

## Top Litigators Share Winning Strategies

“I just show up in court and wing it,” said no Winning Litigator—ever. But the lawyers in our special report bring more to the table than just meticulous preparation. They find new applications for decades-old laws. They take mind-numbing details and condense them into tidy bits of information. They strike the right balance of likability and decorum with fact-finders. They regroup and evaluate every step of the way. And when it’s all over but the bill-paying, they end up with some very happy clients.

### WINNING: A SPECIAL SECTION

## Jenner & Block

BY RICHARD ACELLO

Recovering \$331 million earmarked to assist struggling California homeowners required detective work. Gov. Jerry Brown had used money the state recovered in the 2012 national settlement over dodgy home mortgage servicing practices to plug a hole in the state budget — and was slow to repay homeowners after California’s financial standing improved.

In June 2015, Sacramento County Superior Court Judge Timothy Frawley ruled that Brown and the state Legislature were “obligated to restore” the money. The judge said that they had to do “whatever is necessary and appropriate to meet this obligation.”

Representing the plaintiffs was Neil Barofsky, a partner at Jenner & Block, who said the key to the win was careful, meticulous trial preparation.

“It was not just coming up with a legal argument related to California budget law but using the tools of discovery to track down where hundreds of millions of

dollars went and the many different paths it took,” he said. “So the work was done before we walked into the courtroom.”

The plaintiffs were organizations representing distressed homeowners, including the National Asian American Coalition, COR Community Development Corp. and the National Hispanic Christian Leadership Conference. In the courtroom, Barofsky keyed in on the state law that established the mortgage-relief fund. Faith Bautista, chief executive officer of the National Asian American Coalition, praised Barofsky for standing up for “the people” when other attorneys might not.

“Distressed homeowners have no voice when it comes to asking for help,” she said. “He has the resources and was able to share that with us.”

### TRIAL TIPS

▶ Neil Barofsky said that this was the best trial tip he ever received: Although your adversary might be more experienced, better resourced and have a stellar reputation, you can always be the most prepared—it is preparation that wins trials.



Neil Barofsky of Jenner & Block.

Photo: Callie Lipkin

- ▶ He also said to be as aggressive as necessary when on the record, but never rude, and always be professional and just plain nice when off—particularly to your adversary, support team and court staff.
- ▶ Eye contact is more important than nailing every phrase, he said.
- ▶ Finally, have fun.

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