he could or should adjudicate paternity. Mom would just have allowed him to see the child. But then, something may happen, and Mom may stop allowing him to see the child. So then, Dad has to figure out coming to court to assert his rights.

We used to have appointments to fill out dissolution paperwork. Now we have referrals. When a judgment is submitted, it goes to the legal techs, who are very thorough. Self-represented litigants who get judgments kicked back by the techs for technical reasons will get a referral to review the judgment with the Facilitator so they can fix the problem and resubmit the judgment. We also have one Facilitator going to the DCSS department every Wednesday morning.

Finally, I'm hoping to work with the judicial council on expanding the FL-306 use to streamline the continuance process. Ex parte forms should not be used for continuances — it's more work for everyone.

It's been wonderful speaking with you. Thank you so much for your time this afternoon, Judge Douglas. ◆



— Ariel Brownell Lee is the principal attorney at the Law Office of Ariel Brownell and a graduate of UC Davis. The Law Office of Ariel Brownell represents clients in family law matters throughout the East Bay. Ariel co-hosts a podcast for California Women Lawyers called "A Seat at the Table." Judge Douglas will be the featured guest on this podcast in June 2019.

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Getting to Know

The Honorable Tara Flanagan



by Cassie Springer Ayeni

Now in her seventh year of service on the Alameda County Superior Court and currently sitting in the Criminal Law Division, Judge Tara Flanagan is still "mindful every day when I put on my robe that my job is public service. It's an honor and a privilege to be in this position. We have really great lawyers in this county, and that makes my job easier. I love my job. It's a huge privilege to work for the people of our county and the state."

Judge Flanagan was born in San Francisco and raised in the East Bay, where she attended high school in Concord. The sixth of seven children raised by a single mom, she learned what fairness, justice and hard work looked like at an early age.

"Everyone had to pull their own weight and contribute equally. We all had chores and responsibilities. And if there was malfeasance, from a child's eyes, consequences had to be equitable and similar. My sense of justice was finely tuned from a young age: is there an equal distribution of resources, workload, penalties and so forth? This helped me to understand the definition of fairness. And I watched my mom really struggle financially at times as a single mom. There were no trips to Disneyland or things like that in my family, but my mom would take us to the East Bay Regional Parks-Tilden Park frequently; we'd have a picnic and a swim, or go on a family hike. There weren't a lot of presents under the tree, but there were great experiences."

Her background influenced her perspective during her previous assignment in the Family Law Division, where "I knew from growing up that you don't have to have a lot of money to have quality time with your children. Sure, money makes things nice, but life has taught me, and social science evidence demonstrates, is that what kids need most is to spend time with their loving parents. That's what is important, even in a society that is so wealth and status driven."

Prior to her legal career, Judge Flanagan put herself through undergraduate school through a combination of academic and athletic scholarships (basketball). She played in two Women's Rugby World Cups as a member of the U.S. Women's Rugby National team — winning the 1991 World Cup Rugby Championship — and was later elected to the USA Rugby Hall of Fame.

Playing rugby at such a high level has influenced Judge Flanagan in every way. "In rugby, there are rules, structures, history and strong systems in place, and the players have a lot of respect for that. You don't talk back to the referee and you don't whine or complain. The referees are treated with a level of respect that you don't see in a lot of other sports."

"And I think that's a lot like law: there is a structure, a history of jurisprudence we rely upon under stare decisis, and even

if you don't agree with everything that happens, you respect it and carry on — even if you get a call you disagree with. Also, in rugby, there is a high value placed on civility and good behavior. You are intended to not personalize the contest, and after the match, it is expected that you shake hands and buy your opposite a round at the bar. I find the top litigators conduct their law practice exercising the same values."

There are some aspects of the job she finds challenging, like the quick pace of her docket. She notes that because these matters are critically important in people's lives: "I have to do the absolute best I can to navigate the issues . . . I don't want to *be* right, I want to *get it* right. I remember that there are human beings at the heart of every case. The court's decisions can affect families for years to come. I have to read beyond the paperwork at times to recognize that there is a human being with a life behind the case, and the court's decision can have a ripple effect on families, parents and children. That makes every case so important in every way."

She notes that growing up in the 70s, it was less common to be the child of a single mom, but is also now very appreciative for that "outsider" status. "When there were father-daughter events at school, I felt very much on the outside . . . different. My mom was divorced, and that was not common when I was young. But knowing what it feels like to be different helped me to gain an appreciation for people in our society who are different too, and perhaps get the short end of the stick because of it. And later as I grew up and came out as an LGBT person that helped me to experience 'difference' as well."

Nothing stopped Judge Flanagan from achieving her dreams, however. "The odds were not in my favor, as a lesbian woman who was also the child of a single mom. But I don't see the odds as having been stacked *against me* either. No one opened doors for me, but if I saw an obstacle down the road, I simply had to figure out how to overcome it. I had to find my opportunities by creating them. That's not to say I did it all myself; fortunately, I had a lot of mentors and people looked out for me along the way. And, as an LGBT person, society has come a long way since when I first came out."

"Even during my first 18 months on the bench, assigned to a family law department, I was tasked with the important duty of deciding marriage cases, yet I couldn't even have a legal marriage myself. There was no same-sex marriage under California or Federal law. It was ironic, to say the least. I was responsible and learned enough to make decisions about people's marriages, but I couldn't myself have one." She is grateful for adversity in her life for how it prepared her for compassion from the bench: "I know the difference between 'have-nots' and 'haves' — and try to be mindful of such."

Judge Flanagan is pleased that in her six years on the bench, judicial diversity has improved greatly. "I tip my hat to former Gov. Brown and his appointments secretary, Josh Groban, because they significantly increased judicial diversity statewide and in Alameda County. And now, Gov. Newsom, by appointing Hon. Martin Jenkins as his appointments secretary, demonstrates he too is committed to diversity on the bench. I'm excited about the increasing diversity of our bench; I believe it will continue to catch up with the diversity in our community."

"Diversity on the bench matters. All of the differences we put into the melting pot of justice make for better justice. Justice cannot develop or grow when judges are all the same, and the community cannot trust a system where they don't see themselves reflected back. I'm excited to be on the bench at a time when we have more LGBT, Asian American and Latino judges in our county than when I started. Things are really growing here."

In her courtroom, Judge Flanagan does her part to ensure that lawyers of diverse backgrounds are all treated professionally by their colleagues at all times. "I stop any nonsense about gender. I don't wait for someone to ask, '*Judge, can you admonish that?*' If someone is interrupting the other side, being disrespectful, sighing or eye-rolling, I will step in. I can call it out rather than forcing the aggrieved parties to have to advocate for themselves."

"I have an ethical duty to run a courtroom conducted with dignity and decorum, and that means dignity and decorum for all. We can't have people acting in an unprofessional way. It demeans the law. And if someone is receiving verbal jabs that might be based on their gender, race, LGBT or any diverse status (and I have been on the receiving end of such comments at times in my life so I know what it looks like), I will call it out." She notes that professional collegiality and respect among attorneys in the courtroom "is a true pleasure" to witness and such demeanor makes for "the best advocacy."

Judge Flanagan appreciates lawyers who are on-time, well-prepared and who can make a good argument, but is especially impressed by lawyers who "read the situation, and then argue with what they have, rather than going through a script. Attorneys who can flow with the evidence do a much better job." She believes that the best lawyers understand the weaknesses of their cases, not just the strengths, and analogizes it to a world she knows well: athletics. "It's like going to the gym. Maybe you can bench press 500 pounds, but if you have weak hamstrings you have to focus on them too in order to be a strong person overall."

Her best tip for the courtroom? "If you hear a question from the court in argument or presentation, be prepared to answer a ▶

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similar question if you're next – the question demonstrates a concern for the trier of fact."

The quick pace of Criminal Court does not slow down Judge Flanagan from her athletic passion. She is currently training very seriously for long-distance cycling events. This summer, she plans to participate in the Paris-Brest-Paris 1200k, a grueling 90-hour cycling event that has been held every four years since 1891. Genuinely excited about the rigor, she describes it as "like a scavenger hunt on a bike. You ride hundreds of miles non-stop. And, if your bike breaks down, you have to fix it yourself." She also enjoys accompanying her partner, who is a television director, on work trips around the world.

Judge Flanagan describes herself as "a very competitive person, as many athletes are, and as a lawyer I was competitive too. But I always sought to play within the rules, play fair and to conduct myself in a way that would make my mother proud. Now that I am on the bench, I'm in the 'referee' role, which I quite enjoy — but many of the same values apply." She hopes that her mother, who has passed away, is now looking down on her with pride. This author unquestionably agrees that Mom — and many others — would be very proud indeed. ◆



— Cassie Springer Ayeni is a plaintiff-side ERISA disability litigator in Oakland. She has been named a Northern California "Top 50 Women" attorney every year since 2014 and a "Top 100 Attorney" every year since 2015 by Super Lawyers Magazine. She is a proud recipient of a 2018 Minority Bar Coalition "Unity Award." Cassie is currently the ACCTLA's Membership & Marketing Chair. Cassie is an active mom of four and loves to travel with her family, though by vehicles she does not have to pedal herself.

Alameda-Contra Costa
TRIAL LAWYERS' ASSOCIATION

CALENDAR OF EVENTS

Thursday, April 11, 2019
Spring Cocktail Reception
5:30 - 7:30pm · Sequoyah Country Club
See page 15 for further information

Wednesday, May 15, 2019
Navigating Disability in the Workplace
11:30am · 1999 Harrison Street, Oakland

Tuesday, June 4, 2019
Liens and MSAs (MCLE)
6pm · Scott's, Oakland

Sunday, July 21, 2019
Fourth Annual BBQ & Potluck
Roberts Regional Park, Oakland

Tuesday, July 23, 2019
Finding Hidden Property Damage (MCLE)
11:30am · Massimo's, Walnut Creek

Wednesday, July 31, 2019
Oakland A's v. Milwaukee Brewers
Oakland Coliseum

Thursday, August 15, 2019
What Every Civil Attorney Should Know About Elder Abuse/Wills/Trusts
11:30am · Massimo's Walnut Creek

Thursday, August 29, 2019
Diversity Mixer
5:00pm · Somar Bar & Lounge, Oakland

Thursday, October 3, 2019
Fall Cocktail Reception
5:30 - 7:30pm · Lafayette Park Hotel

Thursday, January 16, 2020
Judges' Night
Rotunda, Oakland

The Honorable Barry Baskin



by Jackson Zhou

Judge Barry Baskin is currently the Presiding Judge for the Contra Costa County Superior Court. He was first appointed to the Bench in 2002 by former governor Gray Davis. As the Presiding Judge, Judge Baskin has the important responsibility of court assignments for judges, as well as making sure that court resources, such as staff, are properly allocated. Aside from being an accomplished jurist, he's also the proud father of three children, two of whom are also working in careers related to civil service. He generously invited me to speak with him inside his chamber.

Let's start with a fun question Judge Baskin. What was the last book you read?
The last book I read was "*The Devil in the White City*" by Erick Larson.

Did you enjoy it?
Yes. It's an interesting historical account of the world trade fair that happened in the late 1800s to early 1900s in Chicago. It was about a serial killer that operated at the same time as the world trade fair was being built. It was the greatest structure that was ever being built in the world trade center at that time, so it's a parallel story event based on historical facts of what actually happened with that serial killer and the actual historical data from the building of that convention. I like reading historical fiction.

And how long have you been the Presiding Judge?
Just over a month.

How do you like your job so far?
It's very intense, very different from being a trial judge, because it's mostly administration and it's just dealing with a lot of emails, high volume of complaints from the public, dealing with staffing issues. We're of course operating under a severe budget deficit. Let's say that if on a day we have clerks and reporters call in sick, we're not staffed as we have been in the past, so it's a real job to juggle how to fill absences due to illness, or people leaving or whatever just to keep the courts fully staffed. That in itself is a big job that keeps our chief executive officer busy two to three hours a day every day, and sometimes I have to assist with that as well.

I want to congratulate you on the new job. It sounds challenging. What would you say is some of the biggest challenges that are facing the court right now?
Thank you. I think the biggest challenge is that the legislature doesn't appreciate that the judicial branch of government is a separate and equal branch of government. And so the problem is that they have, for almost a decade now, kept the

judiciary short of adequate funding, so it affects the public's access to justice. Obviously if we don't have enough judges, if we don't have enough courtrooms and clerks, the hours that the staff can operate, I get short on staffing as I was just mentioning. It's difficult because you need to have the ability to have a courtroom. Clerks call in sick and court reporters call in sick; without having to shut down any courtroom, you need to have a floating staff that can fill in the absences. It's very difficult with budgetary constraints.

Another huge challenge is that we are still using a computer system that goes back to Noah's Ark. It's that old. We've only just now gotten enough funds to convert to a modern case management system for traffic cases, and only traffic cases, but criminal cases and civil cases also need to transition to a modern-day case management system. Only this year, Gavin Newsom, for the first time, allocated funds for this purpose. So hopefully in three or four years we will be able to get our antiquated computer systems re-organized and transferred over into a modern computer system.

That's a good development, but the same old problem exists even with the new governor: our baseline discretionary spending was exactly the same as last year, so we didn't get even 1% of the living increase. Obviously we required employee salary raises. We don't get any matching funds from the legislature, so if you would like to do that, you have to fire some staff to make room for the increases, and that's a huge challenge. That's just a really difficult job. How do you balance the need to keep the courts open, and fully staffed, and fully funded, when the legislature doesn't understand it?

I appreciate you sharing the challenge the court is facing. What can an association like the ACCTLA and our profession in general do to support the courts?

Well I think there are a few things that associations and lawyers can do to help the courts. The first, as I mentioned, is in the budgetary aspect. Anything you can do with the lawmakers you know, with the legislators that you know, to increase the funding of the courts, will be helpful. We just don't have a big constituency like unions do, and so there's no one that really goes to bat for the courts. So that's one way you can help.

There's a second way, and it's become much more important. In today's political climate, you are probably noticing that there are an increasing number of political attacks from politicians on judges. It's unfortunate that in this hateful climate, some politicians feel that an independent judiciary is a threat to democracy, and it's actually the opposite. An independent judiciary is the cornerstone of the essence of democracy, and so it's disturbing to me, and I hope to all of you, to see this trend developing. It's very problematic because politicians attacking judges who make adverse rulings is a new development. It was never like that before. I've seen a lot more of that than I've ever seen before.

And it's had a trickle-down effect. It affects the public. What I mean by that is, in San Francisco in the last election, four judges were challenged just because they belonged to the Republican Party. They were outstanding judges; there was nothing wrong with them. Nobody could even point to a single decision they made that was erroneous or mistaken. This is a bipartisan issue that affects everybody. It doesn't matter if you're Democrat or Republican. This attack on the judiciary has to be defended.

Both the Chief Justice in California and the Chief Justice of the United States Supreme Court have condemned these political attacks. They both think that these attacks are very bad for democracy, and of course very bad for an independent judiciary, but they continue. Judge Persky, who was a judge in Santa Clara County, got recalled for the first time in California in almost 100 years, solely based on popular opinion, and not because of any mistaken ruling he made. He was completely exonerated by the Commission on Judicial Performance, but he was recalled because of popular sentiment, and of course the whole point about this independent judiciary is to have judges who make decisions that are completely independent of popular opinion.

Right here in our county, as we speak, three judges, along party lines, are being recalled because the people who filed the petition are just angry about the rulings that those judges made in those cases. That's unprecedented in our county. It's never happened before, just like it never happened before in Santa Clara County. So you can see this trickle-down effect from the hate climate that's been created in this Twitter era.

It's affecting the judiciary. So coming back to the second thing that your readers can do and lawyers can do, is educate the public. We need to educate the public about how important it is to have independent judges who are not prone to making political decisions in favor of popular sentiment of the day, or of the year. You just want judges making decisions according to the law. That's the most important thing, and I think all lawyers should support that. ▶

Thank you very much for sharing those comments. I think our membership would definitely want to be educated on that. You mentioned something in your comments about Twitter. We live in an era, and also in an area, surrounded by so much technology. What do you think of the impact technology has had on the courts?

I think there is a small portion of technology that's beneficial, to the extent it enables us to have an efficient case management system to better process our cases and gets them to trial more speedily with less expense. But the technology that you are referring to . . . I think it is not technology, but to the media. And the media, especially Twitter, I think is very distractive for the judiciary. In this Twitter-age, people are restricted to very few words; and that means that slogans or overly simplistic things become popular really quickly. Before people understand what the implications are, they jump on this bandwagon. If you want to use the Judge Persky example, the slogan was the #MeToo movement. They labeled Judge Persky as a sexist judge that made a ruling that favored a white male. It's not a very deep analysis of what the facts are. And even if those were the facts, whether he should be recalled as a result of that is a completely different question.

All judges come up for reelection every six years, so if the public feels like some judges making decisions that are not in conformity with what the community expects, they have that right every six years to vote a judge out of office, without specifically implementing a recall. A recall is a very dramatic, drastic and, in my opinion, abusive aspect of the democratic process; and I think Twitter is in part to blame for us arriving at that situation because it compresses the message and allows for messages that are overly simplistic, and doesn't allow for a detailed debate to arrive at what the truth actually is.

How do you see other changes that may be coming, let's say in the next five or ten years?

Well, I think with an increase in technology, one of the benefits I think the public would have, for example, is at self-help. A lot of people can't afford lawyers, and those people who come into the court system without lawyers are in the greatest need for help. They don't understand how to navigate law. They don't understand how to present evidence. They don't understand the complexity of what it takes to successfully prosecute cases in the legal system. This technology could make that easier if it was properly implemented. People could have an interactive process on a self-help website. They would be told how to file a small claims case and could be shown how to file an unlimited civil claim, and how to prosecute or defend against an unlawful detainer.

So that type of technology (and we already have some of it on our website) is not to the point where it's truly interactive. In the next five to ten years, I'm sure the energy will be put in that direction so that the population that is not represented will get more help because these people really struggle. That's good. Obviously the lawyers who are representing clients, they know how to navigate the system and they don't need that kind of resource, but the technology will help those people that are not represented by lawyers. It will even help those lawyers who have clients because that technology should move the cases through the system faster; so if we're not bogged down dealing with self-represented people that can create a bottleneck at times in the trial court system, everyone will benefit from that.

I want to ask you about something a bit more personal. I know that you originally came from South Africa. As an immigrant myself, I have a great deal of respect for people who have come from other countries and have achieved great success in their field, which you have. Has your experience as an immigrant impacted your legal career in anyway?

Well I think it's a difficult question to answer. It was very difficult being an immigrant to be expected that my training could be successful here. Just to give you some insight, when I became a judge in 2002, at that moment in time there had never been an immigrant judge appointed to the bench in California that had been born, raised, and trained outside of this country.

So you were a trailblazer?

Well in that sense, yes. There have been immigrants in the same situation that were born, raised and trained outside of this country, and have been appointed since. But it still may be only a dozen now out of two thousand judges; so it's difficult in the sense that I think there's always anti-immigrant sentiment. Even when I first came here 32 years ago, I experienced it and it's very difficult to be successful with that concern. That issue was always out there. Under this current administration, anti-immigration sentiment has been the issue that probably gives this administration the power that they have. That probably is the main reason that they are in power. And so it still taps into a very serious concern of mine, which is anti-immigration sentiment and it's just a concern.

One of the real happy moments in my time since I got here was being appointed — that was of course a very big moment for me because it really established for me that there was no, at least at that level, discrimination against someone who was ▶

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Cassie Springer Ayeni has handled plaintiff-side ERISA litigation, claims, and appeals since 2002, with a focus on disability employee benefits. She has been recognized on the *Northern California Super Lawyers* Top 100 and Top 50 Women lists. She was named a "Top 40 under 40" *Daily Journal* attorney in 2014, and a *Recorder* Top 50 Attorney "On The Fast Track" in 2012. She is proud to serve on the ACCTLA Board.



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born, raised and trained outside of the country. The second similar event was when my bench allowed me to become the Presiding Judge, which is a big honor and a privilege. Of course I'm the first immigrant Presiding Judge to sit on our court. That is a privilege because it shows that the judges here don't discriminate and have a neutral respect for me; so that was very rewarding and fulfilling that I got to this position.

I appreciate you sharing that, and again as an immigrant myself, I can relate to the challenges you faced. Do you think having that background gives you any benefits?

I don't think that I noticed it as a benefit. I think the benefit, if there is one, is that I'm very sensitive to things that I observed when I left South Africa. There were many lessons I learned when I left and took my three children away from that country. I believe that there was no future in that country with the Apartheid government not heeding warnings that had been given; bipartisan warnings that you're not keeping the judicial branch separate, and to keep the three branches equal was an important thing. They ignored them; they went the other direction in that country.

If you remember in this country, *Brown v. Board of Education* was a very important decision about that separate but equal argument. I guess the racists at that time would make it that it was okay to have minority schools be separate as long as they were equal. Of course everybody knew that they were never equal, but that was the argument that was being made in South Africa at almost the same time. That country went into a different direction and they had the equivalent of *Brown v. Board of Education.*

They allowed separate but equal, and that really was the green light to the Apartheid system being enacted and being affected. And so that came about through undermining the judicial branch to making them, rather than independent, a dependent branch. I learned that the hard way and it caused me to have to leave with my family as a third-generation lawyer. And I left all of that to come here. It's upsetting to me, to see 70 years later now, this country doing similar things to what my country did back then — ignoring the warnings, ignoring the bipartisan warnings about keeping the judiciary separate. So I think I'm sensitive to that. So that's a benefit I think.

Last question, and it's a bit of more of a self-serving question for myself because I am new to the practice. What advice would you give to attorneys who are just entering the practice?

The advice I would give is that it's very important for you to specialize in, and to have accurate knowledge of, whatever representation you undertake. I see a lot of new lawyers make the mistake of not realizing the amount of preparation and study it takes to understand the law in whatever particular area you might be litigating in. So it's very important when you come into a courtroom to understand what the law is and to be prepared. You need to be very well prepared.

It is the best advice I would give to lawyers. At a practical level, and not having to do with the courtroom, is that networking is the most important thing for success because the source of cases that you will eventually get will come from the network you build. You need to take a lot of time when you're a new lawyer building the network because it takes decades to get a good network built. What people look for in the network is competent lawyers; so you want to get a reputation for being a competent lawyer with unique skills. That's why I said the first thing is expertise. Expertise gives you the reputation that gets you the network built up faster than someone who doesn't have the expertise. ◆



— Xiong "Jackson" Zhou is an associate attorney at the Law Offices of Teresa Li, PC. Prior to joining the firm, Jackson practiced business and employment law, representing small businesses and employees in legal disputes. While in law school, Jackson founded the Student Trial Lawyers Association, a student chapter of the San Francisco Trial Lawyers Association. In his spare time, Jackson enjoys hiking, cooking, and raising money for charities.

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Appellate Report

ACCTLA Past President Alan Charles Dell'Ario's Case Named by Daily Journal as Top Verdicts of 2018



Top Appellate Reversals:
Regents of the University of California v. Superior Court (*Rosen*)

The California Supreme Court ruled for the first time that universities and colleges have a duty to protect their students from foreseeable violence during curricular activities. Alan Charles Dell'Ario, Napa-based certified appellate specialist, along with Brian J. Panish and Deborah S. Chang of Panish Shea & Boyle LLP, are responsible for this great result.

In March of 2018, the Court ruled unanimously in this appeal involving a UCLA student who was brutally stabbed in a chemistry lab by a classmate, who school officials knew was struggling with mental health issues and had exhibited threatening behavior.

Charles, lead appellate lawyer for plaintiff Katherine Rosen, says the ruling has the most far-reaching impact in any case in his over-four-decade career because it benefits over 3 million college students in California. He explains that the new duty to protect the students stems from the institutions having a special relationship with them.

The Supreme Court's decision is the first in California to extend the special relationship to the college setting. College students now have the same protections as K-12 students and have the right to expect safety from foreseeable violence in their classrooms.

The Court left unresolved the issue of the appropriate standard of care to be used by lower courts to judge the reasonableness of UCLA's actions. In a December 2018 opinion, the Second District Court of Appeal agreed with Rosen's position, and held the standard of care that ordinarily applies in negligence cases (that of a reasonably prudent person) would apply. The Regents have filed for Supreme Court review. (Stay tuned for more developments in this important case.)

On March 20, 2019, Charles, Brian and Deborah were awarded the Daily Journal's 2019 Clay Award for their tremendous appellate victory. ◆

ACCTLA's Mentoring Program

Take advantage of ACCTLA's Mentoring Program to improve the quality of litigation in our courts. Attorneys who call will be referred to a mentor attorney for a free consultation. The mentor will not prepare your case but will assist you in your approach to the case.

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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Your Practice Takes Precedence

by Nancy Peverini

This year more than any other in recent memory, Consumer Attorneys of California will be making an extra effort in the Capitol to protect and augment your practice of law.

A big part of that effort will involve exploring insurance issues, like the state's absurdly outdated and anemic Financial Responsibility limits; the elimination of California anti-stacking law for uninsured and underinsured motorists; and the mandatory disclosure of insurance limits prior to case filing.

We recently emailed a formal online survey to all members, so please take part if you haven't already. You can access the survey at www.tinyurl.com/insurance2019. If you would like to weigh in with more detail, contact CAOC Staff Counsel Saveena, Takhar at starkhar@caoc.org, or me at nancyp@caoc.org.

We also will be championing several civil procedure proposals that promise to improve your practice.

Among the ideas being weighed for legislation are: authorizing plaintiffs to videotape defense medical exams; augmenting current Request for Admissions law by adding sanctions if the admission could and should have been made earlier; adopting rules of discovery requiring document production electronically to reflect ongoing and anticipated changes in technology; requiring that documents produced in response to a request be produced directly in response to each specific request.

Of course, we're also wading deep into the budget battles. As we all saw during the really bad days following the Great Recession, court funding cuts can have a huge impact on your ability to practice law. CAOC has been working for the past decade with success to secure better funding. This year, with our new governor proposing a $327 million court funding boost, we're working diligently to increase that total even more and earmark funding specifically for crucial new judicial appointments. It is our priority to ensure that judges are available for you and your clients.

The fight against forced arbitration is also on the front burner. CAOC is joining with the California Labor Federation to sponsor AB 51 (Gonzalez), which prohibits forced arbitration of Fair Employment and Housing/Labor Code violations. Although a similar bill backed by CAOC was vetoed last year by then-Governor Jerry Brown, we anticipate a better response from newly-elected Governor Gavin Newsom.

In addition, CAOC will be working with the California Employment Lawyers Assn. on a bill to provide individuals forced to submit to mandatory arbitration in employment or consumer disputes with procedural options and remedies when the company stalls or obstructs the arbitration proceeding by refusing to pay the required arbitration fees.

CAOC will also continue our efforts to protect the legal rights of sexual assault victims. We are sponsoring a bill to extend the statute of limitations for Fair Employment and Housing Act and Labor Code claims from one to three years and also have introduced a bill to ensure sexual assault victims — such as those of USC's Dr. Tyndall — have their day in court.

Meanwhile, we will be pushing to kill every bad corporate-backed tort-war bill that threatens your clients' rights and your practice. This year, we expect legislation aimed at construction defect cases, contingency fee agreements, private attorney general act cases, lemon law and more.

We're already deep in the trenches addressing the employment issue of the year — business efforts to undercut the 2018 state Supreme Court's *Dynamex* decision addressing the classification of independent contractors.

Likewise, attacks on wildfire liability, especially with the PG&E bankruptcy, will be at the legislative forefront in 2019.

We also are joining with other consumer groups for what will be a major fight this year in Sacramento — to protect the landmark California Consumer Privacy Act. Passed last year and set to go into effect on January 1, 2020, the bill is under attack by high-tech firms fronted by the California Chamber of Commerce. The act includes a data breach private right of action that almost certainly will be targeted by big business.

Writing this, my only thought is — phew! And the year has just started. But with Governor Newsom in the corner office, I remain optimistic about our chances on these multiple fronts.

As always, we appreciate your support — in the past, present and in the future — as we work collectively to ensure justice for all and the health of your practice. ◆

— CAOC Legislative Director Nancy Peverini can be reached at nancyp@caoc.org.

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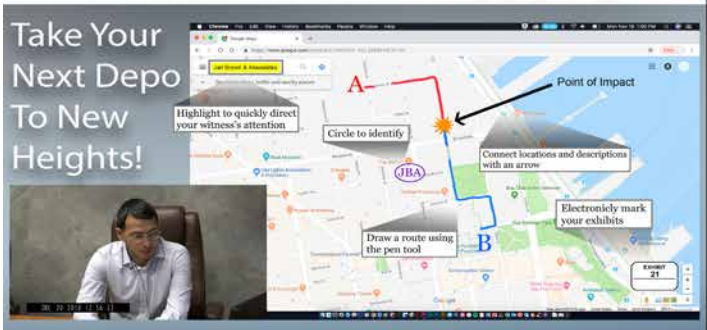

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