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Profile: Mark Fong

Accomplished trial attorney, avid cyclist, relishes a diverse trial practice and says that to a client "you're their knight…"

By Stephen Ellison

For Mark Fong, advocacy is more than just a job requirement. It's an important part of his daily life, whether he's at work in his San Francisco office, riding his bicycle for commute or pleasure, representing his Asian-American heritage or just being a good citizen and family man.

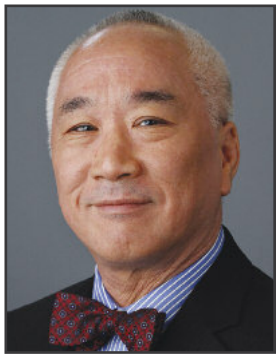
Because others are depending on his intelligence and shrewdness, as well as his ability to do the right thing, Fong takes those roles seriously, always conscious that his actions could result in positive change for specific people's lives and possibly society in general.

"When you've got someone who is catastrophically hurt, they're relying on you to basically put their lives back together again," said Fong, a partner with Minami Tamaki LLP. "You're their knight, you're the one who can put them back together again … they're resting every confidence on you, and you have a chance to really help them."

Indeed, when he was starting out more than three decades ago, Fong quickly recognized that his foray into law – and into plaintiffs' trial practice – would give him a chance to make a difference. It also would give him an opportunity to represent his heritage at a time when few Asian-Americans were in the profession.

"Those certainly were huge factors – the lack of people who looked like me in the courtroom and the ability to … say 'yeah, I'm doing right, one case at a time, one client at a time,'" Fong said about deciding to pursue law. "And every so often, you get a case that will speak to a greater good, where changes can be made that have a much broader impact, not just on your clients."

Fong's cases pretty much run the plaintiffs' law gamut, from premises liability and governmental torts to personal injury and medical malpractice. But his passion seems a bit more heightened when a case involves a motor vehicle, watercraft, bicycle or pedestrian. While he hesitantly called himself a specialist in accident cases, Fong was quick to point out that, as a trial lawyer, he shouldn't be seen as a niche attorney.


Fong

"I hearken from a time when a trial lawyer would say they can pick up any kind of a plaintiffs' case," Fong said, recalling what his mentors taught him early on. "They would say they could litigate that (case) and try it because they always believe the skill is in the trial work and working with the jury and knowing your way around the courtroom. The substantive area is something you can learn up on, and you find experts."

"Those were my mentors' contentions. I'm not that bold; I know my limits."

"But, yes, I would say anything that rolls and ways that people can get hurt from vehicles … those types of cases I've had a lot of experience trying."

Motions on motion

Fong's case diversity in the area goes beyond typical car, bike and pedestrian incidents. They could involve tractor trailers, aircraft, heavy construction equipment, elevators, cranes, watercraft and even underwater transport, including scuba diving gear. He has obtained several multimillion-dollar verdicts and settlements over the years and has been recognized accordingly as a fellow of the prestigious American Board of Trial Advocates as well as a member of the National Trial Lawyers, comprising the top 100 trial attorneys from each state.

Because he is an avid cyclist himself – often riding to and from his San Francisco office – Fong is active in the city's cycling and transportation community – outside the realm of his law work. He is a member of two nonprofits – the San Francisco Bike Coalition and Walk SF and co-chair of a third called Chinatown TRIP, which is active in transportation and pedestrian safety and accessibility. Fong said cycling and pedestrian safety have become critical issues for his hometown.

"I've always lived in San Francisco – still do. It's always been very dense, no one drives, everyone takes the bus or walks or uses other public transit," Fong said. "So having streets that are safe to walk on and buses that are safe and operate on time serves the community, and it's a pretty big deal. Vision Zero is an ambitious and very commendable plan by the mayor – the goal is zero traffic deaths in San Francisco by 2024 – one that everyone who is interested in bike and pedestrian safety should get behind. It's an embarrassment and a sore spot for City Hall the number of pedestrian and bike deaths we've had to endure, and the Bike Coalition and Walk SF are not letting it subside. This issue is not going away."

Fong pointed out that more and more people each year are trying to find alternative ways to work, so that means the bus, walking and bicycling. While there may be many more cyclists on the streets, the number of vehicles is not necessarily subsiding – in a city that's essentially locked in on all four sides. "So you have more total vehicles competing for the same space," he said, "which is why

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you're seeing an increase in cycling accidents and deaths. It's a huge part of what Vision Zero, the San Francisco Bike Coalition and Walk SF are trying to get their heads wrapped around – how to make the three work more harmoniously together."

A sense of duty

In law, Fong's path to success was almost as unwieldy as a San Francisco street. But he paid his dues, learned as he went and polished his skills to a fine shine. And through it all, he never lost sight of his duty or purpose.

"Someone once said, 'You try a case for show, but you settle for the dough.' The idea is you try the cases to show the other side … that you're not afraid, and you *will* try the right case," Fong explained. "If (the opposition) is not willing to be fair to your client, then it's on. I've tried enough cases that I think I have the reputation that I won't back down if they won't be fair."

By the same token, Fong said he's not willing to add undue risk to his clients – many of whom are already catastrophically injured – just to stroke his ego. "I'm not going to say, 'I think I can do better' at trial," he continued. "I'm not going to say, 'Let's roll the dice – let's roll your dice.' I think the medical expression is 'The enemy of good is better,' meaning if you've got the operation to a point where you have a good result, that's where you stop – let's close up the patient. But if you're in your hubris, trying to make it better, now you're playing with the patient's health. … In our case, we're playing with the client's livelihood."

Born and raised in San Francisco, Fong was a trail blazer of sorts in his family when it came to the law profession. He had an uncle who was a probation officer and later went into law, but he really had no influences – at home or at school – pointing him down that path. His career choice, he said, basically came down to his intellectual strengths: reading, writing, critical thinking and public speaking.

Fong graduated with high honors from UC Berkeley with a political science degree and went on to UC Hastings College of the Law in San Francisco, where at first much of the procedural and theoretical practices were foreign to him. He persevered, however, and eventually served as an extern to Justice Winslow Christian of the Court of Appeal, First Appellate District (San Francisco).

Upon graduation from Hastings, Fong was eager to start trying cases and joined forces with Robert Harlem, practicing in that capacity for the next 25 years. He moved to Minami Tamaki in 2006. "When I was coming up, there weren't a lot of minority or especially Asian-American trial lawyers, and that was something that I really enjoyed from the beginning," Fong said. "Trial lawyers will tell you many reasons why it floats their boat, but for me, it's a combination of it's a chess match, it's theater, it's like football. It's a game of inches sometimes with discovery, and then sometimes there can be a long bomb with a dispositive motion. But mostly it's a game of inches – it's human life. So I decided early on I don't want to just be working on some corporation's lease."

Through the early years, Fong studied other successful plaintiffs' trial lawyers at work: how they carried themselves in court, what worked for them and what didn't. Then he recognized the importance of applying those methods to his own way of doing things. It is a developmental process he feels all young lawyers should follow. "What we do, it's been done, studied, dissected by other lawyers – they write books and give seminars," Fong said. "It's incumbent on any young trial lawyer to learn as much as they can, just be a sponge and learn from those who have been successful, and then make it your own because juries can tell when you're faking it.

"I think (jurors) appreciate it when you're yourself," he continued. "If you're not a gifted orator, if you're more of a quiet, confident type, they'll appreciate that. You've got a lot of time in court, and they will know by the end of the trial that your demeanor is true. On the flip side, they can also tell when you're not yourself."

Keep on pedaling

When he's not in the office or court, Fong most likely is spending time with his family, riding his bike or participating in a community service capacity. He insists he is not a hard-core cyclist, but he's experienced and knowledgeable enough to speak authoritatively about it. He also is extra cautious and mindful of following the rules of the road. "I know how hard it is sometimes – you're clipped into your pedals, you've got momentum and you're at a stop sign and you see no cars coming – so it would be easy to keep pedaling," Fong said. "You really have to be cognizant of the fact that if it's a car versus you, you're going to lose.

"When I ride, I look kind of stupid – lights on in the daytime, highlighter-yellow helmet, bright yellow jacket – because I've seen all the crazy stuff that can happen," he continued. "If someone's going to say they didn't see me, they're going to have a tough time proving it."

When it comes to proving his cases at trial, Fong believes whole-heartedly in a show-and-tell approach. For young trial attorneys today, he said, there's no better way.

"Trial work is all about creating a word picture, but if we can create a picture picture, better still," he explained. "People have different learning styles. A study once said if you tell with words, people retain it for 10-20 minutes; if you show them something in a picture, they retain it for 30-40 minutes. When you tell them and show them, their retention increases many-fold, and your chances of winning your case are that much better."

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