



## Judge Thomas Tang

By John W. Rogers

In the early 1980s, I had the privilege of working as a law clerk for Judge Thomas Tang, who served on the U.S. Court of Appeals for the Ninth Circuit from 1977 until his death in 1995. Judge Tang's career was full of "firsts"—he was among the first Asian American lawyers admitted to the Arizona bar, the first Asian American to serve on the Phoenix City Council and as vice mayor, the first Asian American state superior court judge, the first Asian American president of the Arizona State Bar, and the first Chinese American ever appointed to the federal court of appeals. While serving as a federal judge, he authored more than 400 opinions and was well-known as a champion of minority and immigrant rights.

I asked him once what he considered to be his best job, fully expecting that he would say his federal judgeship. To my surprise, he told me that his most satisfying position was being a Maricopa County superior court judge during the 1960s. At that time, one became a superior court judge by running for office, usually under the banner of the Democratic or Republican party. In 1962, he resigned from the City Council and won an election for a newly created position on the superior court bench. After a few years, the county's presiding judge appointed Judge Tang to be the county's sole juvenile court judge. A local newspaper noted that it was a position that "most Maricopa County superior court judges shun like the plague." But he dug into the job with enthusiasm and leadership.

In September 1966—almost a year before the U.S. Supreme Court decided *In re Gault*, 387 U.S. 1 (1967), which recognized that juvenile defendants were entitled to the same rights as adult defendants, including the right to counsel—Judge Tang created a network of 160 lawyers in Maricopa County who volunteered to represent juveniles in delinquency proceedings. He also came

up with innovative programs with the Maricopa County Attorney's office and the police to improve the treatment and rehabilitation of juvenile offenders.

But the real story of his tenure as a superior court judge involves a case that deeply tested his judicial courage. In early 1968, two high-school students—one 16 years old and the other 17 years old—went to the home of another high-school student to confront him about a "nasty remark" he had made about the 16-year-old's girlfriend. An argument ensued, and the 16-year-old struck the other boy, knocking him to the ground. He then kicked him repeatedly in the head, killing him. The two boys were arrested for murder. Neither had committed any previous criminal offenses or had any prior run-ins with the police.

The case was a cause célèbre, and the local papers covered it extensively. As juveniles, the defendants were subject to the juvenile court's exclusive jurisdiction unless that court "transferred" them to superior court to be tried as adults. And the prosecutor promptly brought a motion to do that.

In May 1968, the local papers carried front-page coverage of each day of the proceeding. A county probation officer testified that his investigation confirmed the factual allegations about the assault, but he recommended that the court not transfer the boys to superior court. Instead, he urged Judge Tang to give them probation, explaining that neither boy was a "problem in the community," both were remorseful, and both "would be welcome in my home at any time." The boys' high-school coach also testified about their good character, as did the 16-year-old's priest, who testified that the 16-year-old was "incapable of premeditating anything like this." A psychiatrist also testified, explaining that after examining the 16-year-old, he found him to be "psychologically sound" and believed that the killing was "accidental." The 16-year-old also testified, admitting

that he committed the assault, but saying that he "wasn't thinking" and did not know why he kicked the defendant because "[t]hat's dirty."

Not all of the testimony was favorable. The deceased boy's father disputed the probation officer's testimony, saying, "I could come back to this courtroom in a half-hour with people who would refute [his] testimony." And the prosecutor pushed hard for transferring the boys to be tried as adults. He explained that he had no doubt that the killing was unintentional, but he could not understand why the 16-year-old repeatedly kicked the boy in the head after he went down.

Judge Tang had three choices—transfer the boys to superior court to be tried as adults, incarcerate the boys in a juvenile "reformatory" for a term no longer than their 21st birthdays, or place them on probation. He ultimately chose the last option, placing them on probation until they were 21 years old.

In explaining his sentence, he indicated that "[a] court should recognize human frailty and human error and must take them into account in rendering judgment." And although he conceded that a court also should take retribution into consideration, he explained that a juvenile court's principal aims are "correction, rehabilitation, and treatment." Noting that the boys had already been incarcerated for two months and subjected to extensive negative publicity, he concluded that the boys

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had been punished enough and were “fit for rehabilitation.” He also acknowledged that his decision would not be popular, but said that “justice is not a matter of public furor and public demand.”

The decision created an uproar in the press and the community. One letter to the editor complained, “[t]ell me, how are we going to curb rising crime in this country if a juvenile court judge . . . coddles, sympathizes, and frees criminals?” And another complained, “[h]ow does [a mother] explain that the world has not gone crazy and there are such things as morals and integrity and justice when outrageous decisions such as Judge Tang’s are handed in?”

Supervisors to fund a study of juvenile detention facilities. One of the supervisors opposed the request, explaining, “I think we are throwing money down a rat-hole as long as murderers are slapped on the wrist and turned loose.” Judge Tang responded that “I am not here for the purposes of arguing a decision that I made in which I carried [out] my responsibility. I understood that it was not going to be a decision that would be popular. But I don’t believe that the process of [judicial] administration is a matter of popularity contests.”

The bill finally came due in 1970, when Judge Tang ran for reelection. What the local papers described as “a virtually

since 1945 that an incumbent superior court judge lost an election in Arizona.

His opponent attributed his win to Judge Tang’s May 1968 decision. In response, Judge Tang told the newspapers that “[t]ime has not proven my decision wrong because neither boy has gotten into any kind of trouble.” And he was right. The boy who committed the killing later became a fireman and eventually was promoted to captain. The other boy later graduated from college and became a schoolteacher and coach.

And that is not the end of the story. In the late 1950s, the Arizona State Bar started advocating for the replacement of partisan judicial elections with “merit selection.” Generally known as the “Missouri Plan” and now followed in some form in a number of states, judges are appointed by the governor from a list of applicants screened by a merit selection committee and then are subject to later retention elections. The idea is to move away from the hucksterism and political hyperbole of a partisan election and to replace it with a more deliberate and informed evaluation of a judicial candidate’s qualifications.

But the idea initially got nowhere in Arizona. In the late 1960s, however, Judge Tang became the poster child for the Bar’s campaign for merit selection, with proponents often recounting what happened to him as a telling reason for abandoning partisan judicial elections. And, in 1974, Arizona voters agreed by voting in favor of a statewide voter initiative adopting merit selection. Most observers now credit merit selection as being the most important reform over the last 50 years in improving the quality of justice in Arizona.

And Judge Tang? Things turned out well for him as well. He went into private practice, was later elected State Bar president, and then was appointed to the Ninth Circuit in 1977. And while a federal judge, he continued to display the same courage and determination he showed in May 1968 when he ignored the public clamor for revenge and instead embraced the principles of correction, rehabilitation, and treatment that he, as a juvenile court judge, felt bound to uphold. ■

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In the midst of this controversy, Judge Tang’s judicial brethren were either silent or critical. One superior court judge—who later served for almost two decades on the Arizona Supreme Court—told the press that “Judge Tang’s philosophies differ rather radically from some of the opinions of other judges, including myself.” He went on to say that he believed that too many teenagers had “got[ten] the impression that [Judge] Tang is soft on juvenile delinquents and I don’t think Judge Tang should remain in the juvenile court after June [1969],” when his term as juvenile court judge would end.

Judge Tang’s critics also were not shy about confronting him. About a week after the decision, Judge Tang presented a proposal to the Maricopa County Board of

unknown” private practitioner ran against him, accusing Judge Tang of being “soft on crime” and having “a record of permissiveness.” In one news account, he explained that he disagreed “with Tang’s philosophy of emphasizing correction instead of adhering to strict prison punishment.”

In the run-up to the election, the membership of the Maricopa County Bar Association endorsed Judge Tang over his opponent by a four-to-one margin, and a bipartisan group of prominent Valley lawyers ran quarter-page ads in the newspapers, touting Judge Tang as “widely regarded as one of the most competent members of the bench.” In the end, none of it mattered—Judge Tang lost the election by a 52 to 48 percent margin. It was only the fifth time