

EDITOR'S FOREWORD: PROPOSALS FOR A BETTER CALIFORNIA

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Editor-in-Chief



This issue of *California Litigation* is a bit different in two ways.

First, this issue is rather appellate-heavy. As an appellate practitioner, I don't mind that at all. As is our custom for a year-end issue, we have Kirk Jenkins' analysis of the California Supreme Court's latest term. Kirk informs us about what sorts of cases the Court is taking in amazing detail. If you want to debate whether the Supreme Court is not taking enough cases, or not enough of your preferred cases, this piece will provide you with hard data.

Next we have a pair of articles by a quartet of appellate justices. Justices Raphael and Hoffstadt provide Lessons for Civil Litigators from Court of Appeal Criminal Practice. Appellate justices are the ultimate generalists, so their wide-ranging perspective of the great tapestry of the law is fascinating and useful. This is followed by Justices Duarte and Buchanan exploring the value of separate opinions. Perhaps you feel that too many appellate opinions are unanimous and you're wondering what's happening to any alternative views. This piece provides insight to answer that question.

And how do trial court judges feel about being appealed? Check out now-retired Judge Tim Taylor's article, *Reflections on My Batting Average*. After two decades on the San Diego Superior Court, he looks back at

his record on appeal, over 200 cases taken up, including four up to the California Supreme Court. Trial court judges are served with appellate briefs, of course. But how often do they pay any attention to them—or to outcomes on appeal? Given pressing trial court dockets, there can't be much time for that. Judge Taylor supplies an answer.

This entire issue is not solely about appellate matters. In our general interest category, we have an article about the Ending Forced Arbitration Act, a recent federal statute prompted by the #Me-Too movement, which is being litigated across the nation, including California. Many view this law as poorly drafted and providing an opening for plaintiffs to avoid arbitration in the employment context by adding sexual assault or harassment allegations to otherwise ordinary Labor Code cases. We also have an article by Eddy Board member Marc Alexander about mediator ethics in our current AI age.

And finally, we have Professor Slomanson's analysis of nonresident bar admissions. Has it ever struck you as odd or annoying how every federal district and appellate court has its own bar admission requirements and paperwork? Maybe one day (soon?) there could be some simplification? Or is that merely a pipe dream?

Second, we've done something unusual in this issue by running a much-longer-than-average piece by retired Justice Tony Kline. Justice Kline is a legend and luminary not just for his decades of judicial service but for his political and social justice work as well. You may recall that a few years back the New York Times Magazine ran an interesting article about him, *The Judge and the Case That Came Back to Haunt Him*, N.Y.T. Mag. 22 (Nov. 21, 2022).

In this issue, Justice Kline tackles a problem that should concern every Californian, lawyer or not: mass incarceration. His article details how we got to where we are with prison overcrowding, precisely what that means, and most importantly what could and should be done about it. Most of us have no connection to the criminal

justice system, the prison system, or parole matters. While that may be lucky for us, it doesn't mean that we should turn a blind eye to a very serious and pressing issue. Moreover, this is not an article that merely aims to educate about a significant problem. This is an article that proposes solutions. In short, this is an important article not just for lawyers and judges, but for our Legislature. *California Litigation* is proud to publish this piece and hopes that it is a step in making real-world changes.

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