



Hon. Fernando J. Gaitan Jr.

Senior Judge, U.S. District Court for the Western District of Missouri

by Grace Colato and Ben Stueve



Grace Colato and Ben Stueve are law clerks for Hon. Stephen R. Bough, a district judge of the U.S. District Court for the Western District of Missouri. Colato is a 2018 graduate of the University of Missouri-Kansas City School of Law and also has a B.A. in sociology from Georgia State University and her M.A. in elementary education from the University of Missouri-St. Louis. After clerking, Colato plans to begin private practice at Bryan Cave Leighton Paisner in Kansas City, Mo. Stueve is a 2018 graduate of the University of Kansas School of Law and also has a B.A. in English from Saint Louis University and an M.A. in secondary education from Avila University. After clerking, Stueve will enter private practice with Stinson LLP in Kansas City, Mo. © 2019 Grace Colato and Ben Stueve. All Rights Reserved.

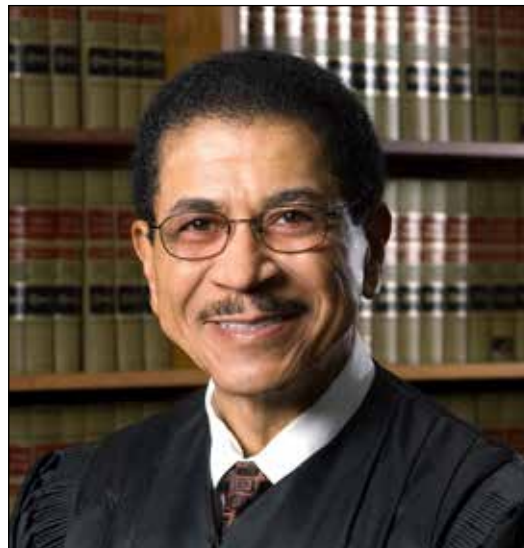
The first African-American appointee to the Western District of Missouri, Judge Fernando J. Gaitan Jr.'s closest family, friends, and colleagues all describe him in the same way: A true public servant. A fair and measured judge. Introspective, quiet, and dedicated to his job. Fun-loving, comical, and loyal as a friend and family man.

According to Congressman Emanuel Cleaver, U.S. Representative for Missouri's 5th District and long-time friend and confidant of Judge Gaitan, "when a person grows up as did Judge Gaitan, it is easy to understand his commitment to justice for everyone with an almost religious obsession to administer it equally."¹

Judge Gaitan was born and raised in a segregated Kansas City, Kan., during the civil rights era. He grew up with his mother, father, and three younger brothers in a small house where they all slept in bunk beds in the same room as the household appliances. They shared one bath and one closet. While not easy, Judge Gaitan fondly remembers growing up this way, with humble means, because it "brought a closeness you wouldn't otherwise get." Judge Gaitan is quick to point out another advantage: growing up in a segregated neighborhood meant he was fortunate to live around more affluent African-Americans: lawyers, bankers, teachers, and other professionals. This exposure showed Judge Gaitan what was possible and made a lasting impression on him.

Judge Gaitan's parents exemplified the work ethic they strove to instill in their children. Judge Gaitan's father dropped out of high school to join the Army and then worked at a meat packing plant. The GI Bill afforded additional training as an auto mechanic and as a tailor. Judge Gaitan's mother married and graduated high school while pregnant with him. As a mother of four boys, she didn't have the chance to live her dreams, but wanted her kids to be able to achieve theirs. She was a big motivator in Judge Gaitan's life. Both of Judge Gaitan's parents strongly encouraged him to pursue formal education through college and beyond.

Inspired by his parents and the role models in his community, Judge Gaitan put himself to work while he was still a young boy in grade school. He shoveled



snow, mowed lawns, dug up worms to sell to fishermen, bussed tables, and sold copies of *The Call*, an African-American newspaper serving Kansas City. During high school, Judge Gaitan cleaned the offices of African-American attorneys, including the offices of Cordell Meeks Sr., who became the first African-American district judge for the state of Kansas, and Benjamin E. Franklin, who became the first African-American U.S. bankruptcy judge in the Tenth Circuit, furthering Judge Gaitan's exposure to the legal profession.

Education

Judge Gaitan was the first in his family to go to college, graduating with a bachelor's degree in biology and psychology from Pittsburg State University (Kansas) in 1970, at a time when racial justice and diversity were not priorities on most college campuses. Unsure what career path to choose, he took a well-paying job in sales for a Fortune 500 company. During this time of societal turmoil in the United States, Judge Gaitan quickly realized his call to public service and desire to make a difference. He returned the company car and headed for Los Angeles, only to return home to Kansas City to work for Y-Pals, a youth organization co-sponsored by the YMCA and the Young Lawyers section of the Kansas City Metropolitan Bar Asso-

ciation, where he worked with young lawyers who volunteered to serve as mentors to troubled youth. It was then that Judge Gaitan knew he wanted to go to law school. After consulting with the lawyers whose offices he used to clean, he signed up for the LSAT and soon began law school at the University of Missouri-Kansas City (UMKC).

Legal Beginnings

Judge Gaitan worked his way through law school, maintaining a part-time job with Legal Aid even as a 1L in order to survive. He studied day and night while he wasn't working. Racial tensions were ever present, even in a relatively progressive and intellectually advanced environment. The African-American students banded together, forming a chapter of the Black Law Students Association. Still, Judge Gaitan was one of only three African-American students who graduated in 1974 out of the 13 who enrolled in his 1L class.

Determined to give minorities a voice in the corporate sector, Judge Gaitan began his legal career as in-house counsel for the Southwestern Bell Telephone Company. He also began serving on the boards of the Kansas City Science Museum, the National Conference of Christians and Jews, and the De La Salle Alternative School, where he would ultimately become chairman. Judge Gaitan was often the only racial minority voice for those boards. He hoped his work in the private sector and serving on boards would foster a positive image of minorities among the white majority and enable Southwestern Bell to use its resources for the betterment of the community. Judge Gaitan spent six years working for Southwestern Bell before transitioning to the judiciary.

Judicial Service

Judge Gaitan has now spent almost 40 years—most of his legal career—serving our nation's courts. While he did not always know he wanted to be a judge, or even a lawyer, Judge Gaitan has always known he wanted a life of public service. In his words, "Law school for me was a means to an end.... I figured out what I wanted to do in life and that was public service." To Judge Gaitan, the "needle" on his compass has always pointed toward public service. Reflecting on his life, Judge Gaitan mused about where he ended up on that path: "Who knew the judiciary would be that vehicle?"

In 1980, at the young age of 32, Judge Gaitan was appointed to the Circuit Court of Jackson County, Mo. Six years later, he was elevated to the Western District of the Missouri Court of Appeals. In 1991, President George H.W. Bush nominated Judge Gaitan to sit as a district judge on the U.S. District Court for the Western District of Missouri. Judge Gaitan served as chief judge for the district from 2007 until 2014, when he assumed senior status. Having served on trial courts and an appellate court, and in both state and federal systems, Judge Gaitan's path is one few others have traveled.

Judge Gaitan presided over a wide range of cases along the way. In 1992, he was part of a three-judge panel, together with U.S. Senior Circuit Judge Floyd Gibson and U.S. Chief District Judge Howard F. Sachs, that heard two consolidated lawsuits in which the Missouri House Redistricting Commission's redistricting plan was challenged as unfair to African-American voters in violation of the Voting Rights Act.² Sometimes, Judge Gaitan found himself in the position to give a person a chance at life. In 1995, Judge Gaitan resented a 34-year-old man to time served so that the man could get a heart transplant to treat a terminal condition. At the same time, some of the most important cases to Judge Gaitan were those that involved death. In 2001, he was judge in the widely publicized death penalty trial of Keith Nelson, the man convicted of kidnapping, raping, and murdering 10-year-old Pamela Butler. Nelson was sentenced to death, and in November 2018 the U.S. Court of Appeals for the Eighth Circuit affirmed the district court's denial of Nelson's request for habeas relief.³ Still other cases involved a strange combination of life and death. In 2006, Judge Gaitan halted all executions in Missouri until the Department of Corrections repaired what he found to be a flawed lethal injection procedure in violation of the Eighth Amendment.⁴ Cases involving fraud and consumer protection laws have also been particularly important to Judge Gaitan. Judge Gaitan has presided over multidistrict litigation challenging several wireless carriers' FCC program cost recovery fees⁵ and the marketing practices of Coca-Cola's orange juice brand Simply Orange.⁶ Judge Gaitan has also presided over mortgage fraud and political corruption cases.

The people who know Judge Gaitan best describe him as a genuine public servant and a humble, curious, and conscientious judge. Ask Rep. Cleaver, and he'll tell you that Judge Gaitan is not in it for recognition, public exposure, or popularity and that he never introduces himself as "judge." Ask Judge Gaitan's longtime friend Howard Townsend and he'll tell you that the role of a judge comes naturally to Judge Gaitan, that he was always the friend in the group who wanted to do the right thing, and that he's had a judge's "frame of mind all along." Charlie Harris, former law clerk and now close friend of Judge Gaitan, describes Judge Gaitan's judicial decisions as measured and emphasizes his "absolute commitment to doing the right thing at all costs, whether or not anyone is looking." Ask Judge Gaitan's daughter Avier Gaitan, a lawyer and former law clerk to several federal judges, and she'll tell you that Judge Gaitan isn't just a good judge to appear before, but also that he's a good judge to work for. He's a good judge in part because "he's a good boss," she says, and he takes the experiences of his clerks and staff very seriously.

The impact of his mentorship to his staff and law clerks even reaches the federal bench: in 2018 Lajuana Counts, former law clerk to Judge Gaitan, was appointed as a U.S. magistrate judge for the Western District of Missouri. Judge Karen King Mitchell, appointed in 2009 to the Mis-

souri Court of Appeals, and Jacqueline Cook, former Cass County, Mo., circuit judge, also clerked for Judge Gaitan before taking the bench themselves. As to lawyers appearing before him, Judge Gaitan is reasonable, willing to listen, and wants to give each side a fair chance. While for some judges “it might just be about getting through a case as quickly as possible,” Judge Gaitan really wants to get it right.

Outside the Law

Judge Gaitan’s closest family and friends consider him to be genuine, fun-loving, comical, and caring. Judge Gaitan’s wife of 44 years, Sylvia, describes him as a loving and supportive husband and dedicated father. Judge Gaitan’s daughter, Avier, describes him as her best friend. Judge Gaitan diligently cares for his special-needs son, Trey, and also makes it his mission to keep in touch with all his nieces and nephews around the country. His closest friends describe him as somebody with whom they can openly and honestly talk faith, family, friendship, and politics. For instance, Rep. Cleaver has said the following about his friendship with Judge Gaitan: “When I am around him it’s like taking a sip of water from a well back home. Everything is real. There are no games being played. He will tell me things with pure, undistilled frankness.”

Throughout his career, Judge Gaitan has served various organizations, sat on a multitude of boards, and earned awards for his service to the community. He is a member of Kappa Alpha Psi Fraternity Inc. and Sigma Pi Phi Fraternity, and a life member of the NAACP. He served as an adjunct professor at the UMKC School of Law, a member of the UMKC Board of Trustees for UMKC, and on the UMKC Law Foundation Board. He also served as an advisory board member and vice-chair for the Kansas City Crime Commission’s Second Chance Foundation and as a St. Luke’s Hospital board member for more than 25 years.

Judge Gaitan has received numerous honors, including the UMKC Alumnus of the Year Award; the Pittsburg State University Outstanding Alumnus and Meritorious Achievement Awards; the Urban League of Greater Kansas City’s Difference Maker Award; the Greater Kansas City Chamber of Commerce Centurion Leadership Award; the Kansas City, Kan., School District’s Reason to Believe Award; and William Jewell College’s William F. Yates Medallion for Distinguished Service. ☺

Conclusion

Since assuming senior status, Judge Gaitan enjoys spending a little more time with his family. He enjoys traveling, golfing, and continuing to serve the community. As his judicial career unfolds, Judge Gaitan remains dedicated to his work of doing justice and making a difference. From the firm foundation of hard work and pursuit of education his parents built for him, Judge Gaitan’s life and career continue to grow and bear fruit. He has seen and experienced much as a public servant, but what he may never be able to fully view is the extent of his impact on the family, friends, communities, and court systems he has so devotedly served.

Endnotes

¹The source material for this article includes the following: BEYOND ONE L: STORIES ABOUT FINDING MEANING AND MAKING A DIFFERENCE IN THE LAW 205-209 (Nancy Levit & Allen Rostron eds., 2019); the U.S. Courts Eighth Circuit Library Archives; Judge Gaitan’s Senior Status Resolution; various articles from the *Kansas City Star*; two scrapbooks meticulously curated by Judge Gaitan’s staff; and personal interviews with Judge Gaitan and his family, friends, and colleagues.

²*Nash v. Blunt*, 797 F. Supp. 1488 (W.D. Mo. 1992), *aff’d sub nom.*, *African Am. Voting Rights Legal Def. Fund, Inc. v. Blunt*, 507 U.S. 1015 (1993).

³*Nelson v. United States*, 909 F.3d 964 (8th Cir. 2018).

⁴*Taylor v. Crawford*, No. 05-4173-CV-C-FJG, 2006 WL 1779035 (W.D. Mo. June 26, 2006).

⁵*In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 293 F. Supp. 2d 1378 (W.D. Mo. 2003) (MDL 1559).

⁶*In re Simply Orange Orange Juice Mktg. & Sales Practices Litig.*, 867 F. Supp. 2d 1344 (W.D. Mo. 2012) (MDL 2361).

Judicial Profile Writers Wanted



The Federal Lawyer is looking to recruit current law clerks, former law clerks, and other attorneys who would be interested in writing a judicial profile of a federal judicial officer in your jurisdiction. A judicial profile is approximately 1,500–2,000 words and is usually accompanied by a formal portrait and, when possible, personal photographs of the judge. Judicial profiles do not follow a standard formula, but each profile usually addresses personal topics such as the judge’s reasons for becoming a lawyer, his/her commitment to justice, how he/she has mentored lawyers and law clerks, etc. If you are interested in writing a judicial profile, we would like to hear from you. Please send an email to Lynne Agoston, managing editor, at TFL@FBA.org.