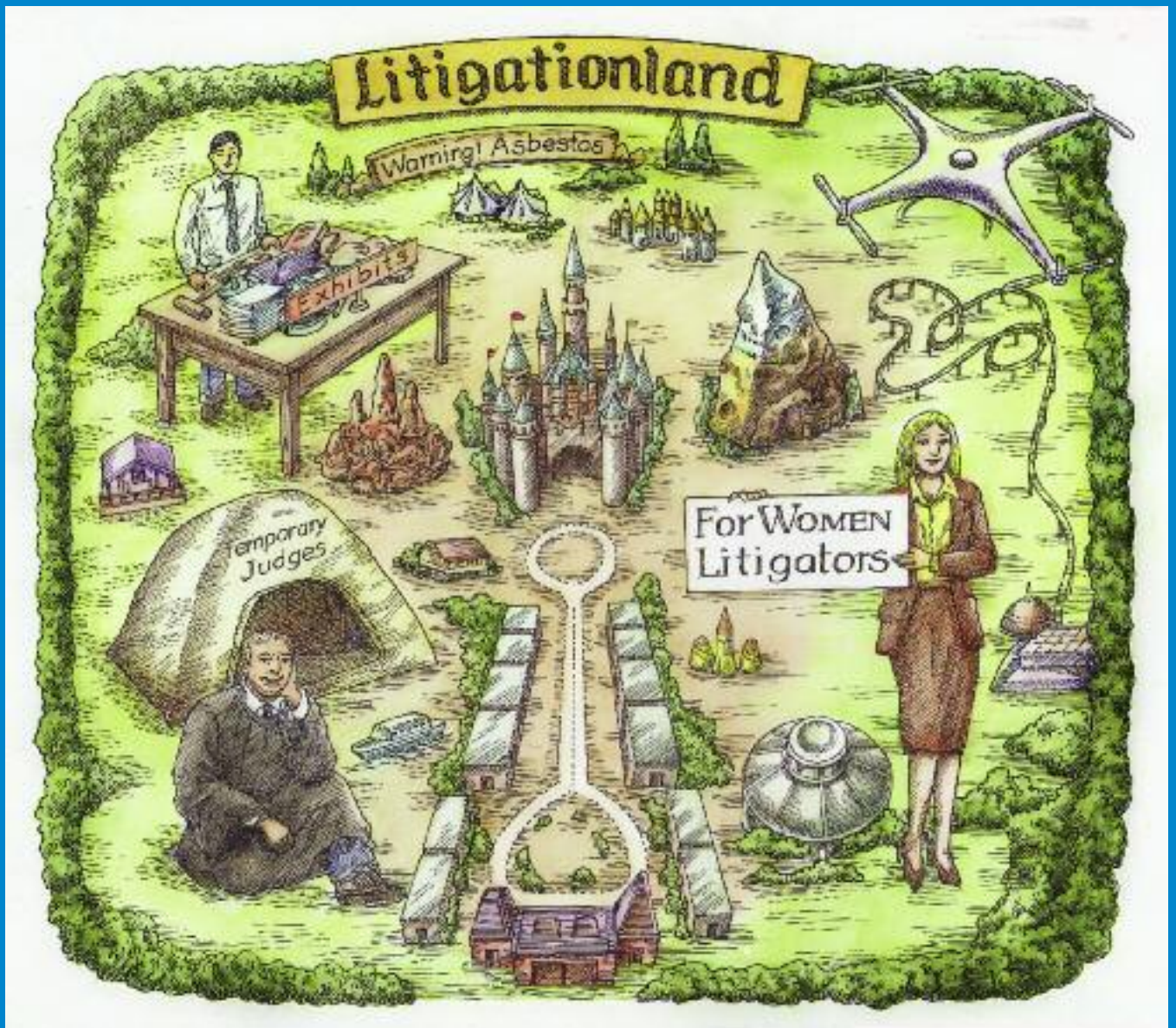


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Editor's Foreword

Golden Opportunity: A Fifth California Justice

By Benjamin G. Shatz



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As this issue goes to print, the press is abuzz with reports about what an open seat on the U.S. Supreme Court means for the nation, pending Supreme Court cases, and the upcoming presidential election. Speculation about successors for this “pivotal vacancy” (Dean Chemerinsky’s phrasing) includes the names of several Californians, including California Supreme Court Justices Goodwin Liu and Mariano-Florentino Cuéllar, Attorney General Kamala Harris, and Ninth Circuit Judges Paul Watford and Jacqueline Nguyen. Another Golden State justice would sure be exciting — and appropriate. We’ve already contributed some of the most esteemed justices. Which justices have hailed from California? None other than Stephen J. Field, Joseph McKenna (who succeeded Field), Earl Warren, and Anthony Kennedy. (See www.SupremeCourt.gov/about/members_text.aspx.) Don’t fret if you missed McKenna; I’d never heard of him either. Apparently, “conscious of his limited credentials,” he took classes at Columbia Law School for several months after his appointment to “improve his legal education

before taking his seat on the Court.” (See https://en.wikipedia.org/wiki/Joseph_McKenna.)

“California does not count,” Justice Scalia parenthetically noted in his *Obergefell* dissent, commenting on how the Supreme Court is dominated by Ivy League East Coasters, and no “genuine Westerner.” Setting aside the debate about who qualifies as a true Westerner, California has been America’s most populous state since the early 1960s. The country is ready for a fifth California justice. Let’s hope this opportunity is a golden one.

Also, as I pen this Foreword, I note that today (Presidents’ Day, February 15) marks the date in 1879 that President Rutherford B. Hayes signed a bill allowing female attorneys to argue before the U.S. Supreme Court — after five years of intense lobbying by Belva Ann Lockwood (let’s give credit where it’s due). I’ve been a devotee of Hayes since I was assigned to do a report on him in third grade. Initially disappointed at not drawing a more renowned president, I now appreciate his place in American history — and would be happy to quaff a lemonade with him. But that’s all ancient history, right? Yet it would be 40 years before the 19th Amendment allowed women to vote. Women wouldn’t be admitted to Harvard Law School until 1950 — and gender discrimination against even those Harvard-educated women lawyers was shamefully rampant. (See Cynthia Grant Bowman, *Women in the Legal Profession from the 1920s to the 1970s: What Can We Learn From Their Experience About Law and Social Change* (2009) 61 Me. L.R. 1, 10.) Recent headlines continue to reflect problems faced by women litigators. (E.g., *Judge Admonished Over Treatment of Women*, *The Recorder*, Jan. 25, 2016; see also *When Teamwork Doesn’t Work for Women*, *NYT*, Jan. 8, 2016 [discussing systemic

bias against giving women full credit for collaborative work with men].) That’s a nice segue for Laura Brill’s article in this issue, making suggestions about how a few changes might improve the status of women and, indeed, make litigation more bearable for us all.

Further on the improvement front, Dan Barer and Hall of Famer Jim Brosnahan have fantastic suggestions on improving writing and oral advocacy, respectively, and John Derrick has some thoughts about reducing overweight exhibits.

Also, don’t miss our articles on CACI jury instructions and temporary judging, both of which invite your participation. We also present articles on the finality of judgments, asbestos litigation, and — sorry to drone on here — privacy in our brave new world of unmanned aerial systems. Finally, we conclude with McDermott on Demand, who channels his inner Frank Sullivan (American humorist, best known for creating Mr. Arbuthnot the Cliché Expert). Even if you weren’t reading *The New Yorker* between 1935 and 1952, you’ll get a kick out of it, hands down, sure as the sun rises in the east.

How about adding your voice to *California Litigation*? Anyone who’s read this deeply into this Foreword must certainly have some interesting article ideas or editorial comments. Your 1500 words of fame are just an email away. Grab this golden opportunity and submit your piece today!

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Benjamin G. Shatz, Editor-in-Chief of this journal, is a certified Specialist in Appellate Law and co-chairs the Appellate Practice Group of Manatt, Phelps & Phillips, LLP, in Los Angeles. BShatz@Manatt.com.
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