



# CITATIONS

DECEMBER - TWO THOUSAND TWENTY ONE

## JUDGE CATHERINE VOELKER

*by Edward A. Andrews*

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## PRESIDENT'S MESSAGE

by Marc D. Anderson



Al Young, poet, novelist, essayist, screenwriter, and professor, died in April of this year at the age of 81. I wasn't too familiar with Mr. Young until Governor Arnold Schwarzenegger appointed him the state poet laureate in 2005.

The position paid \$10,000 and required a minimum of six appearances to promote poetry to the public. Mr. Young did much more than the minimum and in an interview said, "My philosophy many years ago changed from getting to giving, and that shift has brought about just a lot of wonderful things. It just feels good bringing poetry into people's lives."

2006 was a special year for me. My son, Bodie, was born that April and I became a father. Later that year I read an article on resolutions in the Los Angeles Times by Mr. Young that shouted to me then and has stuck with me all these years later.

My favorite parts from Mr. Young's article:

"Remind yourself again and again and yet again that This Is It. That is to say, this melting moment is it, is all you've got. Write this on a Post-it note and paste it on your bathroom mirror. Then, morning or night, when you glance or gaze at yourself, you'll know the score."

"Spread love. Let those close or close by know how much they mean to you. How else are they going to know?"

"Speak less and listen even more closely than you do now.... Fran Liebowitz

spoke truth when she said that many of her writing students have trouble writing credible dialogue because they think the opposite of talking is waiting."

Our Annual Dinner was a great success and proved how much we want to be together again safely. **Donna Munyon, Elvia Garcia, Frank Bellinghiere** and **Vanessa Frank** challenged us to serve and give back to our community. **Jacquelyn Ruffin**, VCBA's new President, closed the evening by outlining her community-focused plans for 2022.


As we end 2021 and begin 2022, I hope Munyon, Garcia, Bellinghiere, Frank and Ruffin inspire you to accept the challenge to serve our community and support our Bar Association.

Remember, This Is It.

I was honored to serve as President of the Ventura County Bar Association in 2021. Thank you to my Board, the Bar's executive director, Sandra Rubio, and the Bar's staff, Nadia Avila and Deborah Tovar, for all of their work. Thank you all for your support and encouraging conversations and emails through the year.




*Marc D. Anderson is a lawyer with Hiepler & Hiepler, APC, in Oxnard. He represents plaintiffs in personal injury and wrongful death cases.*



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**HAVE YOU HEARD?**



On Nov. 15, trailblazer **Katherine E. Stone** passed away. Stone began her legal career in 1974, was admitted to practice before the United States Supreme Court in 1978, and largely

focused her practice on the representation of public entities in complex state and federal court litigation. Most recently Stone was of counsel to Myers, Widders, Gibson, Jones & Feingold, LLP, where she worked alongside her husband **J. Roger Myers**. Look for a detailed profile of Stone in 2022.



Santa Barbara Superior Court Judge Von Deroian, Moorpark College President Dr. Julius Sokenu, and San Diego attorney Lori Trofemuk are the newest members of The Santa Barbara & Ventura Colleges of Law (COL) Board of Trustees. All three were elected unanimously this fall to serve as fiduciaries for the region's oldest and largest independent law school. COL congratulates its three new trustees on their appointment and looks forward to their contributions to our mission and vision. For more information, contact Kryztofr Kaine, [kkaine@collegesoflaw.edu](mailto:kkaine@collegesoflaw.edu).



Ferguson Case Orr Paterson LLP proudly shares the news that on Jan. 1, 2022, two litigation associates will move up to become partners. They are **Max Engelhardt**, a Suffolk

University Law School graduate who spent the first nine years of his legal career in Massachusetts before moving to California in 2016, and University of Hawaii graduate Law School **Jessica Wan**, who practiced law



in Honolulu for three years, then brought her law practice to Ventura County in 2017. Max focuses on business, construction, employment class action and real estate disputes. Jessica

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# JUDGE CATHERINE VOELKER

by Edward A. Andrews



When **Hon. Catherine Voelker** ascended to the bench in 2021, it was a new direction for her commitment to public service in Ventura County, a place where she quite literally has deep roots. Coming from a family background in ranching and farming, Judge Voelker grew up around the area's agricultural community. In seventh grade, however, she became interested in law when **Judge Vincent O'Neill** – then Chief Deputy District Attorney – gave her class a tour of the courthouse. As the first person in her family to pursue a career in law, Judge Voelker credits her supportive parents with teaching her that one is “capable of anything, with a strong enough work ethic.”

Voelker views her work as a jurist as “serving in a different way.” As someone who has “always been a public servant,” she believes it is important to never stop learning, to grow and develop in the law, and to give back. This translates into her courtroom practice. Interested in new issues of law, she appreciates counsel identifying novel legal issues clearly and briefing in advance when appropriate. She also looks forward to meeting attorneys newer in their practices. Voelker focuses on showing parties and attorneys patience, kindness, respect, and courtesy. She values when counsel do the same. “An attorney can be a zealous advocate while still operating within the confines of treating others with respect.” As part of this, she expects attorneys before her to exercise professional courtesy with opposing counsel and everyone else in the courtroom, including court staff, the judicial assistant, bailiff and audience.

Someone who identifies the courtroom as “my favorite place to be,” Voelker has

enjoyed her assignments since being elected and sworn in to the bench. Following her elevation, she began her service as a judge at the Juvenile Justice Center as well as the East County Courthouse, handling both a traffic and small claims calendar, along with guardianship disputes, petitions and trials. In keeping with her view that every case is a chance to learn, Voelker found the positive, even in guardianship disputes: “What I found was, people love these kids and, while perspectives differ, people want what is in the best interests of the child.” Voelker recently transitioned to the Court's Criminal Division and now presides over misdemeanor criminal arraignments in Department 11. She views each of her assignments as an opportunity to grow and learn in the realm of law as a judge. She enjoys using her deep knowledge of the criminal law, not now as an advocate, but as a jurist charged with upholding the law and preserving the integrity of the record and the process of law.

Consistent with her interest in all participants in a courtroom, Voelker has been mindful in her assignments that she is often working with members of the community who have never experienced court proceedings and have little knowledge of the law. Often the first representative of the justice system with whom community members are interacting, she works to take the stress out of the process and explain the procedures and law where appropriate, so that those before her understand what is happening. She finds this not only helps to put people at ease but also that when things deescalate and people relax, they are able to make more informed, assured and confident decisions. For those involved in a case, whether a simple traffic citation or something more complex, Voelker wants to be sure parties know their rights, understand the outcome, and leave with the recognition that they have been treated with courtesy and respect.

Much of Voelker's tenure has occurred during the Coronavirus era, which has presented its own challenges. In addition to some of the issues in proceedings during Covid – assessing credibility with participants who are wearing masks, for example – Judge Voelker notes that one of the central issues is moving cases toward

just results. Voelker understands that this is a very challenging time for many, and legal and logistical difficulties accompanying the pandemic sometimes justify a continuance. However, “the wheels of justice do not stop,” and the court must persevere in its duties to the public. Accordingly, Voelker appreciates when counsel work together to address novel issues, including those related to the pandemic, so that a case can move toward speedy adjudication.

Voelker looks forward to further opportunities to learn and grow as a judge. Drawing on experience that includes homicide, sexual assault and felony trials, she has enjoyed the return to criminal law. Even in limited hearings, such as arraignments, she appreciates counsel who have a grasp on the facts of the case. This goes back to her experience as a trial lawyer. “I have always enjoyed trials. I am always interested in the facts and interested in the law. I love hearing the story from start to finish.” Former colleagues and opponents both praise her demeanor and legal acuity on the bench. As one former colleague noted, “Whatever she handles, she is going to be great. Because she is an incredibly hard worker and smart.”

Alongside a lifelong commitment to local community service, Voelker has also embraced challenges as varied as achieving membership as a magician at the Magic Castle and becoming certified as a rescue diver. Overcoming a childhood fear of water, she learned to scuba dive and now enthuses about the colorful variety of local nudibranchs. As she puts it, “You are only guaranteed to fail if you don't try.” Voelker's focus on public service and continuous learning translates into her community activities and personal life as well, perhaps inspiring other future lawyers as she was inspired in the seventh grade. Among other outreach, Voelker will be speaking at the Bridging the Gap event hosted by VCBA Barristers on Saturday, Jan. 8, 2022.



**Edward (“Ted”) A. Andrews** is a Ventura County deputy district attorney.



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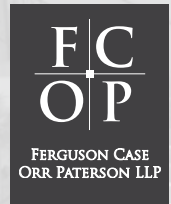
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# WHEN DOES MY STATUTE EXPIRE? LET ME COUNT THE DAYS

by Mark E. Hancock



A brief visit to legal websites like *Avvo.com* will demonstrate there is some confusion among practitioners about just when a statute of limitations will expire. Two schools of thought have been: (1) counting the days, and (2) the anniversary method. Now, thanks to the California Supreme Court and its decision in *Shalabi v. City of Fontana* (July 12, 2021 S256665) \_\_\_ Cal.5th \_\_\_ (“*Shalabi*”), there should be more certainty about how a statute of limitations is calculated and when it expires. So, just how does one calculate a statute of limitations?

According to California Supreme Court, a statute of limitations sets the maximum time in which to initiate legal proceedings. Under Code of Civil Procedure (“CCP”) section 12, the general rule for computing the time in which any act required by law is to be done (including the filing of an action) requires excluding the first day and including the last, except where the last day is also a holiday and then that day is also excluded. The court stated both that this uniform rule promotes clarity and stability, and that there must be a clearly expressed intention to take something out of this general rule and to provide for a different method of computing time for the general rule to not apply. Specifically, the court cited *In re Anthony B.* (2002) 104 Cal.App.4th 677, 682 for the proposition that “[a]bsent a compelling reason for

a departure, [section 12] governs the calculation of all statutorily prescribed time periods.”

While the *Shalabi* case specifically involved calculation of the two-year statute for personal injury and wrongful death in a 1983 action brought by a plaintiff, who had been a minor when his father was killed but had since turned eighteen, it is clear that its holding applies generally. In fact, the court stated, “[S]uch a construction [i.e., its holding that the general rule applies] ensure[s] that a plaintiff minor receives the same first day exclusion benefit as a plaintiff adult whose action has accrued ... [and] it also avoids creating an exception to the generally applicable rule.”

In *Shalabi*, the plaintiff turned eighteen on Dec. 3, 2011, and filed his lawsuit on Dec. 3, 2013. One following the anniversary method might ask, “So what is the time problem?” Well, in a case of hair-splitting that spanned nearly a decade and went all the way to the highest state court, the defense argued:

1. When a cause of action accrues on a **partially spent day** that day is excluded under CCP section 12, but
2. **when a cause of action accrues on the first minute of a day, that day should be included**, and

3. an individual always turns 18 on the first minute of his or her birthday,

4. ergo, one should count from Dec. 3, 2011 (and not from Dec. 4).

The California Supreme Court rejected this argument and attempted to create an exception, holding that the plain language of CCP section 12 does not limit the first day exclusion rule to partially spent days. If it had intended to do that, it could have easily said so, but it did not.

The defense did point out that a year is statutorily defined as 365 days under Government Code section 6803 and the court seems to have agreed that is the case. Not specifically addressed in the opinion, however, is the fact that 2012 was a leap year, so it would appear that the defense was trying to use that to its advantage, because a leap year has 366 days in it. (Also not addressed was what the plaintiff in *Shalabi* was going to do with his “full day,” as a practical matter, **since his birthday fell on a Saturday in 2011.**)

So, what are the takeaways from *Shalabi*? One is that, in calculating the length of a statute of limitations, one counts from the day after the accrual date (whether the action accrues at the beginning of the day, in the middle of the day, or at the end of it). There is no distinction between whole days and partial days. Another is that one counts 365 days for each “year” from there. There may be some additional time if the last day falls on a holiday. Finally, be careful of leap years; don’t assume the anniversary method will be correct.



**Mark E. Hancock** is an attorney, with offices in Ventura, who handles claims under disability and other insurance policies and personal injury, insurance and real estate litigation.



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## Jay Leiderman: 1971-2021

by Kristi Peariso



In June of 2000, I started in the Ventura County Public Defender's Office. The first person to welcome me to the office was **Jay Leiderman**. He had started just a few months earlier, and we instantly became great friends who bonded over the struggles of being public defenders, and our love for live music.

Leiderman was born Jason Scott Leiderman on April 12, 1971, in a Long Island hospital. He was the eldest of three boys born to Jacqui and Stu Leiderman. I always got a kick out of Leiderman's calling his parents Jacqui and Stu rather than Mom and Dad. He lived in Bayside, New York until he was five. In 1976, his family moved to Nanuet, New York where he spent the rest of his childhood years. He attended Bardonia Elementary School, Felix Fiesta Middle School and graduated in 1989 from Clarkstown South High School. As a child, Leiderman loved to play soccer. In high school he painted his bedroom to resemble Picasso's *Guernica*. He was on the debate team and in a band named Captain Cloud.

In 1993, Leiderman graduated from the University of Michigan with a Bachelor of Art degree in both History and Film/Video Studies. After college, Leiderman worked for Hollywood producer and agent Bobby DeBrino, and toured with the Grateful Dead, making a living selling t-shirts in the parking lot. Anyone who knew Leiderman knew his love for music, especially the Grateful Dead. In 1999, he graduated from the University of San Francisco School of Law, where he was the class president. Leiderman became a member of

the California State Bar in Dec. 1999. He worked at the Federal Defender's Office in San Diego for a short time before coming to Ventura.

While in the Ventura County Public Defender's Office Leiderman was a zealous advocate for his clients. He started as a misdemeanor attorney, but quickly moved up to felonies. I would joke that Leiderman had more than 24 hours in his day because he found the time to file motions on just about every case and to fight each case as if his own freedom and liberty depended on it. On top of his very large case load, Leiderman would take on projects like challenging the constitutionality of Ventura's open container law and the illegal camping ordinance. It didn't matter to Leiderman if he was representing someone charged with a low-level misdemeanor or a homicide, he represented everyone to the absolute best of his ability. It was no surprise that Leiderman became the president of the Ventura County Criminal Defense Bar Association in 2004 and then again in 2007, or that he received the **Joyce Yoshioka** award for his outstanding contribution to the criminal justice system in 2009.

In 2006, Leiderman was certified as a criminal law specialist by the California Board of Legal Specializations. On July 18, 2006, he left the Public Defender's Office to open his own practice. Leiderman became somewhat of an expert in Proposition 215. He defended many defendants charged with marijuana-related charges and advised medical marijuana collectives, teaching them the law and drafting their contracts and articles of association. Leiderman co-authored a book on the legal defense of California medical marijuana crimes, which was published by the National Organization for the Reform of Marijuana Laws.

Eventually, Leiderman became known as the country's leading defender of computer hackers. *The Atlantic* called Leiderman the "Hactivist's Advocate" for his work defending hackers/activists accused of computer crimes, especially people associated with Anonymous. BuzzFeed called him "The Maserati-Driving Deadhead Lawyer Who Stands Between Hackers and Prison." Leiderman was also featured in a video about his life and work on CNN's Great Big Story.

In 2011, Leiderman married and had a son with criminal defense attorney **Justine Avtjoglou**. As much as Leiderman loved practicing law, his real true love was his ten-year-old son. Leiderman was a dedicated father who enjoyed every second with his son. Leiderman enjoyed sharing his love for baseball with him. Leiderman's biggest joy was coaching his son's baseball team.

On Sept. 7, Jay Leiderman died in his apartment of a heart attack at age 50. The legal community lost an amazing attorney and an advocate with a heart of gold. He is survived by Avtjoglou, his son, parents, two brothers, four nephews and a niece. He was laid to rest on Sept. 12 in Paramus, New Jersey. A Celebration of Life was held for him on Oct. 1, at the Victoria Pub in Ventura. Leiderman's involvement with the legal community was evident from the number of friends and colleagues who came to celebrate his life, many speaking about Leiderman's impact on their lives, the theme being that Leiderman was loved by all, was everyone's best friend and would have done anything for anyone.

The legal community will remember Leiderman for being a hardworking dedicated advocate. His friends will remember him as the fun, music-loving and baseball-loving big-hearted person that he was. His son will remember him as a loving and dedicated father. His parents will remember him for his wit, intelligence and dynamic presence. I will remember him as "the guy with the big brown hair," as my oldest daughter used to affectionately call him, the guy who watched at least one World Series game with my father every year, even when my father was dying of Alzheimer's and no longer remembered his name.

That was Leiderman....May he rest in peace and enjoy the music... wherever he is.



**Kristi Peariso** is a criminal defense lawyer who practices in Camarillo. Kristi.peariso@gmail.com; 805-620-0322.



# Joe Herbert: 1963-2021

by Panda Kroll



**Joe Herbert**, a Camarillo-based employment plaintiffs' lawyer, passed on Oct. 11 from Covid complications. Herbert was a frequent presenter of VCBA continuing education programs and was well known by the legal community for his charm and wit. A touching obituary was published in the Ventura County Star <https://www.vcstar.com/obituaries/vcs022956> is worth a read.

Herbert was a Navy veteran. A graveside service with military funeral honors was held at Valley Oaks-Griffin Memorial Park on Nov. 3. In addition to **Lou Kreuzer**, his law partner of seventeen years and the master of ceremonies, the service was attended by VCBA members **Polina Bernstein, Melissa Cohen, Panda Kroll, Tom Milhaupt, Greg Ramirez, Tim Sottile, and Laura Withrow.**



*Pictured: Lou Kreuzer and Sam Herbert*

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