



Profile: Jonathan Gertler

Pioneering trial lawyer strives to stay composed and confident without being cocky

BY STEPHEN ELLISON

Even as Jonathan Gertler repeatedly credits luck and fortunate timing for much of his success, it becomes increasingly clear that his ascension among the elite plaintiffs' attorneys in Northern California, if not the entire state, has been no accident.

But humility being part of the man's nature – not to mention a crucial aspect of his professional approach – it's no surprise he's quick to deflect any talk of brilliance on his part.

In recalling his internship and clerking job at the prestigious Walkup firm in San Francisco, Gertler concluded with, "It was a very fortunate turn of events, in many ways – really an early demonstration to me of how much of this life thing is luck. I had really good luck."

In recounting his first trial, a million-dollar verdict he won no more than eight months removed from law school, Gertler wrapped up by saying, "I had a nice judge ... she was very nice to me throughout the trial. And I got a good result – I was very lucky."

Fighting the battle

But behind the self-effacing clarifiers lies the true source of those accomplishments – an intelligent, focused, hardworking litigator who is a leader among his peers and believes wholeheartedly in what his profession stands for.

"Right now, we're fighting the battle generally ... to save the right to a jury trial," Gertler said of his San Francisco-based firm, Chavez & Gertler. "We've been bumping up against the same problem all plaintiffs' firms are dealing with ... a lot of juries are really hostile to what we do despite the fact that if they really understood it, really knew why we do what we do and what the justice of the



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situation was, they'd be behind us. We just have to hope that when we get into court, we can make them see that."

Gertler has managed to do just that on many an

occasion. Since that first million-dollar verdict nearly three decades ago, he has achieved several more awards in the seven-figure range and beyond. More important, his work has evoked change – in workplace practices, in regulatory processes and in the law.

"He has been a very successful lawyer in the areas of class action and personal injury litigation, one of the rare lawyers who can do both," said Martin Blake, a longtime colleague who has served with Gertler on the boards of the San Francisco Trial Lawyers Association and Consumer Attorneys of California. "He's extremely smart, tenacious, well-prepared in all areas and expresses himself eloquently. He's one of the best lawyers in California, in my opinion."

Secret of success

Gertler's secret in trial, or more his style, is to remain composed without appearing cocky – and to retain that composure even while everyone else in the room may be ready to boil over. He learned this method while working for – and thoroughly observing – R. Jay Engel, and it was a crucial factor in Gertler's winning that first trial.

"He had a steady hand and he taught me how to have a steady hand," Gertler

said of Engel. "I watched him every day taking on the real difficult cases and getting into difficult positions and handling them like a gunfighter, man.

"R. Jay taught me how to be quiet and not loud when I wanted to be powerful and how to be passive aggressive when my client needed me to be and how to be cool and light on my feet. He taught me to recognize which way things are going and figure out how to go with it and not against it and still win. He was a great role model that way."

So at the start of that first trial, a construction accident case involving a cement mason, the young Gertler – already trained in formal rhetoric and, by that time, certified by the Engel School of Cool – was ready. But he was still human.

"My understanding was that I looked amazingly contained, but I think I was fairly nervous," Gertler recalled. "I can remember being nervous before my opening statement. I think I also felt that I would work through it, and the jitters would go away. I had some of the tools that are commonplace now – like I knew to focus on my breathing and to control my thoughts. I was a steady hand about facing my fear, but the fear was definitely there."

Chasing a different dream

Fear actually may have played a part in Gertler's entrance into the law profession. Raised in the Chicago suburb of Highland Park, Ill., he had designs on becoming, in his words, "the great American novelist" but was "too chicken" to go to New York, pay his dues as a struggling fiction writer and chase down that dream. So he went to law school instead. "I went to law school because by nature, I'm very verbal and very analytical, and also my mom romanticized being a lawyer for me," he said.

Mom, a civil rights supporter, told her son about his cousin, Jack Greenberg,



who played an instrumental role in litigating *Brown v. Board of Education*. And she gave him *Attorney for the Damned*, a book by Clarence Darrow. “So when I didn’t have the courage to try to be a novelist, I somehow found the courage to go to law school,” Gertler said.

After he graduated from the University of Illinois, Champaign-Urbana, Gertler took a road trip to San Francisco with his then-girlfriend, spent five days in The City and was convinced it would be his new home. He was accepted into Hastings College of the Law and embarked on a new dream.

During law school, when he was still trying to figure out what area to pursue, Gertler clerked for Justice Thomas Caldecott in the First District. He soon befriended the judge’s research assistant, a former attorney and Reagan Republican with whom he had “many heated lunches talking politics.” It was during one of these discussions that Gertler’s friend told him he should go into personal injury law. Not long thereafter, Gertler was clerking at the Walkup firm, learning from some of the best plaintiffs’ lawyers around. “All the people at Walkup were consummate professionals,” Gertler remembered. “They were doing the work the way it should be done and were really my first role models within the area of law.”

Pioneering cases

During the 1990s, Gertler made his mark not only on the legal community but also on the health-care industry nationwide when he filed a series of lawsuits involving health-care workers who had contracted HIV through accidental needle sticks while caring for AIDS patients. The issue was spearheaded by the SEIU with backing from several other employee

associations, and the first case came to Gertler in 1990 via referral – a nurse’s assistant for Kaiser Foundation Hospital.

“At that time, AIDS was a death sentence,” Gertler said. “There were no cocktails that could attack the disease the way they do today.”

There already had been a hepatitis B scare from accidental needle sticks – to the tune of 10,000 per year at the time – Gertler said. When AIDS emerged, it sparked a whole new level of terror in the workplace. And nothing was being done about it.

So, Gertler helped do something. Over the course of 11 years, starting in 1990, he filed six lawsuits – against varying combinations of health-care plans, hospitals and needle manufacturers. The cases were well-documented by the San Francisco Chronicle and led George Miller, a state legislator from Martinez, to introduce a bill amending Cal-OSHA safety regulations within hospitals. U.S. Sen. Barbara Boxer introduced similar legislation at the federal level.

“It was a pioneering set of lawsuits,” Gertler said. “They all settled, but by the time the last one settled in 2001, the laws across the country had changed, and the number of accidental needle sticks had been dramatically reduced.

“It was compelling because the risks were so grave and because the workers at risk from these products were so heroic to be working with these infectious patients,” he added. “A lot of good got done. It lasted a decade of my life, so for me, it was pretty memorable and an important part of my practice.”

Humble and focused

Gertler is a strong proponent of the age-old concept of being first to the

battlefield – as a rule, he and his colleagues are always the first to arrive in the courtroom. But nothing, he said, is more important to him than staying humble and focused. “That’s what gets me home,” he said. “I really try to be the calmest person in the middle of a storm.”

Outside of the courtroom – and the office – Gertler plays basketball twice a week, what he calls “a passion.” He also enjoys running in the hills around home or on the beach when he’s traveling. He is an avid reader, too; lately he’s been intrigued by the field of neuroscience. “I’m very interested in the way we think and the way we feel,” he said, “and decision-making is a science that all trial lawyers ought to have an interest in.”

However, Gertler said, being overly analytical oftentimes leads to the wrong decision. “You’ve got to look at the odds, but you can’t be governed by them,” he said. “Because in the last analysis, it’s only the people who take a chance – who make the bet that most people won’t make – who get the big reward. You have to understand the odds but not be ruled by them.

“You’ve got to be a good gambler. But being a good gambler is based on working hard and getting the intelligence you need and then thinking hard about whether something really is a bet to take. I think a lot of lawyers’ careers turn on those decisions.”



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