

## **ABBY ABINANTI**

**Abinanti's goal: to help youth who come before her**

Dennis J. Opatrny  
The Recorder  
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A 12-year-old accused of prostitution is almost swallowed up by the chair she is sitting in as San Francisco Superior Court Commissioner Abby Abinanti reads her probation report.

The judge notes the child is from Alameda County, which means her case is probably going to become that county's problem.

"You intend to send her back?" Abinanti asks the juvenile probation officer. "Have you found a place to send her?"

The answer is, not yet.

"Try to find a place," the commissioner says, ordering the child to remain in San Francisco custody while the two counties work out where to place her.

Abinanti says she has just one goal: to help the kids who come before her.

"Like today, we have a prostitute who's in the fifth grade," Abinanti said. "Where am I supposed to send this kid?"

Abinanti is presiding over the detention calendar at the Youth Guidance Center, where she must decide what to do with youthful offenders, many of whom have nowhere to go.

Her job is probably one of the most difficult for a judge, since she often deals with pre-teens whose families have turned their backs on them.

She must punish the child for his or her crime, while looking into the future to decide how to keep the youngster from becoming a habitual criminal. Abinanti laments the limited resources available to her.

"The most difficult part of being out here is that people really don't understand juvenile law that well," Abinanti says in an interview. "The city, the county, the state are allowed to neglect children, because they're so invisible. It's painful to watch."

Abinanti is a Yurok. (She says to call her a Yurok Indian is redundant.) And she uses Indian and Native American interchangeably.

Although born in San Francisco, she was raised on a reservation in Humboldt County, and she began her judicial career as a tribal judge in that county.

"I did a lot of Indian law," she said. "I did a lot of training in tribal courts all over the country, training judges from other tribes."

When Abinanti sits on the bench, she seldom smiles and maintains a severe, no-nonsense expression.

"I think her demeanor is austere and she runs a very procedure- and rule-oriented courtroom," said defense attorney David Simerly. "There's nothing wrong with that. It's just something you have to get used to."

"There's none or little banter that goes on [in court,]" added Simerly. "It's OK as long as I know what I'm dealing with."

George Lazarus is another defense attorney who practices at YGC and has watched Abinanti. He sees a stern but guiding hand.

"She can be demanding at times," Lazarus said. "But she's done a tremendous job of holding people -- lawyers, probation officers, families -- accountable."

When asked if she agreed that she possessed an "austere demeanor," Abinanti thought for a moment, then didn't deny it.

"I don't let [lawyers] eat their oatmeal and drink coffee and that kind of stuff that they used to do [in the courtroom]," she responded.

"It is my job to make [the courtroom] conform to what I've been taught is a court of law," she said. "That does not include a lot of behavior that went on previously. People had gotten too relaxed and too informal."

Abinanti gives general high marks to the lawyers who practice before her, but she thinks some of their work is misdirected toward only proving innocence rather than seeking forward-looking solutions to delinquency.

"They pour all their resources into that, as opposed to pouring their resources into ... where this person should be sent to be rehabilitated," she said.

Abinanti said more and more immigrant children are coming before her charged with selling drugs. She says she is often at a loss about what to do with them.

"They're like road kill," she said, meaning they're forgotten and unwanted. "Clearly it's to make money to send home."

She says there is no clear-cut sentence for them, since their families are fearful of coming to court to take them home because of their own immigration issues.

"Often they'll just leave the kid here until I send the kid back to his country of origin," she said.

Assistant District Attorney Franklin Yee has the difficult job of prosecuting young offenders for crimes before a judge who appears more interested in their welfare and future.

"I think if there's a doubt, she'll resolve it in the favor of the defendant," Yee said, who conceded his office can sometimes clash with her.

"It's usually if our office has taken one position, because we think the law supports our position, then she'll take an opposite position," he said.

"That's frustrating," he added. "Then a couple of times I learned that her position was right, and we were wrong."

Abinanti recalls the days when there were truancy officers tracking children who were not in the classroom but roamed the streets.

"If children are not in school, they're in trouble," she said. "They're either in trouble immediately or in trouble tomorrow, because they have no education. It's heartbreaking."

# RON ALBERS

## Commissioner gets top marks in bench quest

Pam Smith  
The Recorder  
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The misdemeanor offender in Department 30 is flustered.

Commissioner Ron Albers tells him to calm down, but when the man claims confusion over what he was supposed to have done, Albers continues the case to give him another chance to prove he's enrolled in first-offender classes, and methodically explains what needs to be done next.

"Sometimes things get confusing, but I think now we're all on the same page," Albers reassures him.

Albers addresses everyone with courtesy titles, and explains the proceedings -- and his decisions -- in plain English.

"Even though somebody has technically violated the law or the terms of their probation, Ron has worked with them to get them back on track, where another judge might think, 'After the third violation, send 'em to jail,'" said solo Douglas Rappaport.

Albers said he frequently puts special conditions on a defendant's release. For instance, he may require a homeless person to provide a phone number where they can be called and reminded of court dates.

Deputy Public Defender Stephanie Wargo said Albers "has a soft spot for clients" who show they're trying. But "he's very stern about it; he lets them know what will happen if they don't do what they're supposed to do," she added. "It seems to make [them] want to please him."

Albers, who twice ran for judge and lost before being appointed commissioner last year, is getting strong marks from both prosecutors and defense attorneys for his courtroom conduct and knowledge of criminal law.

"It's difficult to judge how he'll be in a courtroom where there's more substantive issues," Rappaport said. But "I think he has all the prerequisites for becoming a very fine judge."

He's perceived as even-handed by attorneys who have appeared before him, which some say is notable given he was a public defender for more than 20 years. In that job, he was characterized by former co-workers and trial opponents as an aggressive, dyed-in-the-wool advocate for his clients.

Yet Assistant District Attorney Michael Menesini, who leads the DA's misdemeanor trial team, said, "I feel very confident that the people will get a fair hearing before Ron. I have no qualms."

"A lot of times public defenders that become judges will overcompensate and become tougher, or even really tough, to show that they're not favoring a defendant," said solo Jeffrey Schwartz. "He's really right down the middle, just really objective."

Albers' popularity among attorneys isn't universal, though. At least one lawyer he supervised in the public defender's office has some criticisms, while conceding that both of them are strong-willed people who disagreed on just about everything.

"I think as a supervisor he played favorites," said Sheila O'Gara, now a civil attorney at Becherer, Kannett & Schweitzer in Emeryville. He "was, all in all, quite difficult to deal with if you challenged his control in any way."

Managers have to make difficult decisions, and they don't usually receive unanimous approval, Albers said. "I have, I believe, always tried to be as fair and professional as I could be in dealing with my management responsibilities."

Even O'Gara, though, echoes the compliments of former co-workers and trial opponents regarding Albers' work ethic.

"He made me proud as a public defender," working hard for his clients amid maelstroms of office politics," O'Gara said.

"I think among the judges he has a reputation as being extremely hard-working and very competent," said Judge Kay Tsenin, who ran against Albers for judge and now supervises the criminal master calendar.

Albers has served on the State Bar's Board of Governors and served as chairman of its Commission on Judicial Nominees Evaluation. He was also a founding board member of Bay Area Lawyers for Individual Freedom and a co-founder of the National Lesbian and Gay Law Association.

In addition to performing the duties of bail commissioner -- reviewing applications for own recognizance and special releases and determining probable cause for felonies -- Albers regularly presides in Department 30, where he ensures that misdemeanor offenders comply with conditions of probation. He's also been a frequent substitute in Department 19, where misdemeanor arraignments and bench warrant returns are reviewed for custody status and assigned to judges for jury trial.

Albers has handled some misdemeanor arraignments and misdemeanor legal motions which have been stipulated to by attorneys on both sides, said Judge Carol Yaggy, who beat Albers for an open seat on the bench in 1998. "They don't stipulate unless they believe you're going to be fair."

Though he has twice aimed for, and missed, a seat on the bench, Albers said he's "totally satisfied" with his role as a commissioner.

But "sitting as a superior court judge and having either greater challenges or opportunity would thrill me," he said, pointing out that his predecessor, Newton Lam, was appointed judge after several years as a commissioner.

## MARVIN BAXTER

Mike McKee  
The Recorder  
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Marvin Baxter is the no-nonsense justice on the California Supreme Court.

He's the guy who draws a bead on attorneys during oral arguments kind of like he's sizing them up then pitches a carefully crafted hypothetical question that often catches them off guard. All the while he arches one eyebrow and maintains what one lawyer calls "an air of skepticism."

"He will be remembered for his directness," says Santa Clara University School of Law professor Gerald Uelmen. "I find him to be very precise and very direct."

Then there's the Baxter with the dry sense of humor the one Justice Richard Huffman, of San Diego's Fourth District Court of Appeal, once saw crack up a meeting of the state's Judicial Council.

Someone idly commented during one discussion, Huffman recalls, that he wouldn't buy into a particular idea until he caught Baxter wearing an earring. While no one was looking Baxter's way, Huffman says, the 66-year-old, ranch-raised justice borrowed a woman's earring and put it on.

"He just sat there until somebody noticed it," Huffman says. "Then it became chaos. Marvin Baxter wearing an earring!"

Marvin Ray Baxter, whom friends and close acquaintances simply call "Marv," will celebrate 16 years on the Supreme Court on Aug. 28. He's widely regarded as the most down-to-earth of the seven justices and as someone who approaches his job practically, with a common man's feel for what hard work is really all about.

His tenure has been marked by a methodical thoughtfulness, court watchers say, that has steadfastly positioned him on the far right of the bench politically and philosophically.

Some attorneys, including one who derisively labels Baxter "Johnny-One-Note," say his legacy will be one of an extremely pro-prosecution and pro-business justice. A rural gentleman for whom law and order is paramount.

"Look at all the criminal cases [he's authored]," says another attorney, Oakland appellate specialist Jon Eisenberg, of counsel to Encino-based Horvitz & Levy. "Not surprisingly, they come down on the side of The People for the most part."

Says Wesley Van Winkle, a Berkeley solo practitioner who handles death penalty defense: "He has not been kind to criminal defendants in general or to capital defendants in particular."

Baxter's admirers disagree, arguing that his legacy will be as a considerate justice who looks at issues from all angles and calls them the way he sees them.

"That type of reasoning from a court's perspective adds balance," says Elwood Lui, a former appellate justice and a partner at Jones Day. "I know he's conservative by nature, but what he does is give that careful analysis and has a genteel approach to lawyers and his colleagues."

Daniel Kolkey, a former appellate justice and a partner in Gibson, Dunn & Crutcher's San Francisco office, notes that today's judges, including Baxter, are a product of the laws they must abide by, with legislation such as the Three Strikes law, the One Strike law for rape and long jail terms for firearms violations limiting judicial discretion.

"A good judge who follows the law and the intent of the Legislature and the voters," he argues, "is simply doing his job."

Kolkey believes Baxter is "one of the anchors of the court, always striking a blow for common sense, fealty to the text of the constitutional or statutory provision at issue and [exercising] judicial restraint."

Former State Bar President Anthony Capozzi, an avid Democrat and a longtime Fresno friend, says Baxter is a simple man in the good sense of the word and is true to himself and the law.

"He's a conservative, but he believes in the fairness of the system," Capozzi says. "He has an open mind and his decisions, I believe, are moderate."

Baxter, who has no plans to leave the court anytime soon, is a somewhat self-effacing man who says he'll just let his opinions "speak for themselves."

If he's remembered for anything, he says, he would hope it's "as a thoughtful judge and open-minded, working hard and doing as good a job as possible." He also shares the credit for his work with others.



"So often opinions are viewed as solos when, in fact, they're a chorus of a number of views," Baxter says. "In other words, the process that we follow on the Supreme Court, the front-loading process, by its very nature gets everybody [all seven justices and staff attorneys] involved in producing the opinions.

"They are the result of a lot of give and take."

Baxter's work ethic and demeanor appear to have been directly shaped by his rural Central Valley upbringing in the small town of Fowler, about 12 miles south of Fresno. He attended racially diverse schools, graduated high school with a class of only about 70 kids and was expected to lend a hand at home.

"Certainly growing up in that environment," he says, "you learn to do your chores and our parents expected us to work hard on the ranch, which we did. To that extent, it does have a positive impact."

Another longtime Fresno friend, Paul Hokokian, an attorney in the state's Department of Child Support Services who's currently seeking the State Bar presidency, says Baxter should be remembered for putting more than 700 judges on the California bench while serving as former Gov. George Deukmejian's judicial appointments secretary. Many credit him with greatly increasing the number of women and minorities on the court.

"You have to look at him as the beginning of diversity in the judicial ranks," Hokokian says.

However, Uelmen says a lot of those judges were ex-prosecutors in keeping with Baxter's own philosophy. Uelmen conducted a study a few years ago that showed Baxter favored the prosecution 89 percent of the time.

While Uelmen isn't a fan of Baxter's conservative bent, he finds him an honorable fellow and was pleasantly surprised at how he reacted when Uelmen asked him to recuse himself from *People v. Mower*, 28 Cal.4th 457, in which the court in 2002 provided medicinal marijuana users an affirmative defense. The case had come out of Fresno's Fifth District Court of Appeal on which Baxter's brother-in-law, James Ardaiz, is the presiding justice.

"He actually asked the judges' association's ethics committee for an opinion," Uelmen says, "and when they decided he should recuse himself he did. He has recused himself in every case since in which his brother-in-law has participated."

Over the years, Baxter has authored several significant opinions allowing evidence of a defendant's financial condition for punitive damages (1991's *Adams v. Murakami*, 54 Cal.3d 105), dealing with the scientific acceptance of DNA analysis (1998's *People v. Venegas*, 18 Cal.4th 47, and 1999's *People v. Soto*, 21 Cal.4th 512), maintaining the confidentiality of court-ordered mediation sessions (2001's *Foxgate Homeowners' Association v. Bramalea California*, 26 Cal.4th 1) and invalidating a state law that prohibited convicted felons from profiting off their crimes (2002's *Keenan v. Superior Court*, 27 Cal.4th 413).

But some say he might be best remembered for a ruling he authored just last month in *Lyle v. Warner Brothers Television Productions*, 06 C.D.O.S. 3258, better known as the "Friends" sitcom case. In that decision, Baxter held that sexually coarse and vulgar language is often a necessary part of the creative process.

Why would that stand out? "Because," Capozzi says, "it's a high-profile case that deals with the movie industry."

Baxter says he doesn't favor any one of his dozens if not hundreds of opinions. But he does enjoy cases dealing with the separation of powers.

And he says he's always aware of the fact that his decisions aren't issued in a vacuum, that they'll have an impact on others.

"I think we all do [that]," Baxter says about his colleagues. "And that's always an important part of our consideration. It's 'What will the real-life effect be?'"

**Editor's Note:**

It's been 10 years since Ronald George became chief justice of the California Supreme Court. *The Recorder* reflects on his legacy with a series profiling five of the seven justices who have been on the court the longest.

## **GAIL BREWSTER BEREOLA**

**Superior Court Judge Gail Brewster Bereola has spearheaded a task force to bring offenders, victims and the community together to help repair the damage caused by crime.**

By Laura Ernde  
Daily Journal Staff Writer

OAKLAND - There was a time when Alameda County Superior Court Judge Gail Brewster Bereola would scold tardy litigants by saying, "I'm in a wheelchair. If I can come to court, you can too."

She doesn't say that anymore.

Bereola recognized early on as a judge that her disability doesn't give her a license to impose her personal standards on other people. Being in a wheelchair has, however, opened her eyes.

"You become more aware of things, sensitive to things and people," she said.

It's one example of what attorneys described as Bereola's careful and deliberate bench style.

Bereola, 56, has used a wheelchair for more than 20 years - the result of a plane crash while she was on vacation in Mexico in 1989.

The accident left her husband and law partner, Emmett G. Hardy Jr., with permanent brain damage. He no longer recognized his wife of six years. Bereola, after much soul-searching and survivor's guilt, divorced him.

There was a silver lining to the tragedy. Bereola reconnected with an old flame, Enitan Bereola. The two married and had a daughter, Abigail, who is 17.

Bereola continued practicing law after the accident. Just one month after being released from the hospital, she served as co-counsel in a death penalty trial.

Seeking to escape the hassles of running a solo law practice, Bereola applied for a job as a commissioner in Alameda County. Less than a year later, Gov. Pete Wilson appointed her to the Municipal Court bench. She was elevated to the Superior Court by unification in 1998.

In January, she took on her first major civil assignment. The direct calendar assignment means that at any given time she's in charge of about 500 cases from start to finish.

On any given day, she could be handling case management conferences, ruling on pre-trial motions or conducting full-blown trials.

Attorneys who have been in her courtroom said she's a fair and deliberate jurist whose decisions reflect common sense.

"She thinks things through," said Gregory Redmon, a Walnut Creek attorney. "It's a good quality to have as a judge instead of just being so focused in on the legal aspects of the case."

Redmon recently finished a malicious prosecution trial in Bereola's courtroom, where the jury found that his client was falsely accused of sexual harassment. The parties settled before the punitive damages phase of the trial.

Bereola spread the pretrial motions over several weeks, which gave the parties more time to prepare, Redmon said.

Bereola said she would like to conduct settlement conferences, but her caseload doesn't permit the time. She sometimes refers litigants to mediation.

Attorneys said she gives them time to argue their point. Bereola said it's sometimes a challenge to give lawyers some leeway without holding up the proceedings or keeping jurors waiting.

"I may appear relaxed, but internally I'm like, 'Let's get this going,'" she said.

Bereola encourages attorneys to give her as much information as possible in advance of a court date because in some cases it will save them a trip to the courthouse if she has everything she needs.

Bereola's last civil assignment was more than 10 years ago when she was still on the municipal court.

As a superior court judge, Bereola has handled juvenile dependency and delinquency matters as well as adult criminal cases.

One of her first jobs out of law school was as a prosecutor in the San Francisco district attorney's office.

On the bench, she's held a variety of criminal and juvenile court assignments and one day hopes to try probate.

"There's just a part of my nature to try to help people," she said. When she handled a drug court, she said she felt as much like a parent as she did a judge.

That passion came through when she talked about her effort to bring restorative justice to Alameda County.

Bereola convened a task force in 2008 after seeing a presentation about bringing together victims, offenders and the community to help repair the damage caused by crime. In some places where restorative justice has been tried recidivism has been cut dramatically.

She sees it as a way to cure the lack of empathy she saw in some of her young adult offenders.

Although Bereola briefly stepped down as chair in anticipation of the civil assignment, she chose to return this spring out of concern that the group was grappling with its direction.

Fania Davis, co-founder and director of Restorative Justice for Oakland Youth, said Bereola's commitment to the cause has been key.

"She took the idea and ran with it," Davis said. "The members of that group really look to her for leadership. She's been a central figure in the gains restorative justice has made in Alameda County."

Bereola sees the project as community service for the city where she's lived since 1983.

Bereola and her nine siblings were raised in San Francisco by a single mother. She earned her bachelor's degree from the University of San Francisco and her law degree from UC Hastings College of the Law.

## THADD A. BLIZZARD

**Overseeing traffic court provides him with a flurry of activity, but Judge Blizzard has his sights on more intellectual pursuits and an appellate post.**

By Rebecca Beyer  
Daily Journal Staff Writer

SACRAMENTO - Growing up, Thadd A. Blizzard wanted to be a novelist. He wrote for the literary magazine at his high school and his favorite book was "Moby Dick."

Law was something he fell back on after he tried to enter a Ph.D. literature program and was told the program was only accepting as many people as the director felt could be placed in teaching jobs: one.

Blizzard decided to go to law school instead, and the decision paid off. After more than 20 years as a litigator and appellate specialist in New York and Sacramento, Blizzard is a Sacramento County Superior Court judge with an eye on the appellate bench. But he didn't give up on literature. During the summers between his years in law school, he earned a master's degree in the field and, later, he did finally enter a Ph.D. program - right after he earned his degree in international law and right before he spent a year in Germany on a fellowship to study German law.

"He's got more degrees than a thermometer," said Blizzard's former colleague Joseph S. Genshlea of Weintraub Genshlea Chediak in Sacramento.

Firm shareholder Charles L. Post, at whose wedding Blizzard was best man, agreed.

"I think if there was a way for him to stay in graduate school until he retired, he would have," Post said.

In the end, of course, Blizzard had to make a living.

The law was "close enough to my interests in reading and writing," Blizzard recalled recently in his Sacramento chambers. "I had never thought I would be a litigator. I'm more a shy and retiring kind of person. But I found that I actually enjoyed it. I found that a lot of it was handled by research and writing - in preparation."

Former colleagues and attorneys who have appeared in front of Blizzard say he has found his calling on the bench and that Blizzard - who has an interview with the Judicial Nominees Evaluation Commission for appellate consideration later this month - would make an excellent appellate justice.

For now, Blizzard is the presiding judge of the Carol Miller Justice Center in Sacramento, overseeing traffic, unlawful detainer and small-claims cases. Prior to that, he handled criminal and civil trials.

"Having him on traffic court is like having Einstein shoveling coal," Genshlea said. "It's a waste of talent."

Blizzard said he enjoys his job and appreciates the experience it has provided.

"Where else do you get to do 1,000 trials a year," he joked about his current assignment.

He said he had learned valuable skills there. "You have to learn to make a decision, to look people in the eye and tell them they're guilty several times a day - that's something; that's useful."

Still, Blizzard, 55, said he thinks he is "better-suited" for the appellate court.

"I really like digging in and solving the puzzle and having the time to really understand the legal issues," he said.

The son of artists, Blizzard moved around a lot as a child. His parents were painters, and his father took jobs teaching at different universities until the family settled in Claremont, just outside Los Angeles. Blizzard graduated from high school early and entered Claremont McKenna College at 16, going straight into law school and Claremont's summer master's degree in literature program when he graduated in 1975. He earned his law degree from McGeorge School of Law in 1978 and then spent a year clerking for 1st District Court of Appeal Justice Joseph A. Rattigan.

"He was a great judge," he said. "I admired a lot about his approach. He cared very much about his writing."

Blizzard said he tries to use some of what he learned from Rattigan on the bench.

"He was demanding, but it was because he was so principled he wanted to be fair," he said. "He had high expectations and standards but not at the expense of being fair."

In his own courtroom, Blizzard said he often grants motions for rehearing when a party fails to show up so that a case can be decided on the merits rather than with a default judgment.

After his clerkship, Blizzard and his wife at the time moved to New York, where she had been admitted into medical school. After earning his degree at New York University School of Law and interviewing with several big firms, he decided instead to stay in school, enrolling in a Ph.D. program in medieval literature at Columbia University.

To pay his way, Blizzard worked part-time at a small law firm handling international transactional work. In 1983, he left Columbia with a second master's degree, having completed all the requirements for his doctorate except the dissertation. The next year, he accepted a year-long fellowship to study German law in Germany.

When he returned to New York, Blizzard took a job at a small litigation boutique. While there, he got to try a case involving "The Smurfs" cartoonist Peyo (the pen name of Belgian Pierre

Culliford) in Los Angeles federal court. Blizzard's firm represented a plaintiff who owned merchandising rights to "The Smurfs" that they claimed another entity had interfered with. Because the cartoons' creator was Belgian, some of the contracts were governed by Belgian law, and Blizzard called upon a Belgian lawyer he'd met in Germany to help on the case, which ultimately settled after three weeks of trial.

By 1987, however, Blizzard and his wife, who later divorced, decided they wanted to return to Sacramento to raise their young son and daughter. After living in New York, he said, coming back to California felt like "visiting an amusement park," with the pretty lawns and clean streets.

"When my son saw automobiles, he called them taxis," he laughed. "Our car was 'the white taxi.'"

Blizzard joined Weintraub and stayed there 22 years until he was appointed by Gov. Arnold Schwarzenegger to Sacramento County Superior Court in March 2009.

In 1990, Blizzard became a shareholder and handled - and won - his first solo jury trial, a civil fraud case.

"I found out you didn't have to be really flashy or dramatic," he said. "You could just be sort of believable and prepared."

At Weintraub, Blizzard handled a variety of cases in litigation and on appeal.

"He was very well respected here and generally thought of as the best writer in the place," former colleague Post said. "He was the guy that people brought their hard problems to."

On the bench, attorneys who have appeared before Blizzard say the judge takes his time to consider cases.

Sid M. Rosenberg of Rosenberg & Link in Sacramento litigated against Blizzard and has represented landlords in unlawful detainer cases before him. He said Blizzard is "particularly conscientious in terms of being prepared for cases."

"He hasn't always ruled in my favor, but he tries to explain the decisions he's made," Rosenberg said. "I think he felt it was helpful to not only the litigants but to the attorneys who will have to appear before him again."

Ross Bozarth, an Elk Grove attorney at Guenard & Bozarth, tried a civil jury trial before Blizzard earlier this year and said the judge seemed to have a pro-defense orientation but did not let that get in the way of his application of the law.

In the personal injury case, Bozarth said Blizzard, in considering the "collateral source rule," told the attorneys he thought the jury should only hear what the insurance company paid for the plaintiff's injuries and not what the medical bills actually were.



"He said that was his personal belief, but he understood that was not the law," Bozarth said. "That kind of emphasized how conservative he was in that respect."

After the trial, in which the jury awarded the plaintiff her full medical bills, Bozarth said Blizzard reduced the amount to what the insurance company actually paid. Bozarth is appealing that ruling.

"In fairness to him, I think he followed what he thought the law was," Bozarth said. "I would have liked for him to go my way, but it was certainly within his power and authority to [do what he did]."

Bozarth said he would "not hesitate" to return to Blizzard's court.

Blizzard said the most challenging part of becoming a judge was "that moment the first time you're on the bench when someone makes an objection and you realize you have to rule on it."

As an advocate, he said, he only had to make "intellectually honest" arguments. But as a judge, he has to "get to a comfort level that 'this is the right decision.'"

Outside court, Blizzard, whose son and daughter are grown, stays busy. He remarried a woman with two teenage daughters and is the assistant softball coach for their team. He continues to write and is at work on a comic novel.

He's also still in school - only this time as a professor, teaching an appellate advocacy class at McGeorge.

## SUZANNE BOLANOS

### Judge ends year on the job with mixed reviews

Pam Smith  
The Recorder  
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After a jury convicted Adam Gasner's client of his second DUI, San Francisco Superior Court Judge Suzanne Bolanos stayed 30 days of jail time, deciding the defendant won't have to serve them -- if he guest teaches economics at Mission High School for a year.

Gasner lauds the judge's foray into alternative sentencing. "It's creative thinking, and I think it bodes well for defendants."

While the Gasner, Spahr & Larson lawyer gives Bolanos a thumbs-up for thinking outside the box, lawyers' opinions on the judge are mixed, and sometimes contradictory.

About a year after her appointment, some attorneys are calling Bolanos cordial, convivial, balanced and a quick learner.

On the other hand, some of the public and private defense attorneys interviewed think Bolanos favors prosecutors -- or at least that she used to -- and some suggest her learning curve is particularly steep.

A child of immigrant parents from Chile and Peru, Bolanos began her legal career working for the Mexican American Legal Defense and Educational Fund, a national Latino civil rights organization. While lobbying for that group on Capitol Hill, she met Sen. Edward Kennedy, D-Mass., who hired her to be a lawyer for a committee he chaired. Today, a couple of photos of Bolanos and Kennedy hang on a wall in her chambers -- alongside some of her with then-Vice President Al Gore, for whom she worked as a domestic policy adviser.

After a stint as an associate in the litigation group at Wilmer Cutler Pickering Hale and Dorr, Bolanos became a federal prosecutor. Her trial experience as a lawyer was all in federal court, mostly prosecuting drug trafficking and alien smuggling cases and defending the government in civil cases. She worked briefly for the U.S. attorney's Computer Hacking and Intellectual Property unit before her appointment by then-Gov. Gray Davis.

Bolanos, said to be the first Hispanic woman on the San Francisco bench, says Latino legal groups urged the governor to pick her. She also got recommendations from Kennedy and Gore. "I had a lot of help getting here," she said.

In her misdemeanor courtroom, Bolanos says she's big on decorum, likes lawyers to brief arguments, and encourages them to negotiate everything. And she "strongly" encourages attorneys to include treatment for any mental health or substance abuse problems when proposing plea bargains or sentences for defendants.

The judge also appreciates when lawyers, even private counsel, make it to her chambers by 8:30 a.m. to discuss their cases.

Several lawyers praise Bolanos' demeanor, calling her soft-spoken, approachable and personable.

"Not only is she polite and nice, she appears to make really good rulings," said defense attorney James Collins.

"She's very, very patient and gracious. I give her among the highest marks that I can" for that, said a criminal defense lawyer who has used a peremptory challenge against her. This lawyer, who asked not to be identified, thinks Bolanos favors the prosecution, an opinion based in part on the judge's job history as well as several rulings observed by a colleague.

About five months ago, complaints that Bolanos was treating deputy public defenders and their clients unfairly reached a point where Public Defender Jeff Adachi's office used -- briefly -- an unusual blanket peremptory challenge against her.

Bolanos asked Judge Mary Wiss, her mentor at the court, to give her some coaching.

Bolanos says she makes fairness a priority, examines the law closely, and listens to both sides carefully.

While Assistant DA John Delgado said Bolanos doesn't make snap judgments, a private defense lawyer who requested anonymity said the judge makes decisions quickly and can be defensive about them.

Bolanos has been fair and sympathetic to clients, the lawyer said. But once her mind is made up, "She'll let you make the record, but she won't necessarily listen to what you say."

The judge says she often sticks to her guns because she's thought her decision through carefully, but she'll revisit something if attorneys raise new authorities or facts. Otherwise, she said, "I make sure they have a complete record so they can take it up on appeal."

Since the public defender's short-lived blanket challenge in April, the "general consensus" in that office is that Bolanos is treating litigants better, said Chief Attorney Teresa Caffese, No. 2 in the PD's office. "The jury's still out on all other matters."

Deputies still have to "educate" the judge on basic issues when they arise for the first time, writing briefs on what "should be obvious," Caffese added. "She is trying," she said. "But it's been painful at times to practice in her department."

A couple of lawyers who perceived a prosecutorial bent at first say Bolanos seems to have shifted more to the middle.

"Recently when I've been before her, she was very balanced," said Paul "Nate" Puri of Puri & Walia, who as a volunteer public defender tried two cases in front of Bolanos last year.

And solo Douglas Horngrad said the judge seems to be relying more on her own instincts, "finding her own terra firma."

"It's a subtle change," he added.

Bolanos says she's made an effort from the very beginning to be open-minded, so she's intrigued by comments that she's changed. Noting that she'd never practiced in a state misdemeanor court, she said, "If there's been any change, it's that I'm feeling more at ease."

## ARLENE BORICK

### Help Yourself Stay Out of 'Vice Principal's' Office

Pam Smith  
The Recorder  
August 26, 2003

The theme in Arlene Borick's courtroom comes through loud and clear: Help her help you. Please.

As commissioner for the civil case management department, it's Borick's job to ensure that most civil cases in San Francisco Superior Court stay on track through trial setting. Allen Kent, an associate with Aguilar & Sebastinelli in San Francisco, likens Borick's role to a vice principal's -- "the disciplinarian."

His description makes some sense, because Borick presides over show-cause hearings, where parties explain why they haven't filed something or appeared as scheduled. She also makes sure all unlimited, non-exempt cases go to alternative dispute resolution prior to trial or mandatory settlement conference, and she holds case management conferences -- when they can't be avoided.

"I really want to emphasize that we don't want needless appearances," Borick said. She estimates her department handles about 600 to 800 cases a week, ongoing or new.

During a show-cause calendar last week, Borick reached out to attorneys and *pro pers*. She urged them to file case management statements 25 days before their scheduled conference, rather than the 15 days required under the California Rules of Court. "That way we can process your case by mail, and you won't have to appear in court on that date," she explained.

Several attorneys say Borick succeeds in keeping her calendar moving with businesslike efficiency, but remains consistently pleasant and accommodating.

"She's really very nice and considerate, very understanding of lawyers even when they -- how do I say -- 'mess up'?" said S.F. solo Julian Lastowski. "If you come up with a reasonable excuse for not having met a court-imposed deadline, she listens and weighs the reasonableness" rather than acting doctrinaire, he said. "And I think she moves the calendar as a result."

Borick also makes it crystal clear that she wants to hear as much as lawyers can tell her about their cases -- "Feel free to make attachments to the case management form," she tells them -- and she wants to hear it ASAP.

"She is reasonable, she listens to attorneys' problems, and when she can accommodate you, she does," said Kenneth Tishgart, a plaintiffs personal injury attorney.

"If you communicate with that department in a timely way, you're not going to have a problem," said Thomas Paoli of Paoli & Geerhart.

But you will have a problem if you don't show up. At the hearing last week, Borick routinely assessed no-shows \$200 sanctions.

"My impression is if there's a good reason why you didn't appear the court will consider a request that the sanction be withdrawn," Paoli said. Borick did as much for one of his clients, who first attempted to proceed *pro per*.

Sedgwick, Detert, Moran & Arnold associate Thomas Kopshever praised Borick's organization and efficiency, but said she struck him as, "I guess, overly stringent sometimes."

In a case about a year and a half ago, he said, the parties spent two days in mediation to no avail, and upon reporting back to Borick, were told to try arbitration instead. "As I read the rules, [mediation] satisfies your arbitration requirement," Kopshever said. "She interpreted it differently."

When he's appeared before her more recently, he said, "she's been very accommodating."

Borick said a local court rule sets out a time frame for mediation in lieu of arbitration, and to allow deviation, she needs to see good cause. "Otherwise, any time through the process the attorneys could flip-flop between the programs."

Borick also said she rarely hears feedback, and welcomes any input, negative or positive.

Borick has a long history with the superior court. She worked there for a year after law school as a legal research assistant before moving on to work in the San Francisco office of Kaplan Russin & Vecchi. And around 1987 she returned as a staff attorney, to work on a three-year state pilot project to eradicate civil case backlogs.

When the state gave courts the power to set the pace for certain cases, taking the reins out of attorneys' hands, Commissioner Ralph Flageollet was put in charge of civil case management, Borick said. She became his staff attorney and "right-hand person." When Flageollet retired in 1999, she applied and was appointed by the superior court to take his place.

Although she maintains she likes her job, she frankly stated, "I had no aspirations to go on the bench." She said she only considered it with Flageollet's encouragement.

"The difficulty for me was the transition to becoming the front person for the department," Borick said. "I'm a behind-the-scenes person. That's what I feel I excel at."

## ANNE BOULIANE

### **Bouliane insists that lawyers don't waste jury's time**

Pam Smith  
The Recorder  
May 10, 2005

With coffee and bagels or a meet-and-greet after trial, San Francisco Superior Court Judge Anne Bouliane is particularly concerned about treating jurors well.

"She's very solicitous of the jury," said David Given of San Francisco's Phillips, Erlewine & Given. When he was in a civil trial before Bouliane, he said, the two sides shared responsibility for providing coffee, Danishes and bagels for the jury. (Bouliane says she has only required it for that trial, when the jurors worked through lunch.)

Now presiding over criminal trials, Bouliane tries to demystify the justice system by inviting jurors back to her chambers when the trial is over, to ask questions of her or the attorneys.

On the bench more than 15 years, Bouliane has presided over juvenile, criminal and civil cases, and supervised the criminal master calendar.

She handled civil trials for about four years in Department 624 at the Civic Center Courthouse until early last year. Her assignment, though not her location, changed when the court decided her time should be used for criminal trials to help address a backlog.

What hasn't changed, according to prosecutors and defense lawyers, is the judge's determination to avoid keeping the jurors waiting around.

Bouliane calls jurors "the essence" of the justice system here. "If we don't take care of them, we don't have our system. . . . We're asking them to give weeks, in some cases months, of [their] time."

"It's like you are on fast-forward as soon as you empanel a jury," said Assistant DA David Merin. Up until that point, the judge is accommodating with lawyers' schedules, he said. "Once you get that jury in there . . . you best be ready."

Before *voir dire*, the judge also hammers out stipulations on facts to narrow the issues that will go before the jury, added Merin, who recently prosecuted a defendant in her courtroom for failing to register as a sex offender.



"I'm very concerned about being considerate of the jury and their time," Bouliane said.

Lawyers should have their witnesses ready to go on time. And she doesn't like to hear mid-testimony that the attorneys need to argue about something right away outside the jury's presence, if it should have been anticipated, she said. She'd rather plan ahead so she can take up any issues before jurors arrive, or once they go home.

"My big focus when I interview attorneys before the trial is, are there any ticking bombs?" Bouliane said.

The judge likes to do research, too, so she also appreciates having papers in advance, said Deputy Public Defender Christiane Hipps. Bouliane encourages lawyers to e-mail case citations during trial if a "unique bend on an issue comes up."

Many criminal lawyers claim they wouldn't know that Bouliane used to be a prosecutor just by walking into her courtroom. The judge gets marks for fairness and smarts from both sides -- and extra points for personality.

"She's personable and easy-going, and yet she runs things well," said solo Freya Horne, who was a deputy public defender assigned to the same courtroom when Bouliane was an assistant DA, and has since had trials in front of the judge.

During a break from videotaping testimony last week, Bouliane came down off the bench to chat with the prosecutor and defense attorney and check whether the witness needed anything.

Criminal-defense solo Mark Nicco got his first taste of her style in his first case, when he was up against the prosecutor as a law student interning in the public defender's office. She is professional but friendly and sincere, he said. "How she treated me and my client was just extraordinary," he said, "and she's still like that today."

"She's not afraid to show that she's a nice person from the bench. A lot of judges are," said solo James Collins.

Deputy Public Defender Stephen Rosen, who tried cases against Bouliane and has gone before her since, says she stands out for dealing courteously with "even the unprepared lawyer."

"She'll send them back to do their homework, and the lawyer will definitely get the message," he said. "But she won't necessarily go out of her way to embarrass."

The judge says "it's important not to embarrass an attorney in front of a jury, or in front of a client."

Though it's been almost two decades since she was the one trying the cases, she still reminds herself how it feels to be the lawyer. When she donned the robe, "I thought of all the things that judges did that I hated.

"One was questioning witnesses for me, thinking I needed help."

Another was getting screamed at.

"I don't think lawyers should have to put up with bad tempers from judges," she said. "Every once in a while I fall short of that, and I get angry at myself when I do."

Bouliane has spent her entire legal career in San Francisco courtrooms.

After graduating from law school in 1980, she spent a year as a research attorney at the court. She joined the San Francisco district attorney's office and stayed there for about five years, until she was hired as a superior court commissioner.

She got a municipal court appointment in 1989 from Gov. George Deukmejian, followed by a superior court appointment from Gov. Pete Wilson three years later. Like both politicians, Bouliane was a Republican -- but she became a Democrat in 1996. The GOP, she said, "seemed to be taking positions on very important issues to me that were the opposite of what I felt."

## **STEPHANIE M. BOWICK**

**Being raised by educators and serving a stint with the LAUSD helped Los Angeles County Judge Stephanie M. Bowick to guide delinquent youths in her new juvenile court post.**

By Pat Alston  
Daily Journal Staff Writer

POMONA - When Judge Stephanie M. Bowick speaks to youngsters in trouble with the law, they listen.

"She has a kind of conversational style. It's really effective," Covina attorney David Daugherty said of the new juvenile-delinquency judge.

"She [understands] the poverty issues, the obstacles that our minors are facing, the families are facing," Deputy District Attorney Adrian S. Armstrong said.

Bowick asks questions, "the right questions," Armstrong said. "And I see her listening when they answer. To me, it shows that she cares."

What Bowick cares most about is keeping the youths who appear before her focused on their future. Key to that goal, she said, is education.

"Instead of doing juvenile camp, I'd rather have them in school," said the judge, who thinks of it as "a kind of diversion."

Education has played a major role in Bowick's life. Her parents were teachers and administrators. She followed them to the Los Angeles Unified School District, not as a classroom teacher but as a lawyer.

After a varied career as a litigator in both the private and public sector, Bowick spent eight years with the LAUSD, first as counsel to Don Mullinax, the district's inspector general and the chief author of the critical report on the failed \$200 million Belmont Learning Center project.

Bowick later handled special-education administrative hearings and appeals in the office of the general counsel. Her former supervisor, Diane H. Pappas, said Bowick went out of her way to help other people and mentor junior lawyers.

"She's very compassionate and caring," said Pappas, the district's associate general counsel.

A native of Los Angeles, Bowick, 47, graduated in 1980 from South Pasadena High School, where she participated in track-and-field events. A certified scuba diver, she enjoys cycling and she is a novice golfer.

During her undergraduate years at UCLA, where she majored in English, Bowick worked part time as a receptionist for Dumas & Associates, a small Santa Monica firm.

"That's when I decided to go to law school," she said.

After receiving a degree in English in 1984, she spent another year at the Dumas firm before enrolling at Howard University School of Law in Washington, D.C.

"I had been in Los Angeles [all my life]," she said. "I wanted to do something dramatically different."

Howard, which has roots dating back to the post-Civil War era, attracted guest lecturers who were active in the civil rights movement.

"You had a lot of that influence," she said.

Bowick spent the summer between her second and third years on Park Avenue, interning in the legal department of Clairol, a subsidiary at the time of Bristol-Myers.

Torn between the excitement of the East Coast and her West Coast roots, she decided to take the California Bar Exam, which allowed her to waive into the D.C. Bar. She was working as a litigation associate at Mills & Schroeder in Pasadena when she flew back to Washington to be sworn in. She decided, however, to stay in California.

In 1990, she moved to the San Diego city attorney's office, which offered her a job in the criminal division.

"I wanted trial experience," she said.

By 1993, however, she found herself pulled by her law-school interests in business and corporate law and joined plaintiffs' class-action firm Barrack Rodos & Bacine. Among the cases she worked on was a consumer-fraud class action brought against motivational speaker Charles J. Givens, a get-rich-quick guru of the late 1980s and early 1990s who was accused of misleading and defrauding consumers who flocked to his seminars and purchased his books and tapes. Bowick was a member of the trial team. *Gutierrez v. Charles J. Givens Organization Inc.*, 667169 (San Diego Super. Ct., filed July 29, 1993).

In 1996, a California jury awarded \$14.1 million on behalf of the 29,000 class members. Bowick does not believe the litigants ever collected on the award, however. Givens hid his assets. A month after the verdict, he filed for bankruptcy protection.

After a year off, Bowick returned to the public sector in 1997, joining, first, the city attorney's office in San Francisco and then its counterpart in Los Angeles, defending the city against civil litigation arising from the Los Angeles Police Department's Rampart scandal.

In late 2001, she came to the LAUSD.

"I got to use a little bit of my criminal experience," she said of her work with the inspector general, who investigated fraud and waste in the district.

She handled cases of district employees and outside contractors suspected of fraud and other crimes.

When the district decided a few years later to hire outside counsel to investigate these cases, she was assigned to the office of the general counsel, where she worked on special-education and employment-related issues involving administrative hearings and appeals.

She took her work very seriously, according to her former boss.

"She's very thorough, very detailed in her analysis," Pappas said.

Attorneys who have appeared before Bowick since her appointment last year to the Superior Court describe her as meticulous yet efficient.

"She sets a very high standard in her courtroom," Armstrong said. "There's not a lot of time wasted in there."

Daugherty said Bowick picked up juvenile law quickly and has a keen understanding of reasonable doubt.

"You will get as fair a trial [in her courtroom] as you will get anywhere," he said.

Bowick said the most compelling cases are those that involve children who are wards of the Department of Children and Family Services, "when you're trying to get them on the right track but they don't have family support."

"Those are the most heartbreaking," Bowick said.

"There are good stories, too," she added, "when they've turned their lives around. Those are the cases where you can leave with a smile on your face."

## **ANTHONY J. BRANDENBURG**

**A soldier, teacher and lawyer, Anthony J. Brandenburg says his work building an Intertribal Court from the ground up is his destiny.**

By Pat Broderick  
Daily Journal Staff Writer

VALLEY CENTER - Anthony J. Brandenburg, chief judge of the Intertribal Court of Southern California, considers this job his destiny. And like many who seek their destiny, Brandenburg found the path long and winding.

Growing up in Boston as one of six children, Brandenburg never even thought about the law, but he did inherit his mother's love of books.

"I'd sit up late at night and read and read," said Brandenburg, 70, sporting a silver braid, and seated in his office on the Rincon Indian reservation, surrounded by carved statues and American Indian art.

He also inherited his mother's wanderlust, Brandenburg said, although with six children to rear, she was never able to indulge it.

In 1957, after graduating from high school, and shortly before his 18th birthday, Brandenburg decided that it was time to hit the road. So he packed a bag early one morning and went to his mother's room.

"I leaned over my mother, who was still in bed, and I said, 'Ma, I'm leaving,'" he said. "She looked up at me and said, 'Make sure you're right.'"

Brandenburg hitchhiked to California, with no particular goal in mind. In Denver, he got arrested and detained overnight for hitchhiking, then resumed his journey.

He was awestruck when he finally arrived.

"I looked out and saw the Pacific Ocean, and I said, 'Oh, my God, I'm never going to leave here.'"

When his money ran out a couple of weeks later, however, Brandenburg hitchhiked back to Boston and joined the Marines - with the understanding that he would be shipped back to a base in California.

After basic training, Brandenburg was sent to electronics training school, became a technician, and taught the troops radio operations and procedures in Okinawa.

By the mid-1960s, he was out of the military, back in California and working in construction when a friend impulsively decided to open a restaurant in Solana Beach.

"There was no Italian restaurant between Oceanside and Solana Beach, with the exception of a pizza place," he said. "We used to always cook at the house, and somebody came up with the idea of opening an Italian restaurant. I said, 'Let's do it.'"

With about \$4,000, handmade plywood tables and secondhand chairs, they were in business.

Then, one day, in the early '70s, Brandenburg saw a newspaper ad for what was then Western State University School of Law, now Thomas Jefferson School of Law, assuring him that he, too, could be a lawyer.

"My friends were joking and said, 'You'd make a great attorney,'" he recalled.

Brandenburg thought about it and decided that he would indeed.

"The next day, I went down and enrolled," he said. "Basically, I did it on a dare."

He started law school in 1971, but it was a rocky ride, mired with the detours of a failed marriage, being a single father to two small children and a trip back East to pursue teaching credentials. Brandenburg, though, eventually decided to return to law school, graduating in 1979.

Working as a sole practitioner and then at the Oceanside law firm of Gore, Grosse, Greenman & Lacy, Brandenburg decided to change course in 1989 when a position as a San Diego Municipal Court commissioner opened, and he landed it.

"I enjoyed it tremendously," he said. "I remember being in three courthouses in one day, filling in where they needed me."

After the San Diego County courts unified in December 1998, he became a Superior Court judge, handling both civil and criminal proceedings.

Through it all, Brandenburg nursed a fascination for American-Indian culture, and continues to research his late mother's heritage, which he thinks was tied to either the Narragansett or Pequot tribes. He did pro-bono work on reservations and, at one point, was offered the position of chief judge for a Hopi tribe, a job he declined.

But destiny continued to call, this time in the form of Temec Aguilar, who was instrumental in creating the Intertribal Court of Southern California in 2004, and was searching for its first chief judge.

"I was looking for somebody from the county bench who had prior experience in tribal court and the community," Aguilar said.

Brandenburg heeded the call, although with some trepidation. He said to his wife, Cynthia, "If this doesn't work out, I can always do other things."

But, he added, "She looked up and said to me, 'This is your destiny.' I've never looked back."

An independent judiciary within American Indian sovereign territory, the court's stated mission is to "preserve the integrity, autonomy and sovereignty of the Native American communities in a culturally sensitive and traditionally aware environment."

Erik C. Jenkins, an attorney with Fuller Jenkins in San Diego, is a member of the Intertribal Bar Association, and serves as a judge pro tem in the Intertribal Court.

"Judge Brandenburg is the foundation on which this court was built," he said. "He has the personality and charisma needed to take the cultural differences that make up the court and make it a cohesive unit."

Cesar Luna of Luna & Associates in San Diego, who represents the Iipay Nation of Santa Ysabel, has appeared before Brandenburg and found him to be very sensitive to the tribal communities.

"He understands that some tribes often don't have legal sophistication or adequate legal representation," Luna said, "and he goes beyond the call of duty to make sure that all parties are fairly represented."

Anthony W. Norton, a Chula Vista attorney, said that he is impressed by Brandenburg's "tenacity."

"He is very passionate about what he's doing," Norton said. "He does his best to get the best results for everyone involved."

Since Brandenburg assumed his post in 2005, the court's caseload has grown from a handful of cases to about 1,000 a year.

"We had to build a judicial system from ground zero," he said, "and we've done it."



## **STEVEN A. BRICK**

09-07-2010

### **Q. What do you enjoy most about being a judge?**

A. I like to contribute to providing for the fair resolution of disputes.

### **Q. What advice do you have to offer to new attorneys?**

A. New attorneys should work very hard to be the best lawyer they can, and to maintain their integrity in everything they do.

### **Q. What are some common mistakes that you see even from experienced attorneys?**

A. Inadequate preparation covers a lot of ground. Whether it's in motion practice, trial or even case management. Really, inadequate preparation is the largest single problem.

### **Q. How should an attorney prepare for a case management conference in your department?**

A. An attorney should view a case management conference as an opportunity for the judge to understand the case from that attorney's perspective, and should think through what she or he wants to accomplish in advance. And lay that out, first in a written case management conference statement and then, if the case management conference goes forward, be prepared to answer questions and make suggestions.

### **Q. Do you ask the parties to submit a joint case management statement?**

A. I do. I think common sense and the rules of court dictate that the parties are required to meet and confer before they file separate or joint statements. If they are doing meaningful meeting and conferring, there is no reason why they shouldn't express what they have agreed upon, and what they have disagreed upon, in the same document. There is no reason to have two separate documents, or in many cases it's 15 or 20 separate documents.

### **Q. How do you deal with situations where an attorney fails to provide courtesy copies?**

A. It depends, because the court is so underfunded. In Alameda County, we image everything that is filed, and we try to have images available within 24 hours. But because of inadequate resources, we don't have the staff to make that a reality. And it often results in a delay of a day or two. And if I'm trying to work ahead, working at home nights after we close down or on weekends, and I don't have a courtesy copy to take with me, I may not be able to provide the attorneys with my tentative order until the following week. So it results in inefficiency for everybody.

**Q. Do you decide motions based solely on the briefs, or do you prefer to hear oral argument?**

A. I do not decide motions solely on the briefs. But I do try to give substantive tentative rulings for every motion so that the lawyers can review them and be prepared to explain to me if I missed something in the record they want to draw my attention to. If there is a new case that's come out that wasn't in the briefs that they couldn't have provided to me sooner, they can use oral argument to do that. And I do sometimes change my mind as a result of good oral arguments.

**Q. What advice do you have for an attorney who is preparing to argue a motion in front of you?**

A. Carefully study the tentative ruling, and if you're on the winning side, you should be prepared nonetheless because a tentative is just that. It's tentative. You might have to respond to the points the other side is going to make. And if you're on the side that's going to lose, figure out what you can say to me that you haven't already said in the papers that will get me to take a second look at it and possibly change my mind.

**Q. If an attorney becomes hostile or overly confrontational during an argument, how do you handle that?**

A. I usually ask them to keep their voice down, and say it in a tone of voice they can barely hear.

**Q. When ruling on a motion, do you issue written opinions?**

A. It depends on the motion, but something is in writing on every motion. Some motions [receive] just a sentence or two, and others are considerably more elaborate.

**Q. Do you have any preferences as to how and when attorneys submit proposed orders?**

A. The rules require that they be submitted with the moving papers and with the opposition papers. If something comes up along the way, such as my tentative ruling comes out, it's wise for the counsel who is on the winning side to bring a revised proposed order that mirrors what is in the tentative ruling.

**Q. In your opinion, what are the keys to a well-written, persuasive brief?**

A. A well-written, persuasive brief should have a terrific introduction — it may not be written until the end — that brings together what the party wants, why the law calls for that or requires it, and why it is appropriate in that particular case. And then the introduction and the conclusion, which will be the mirror image, should be the bookends for carefully laying out the procedural posture of the case, the controlling law, and the facts, whether they are disputed or undisputed.

**Q. How would you like to see attorneys handle discovery disputes?**

A. I require attorneys to meet and confer in genuine good faith before bringing a discovery dispute to me. And before allowing a discovery motion to be filed, each side has to submit a letter of no more than three pages explaining what the problem is and what each side's position has been during the meet-and-confer process. And then I either set up an informal conference call and talk with them about it or I occasionally will give suggestions, but not orders, through e-mail response to both, or all, counsel. And when necessary, I have them get in touch with the clerk so they can file a motion.

**Q. In your experience, how can attorneys help the court promote settlement of a dispute?**

A. Attorneys can, and often do, carefully evaluate the risks and rewards from their client's perspective, think through what their opponent's position is likely to be and why, and try to approach the process as an advocate, but in a reasonable way. That's terribly helpful.

**Q. What impact has technology had on litigation, especially in jury trials?**

A. It's having many impacts on litigation. That's the subject of an hour-long program. For purposes of communication, I'm a fan of e-mail service of documents among counsel, and wish that our court could accept e-mail filing for all documents. Right now, we can only do e-mail filing for case management statements. There is a lot of using technology to image documents. Setting up central repositories for documents so that they can be easily accessed from a website is becoming more and more common in the bigger cases. Using technology in the courtroom to help explain your position to a jury is becoming essential. Good videographics; use of electronic documents rather than binders full of paper documents. Those are all things that are assisting litigation. And then of course it's had a whole different set of ramifications in discovery and discovery disputes.

**Q. How do you feel about telephonic appearances at hearings?**

A. I'm in favor of the state law, which generally permits attorneys to appear telephonically for motion practice and for case management conferences. The only times I order an attorney to appear in one of those situations is when they are seriously in default with respect to not having filed their papers on time, having failed to appear at a prior hearing, something like that. And I don't permit, or favor, telephonic appearances in general at pretrial conferences, and of course not at trials, and generally not at settlement conferences.

**Q. What are the most common reasons for sanctioning an attorney?**

A. Failure to appear, failure to file papers in a timely fashion.

**Q. Is there a dress code in your courtroom?**

A. There is no official dress code in my courtroom. People generally wear a tie, but not always, and usually wear a jacket except when it's hot. And people, when it's really hot, generally request permission to take their jacket off, and I routinely grant it. For women, there's no dress code at all. They just do what they think is appropriate.

**Q. What do you see as the advantages of the complex litigation program?**

A. There are many. It permits us to develop more specialized knowledge in an area where it's quite a long learning curve for individual civil department trial judges or direct calendar judges to learn the ins and outs of class actions — when to settle, when not to allow settlement, how to conduct a class action trial. That's on the procedural side. And then on the substantive side, we begin to develop expertise in the areas that are in front of us on a regular basis.

**Q. At what point in a case would you like to see attorneys making the determination whether to apply for complex case designation?**

A. Usually it's done with the complaint or with the answer. I prefer to have it resolved early on. Occasionally, the attorneys don't check the box for complex, and after the case has been in a direct calendar department for six months or 18 months, when suddenly somebody wants to do something, it becomes apparent to everybody that this case has multiple parties, lots of motions, lots of issues, and it really belongs in complex. And then, instead of having had the opportunity to manage the case from the beginning, we are picking up a case that has had somebody else's management style.

**Q. How do you feel about the use of motions for summary judgment and motions for summary adjudication in a complex case?**

A. I encourage parties who believe that they have a meritorious motion to make them, and those who know that there is going to be an issue of fact created by a deposition that was taken in the case, or whatever, not to make them.

**Q. Are there any resources or reference materials that you would recommend to attorneys who have a case in a complex case department?**

A. The Judicial Council is putting out a new edition of the complex civil litigation manual, which has recently been updated in many ways and is a good resource. The Federal Judicial Center has terrific publications on a variety of topics that would be of interest to anybody having a class action or other complex case. Those are all available on the Federal Judicial Center website.

## FRANCISCO P. BRISEÑO

**Francisco P. Briseño, the senior judge on the Orange County Superior Court, has won plaudits for his patience with defendants - and for hearing them out.**

By Don J. DeBenedictis  
Daily Journal Staff Writer

SANTA ANA - Sometimes when Judge Francisco P. Briseño finds himself at a difficult point in a troubling case, he remembers his father.

The senior judge on the Orange County Superior Court, Briseño hears long-cause criminal trials, meaning murders, gang cases and others in which defendants face life in prison or worse. Recently, Briseño sentenced Rodney J. Alcalá to death for raping, torturing and murdering four women and a 12-year-old girl.

Briseño's father was a fruit-picker and ranch hand. He remembers his father getting ready for work at 4 a.m. by the light of a Coleman lantern while heating coffee over a small fire.

Still, his father was always happy, always smiling. "I never saw him down at all," Briseño said. "I think about that when things aren't going smoothly."

Lawyers say the judge is always happy, too.

"He's just the best there is, the best demeanor," said John D. Barnett, a top criminal defense attorney in Orange. "He's calm. Nothing upsets him ... He treats everyone with great kindness."

"His courtroom demeanor is amazing," said Los Angeles County Deputy District Attorney Gina T. Satriano, who co-prosecuted Alcalá along with Orange County senior deputy Matthew Murphy.

Satriano said she was particularly impressed the judge stayed calm with Alcalá, who represented himself during the two-month trial. "It's hard to keep your temper with someone who rambles worse than a lawyer," she said.

Briseño said he enjoys being a judge - despite the serious cases he hears now - because he likes people.

"It's all about people," he said. "Different kinds, with different objectives."

And Briseño pays attention to the people and to their objectives. He listens to them, particularly those who don't have lawyers.

In fact, he said, the most important training a judge can receive comes from hearing traffic and small claims cases. "You see a lot of people who walk in and just want to be heard," he said. "Sometimes it's just a matter of letting them vent."

It also is important to actually listen to them. "It's not just what you do but how you do it," the judge said.

That same approach carries over to serious felonies. He lets lawyers and pro per defendants "say their piece," said Irvine defense attorney John M. Earley. Even if that takes extra time at the moment, it saves time later on, Early said.

He finds treating felons courteously pays off. "They're taken aback by that," Briseño said. "They're used to people yelling at them" at school, at work and in jail. "Once they get confident they're going to be treated with respect," he said, they treat the court proceeding with more respect.

The judge said he asks his staff to be respectful to the defendants who come to the courtroom, too. "I tell them we're not here to impose punishment," he explained.

When he must impose punishment, Briseño rarely offers personal, derogatory comments about defendants. Particularly when he is sending someone to prison for 25 years to life or more, "I think the sentence speaks for itself," he said.

Now 71, Briseño was born in La Puente and grew up in Gardena. As a Long Beach State College student, he joined a Marine Corps reserve corps, going on active duty right after graduation in 1961.

He enjoyed being a Marine - "I like being outdoors; I liked everything about it," he explained - and he intended to become a career infantry officer. But while stationed at the helicopter base in Tustin, he decided to go to Loyola University School of Law just in case.

He was in law school as the Vietnam war heated up, and as soon as he graduated and passed the bar exam in 1968, he shipped out. By then a major, Briseño was a company commander in a tank battalion for a year.

After he came home, he decided to resign his commission rather than become a military lawyer, which would have required another tour in Vietnam.

Mustered out immediately, he went looking for a job. He walked into the Orange County personnel department that same day in 1969, wearing his Marine uniform, to ask if the district attorney's office had any openings.

It had two, and he was hired for one of them virtually on the spot.

He arrived at work the next morning at 7 a.m. When everyone else got in the office about 9 a.m., he was sent out to court with 20 case files either to settle or try. "It was on-the-job training," he said.

Fairly soon, Briseño learned the importance of listening to pro per defendants. In those days, people given traffic tickets could ask for a jury trial. As a new deputy, he had to talk to them, and he discovered that many of them didn't so much want a trial as to complain about how rude the citing officer had been.

Once he listened to them, they would plead guilty, he said.

He moved on to felony trials, and within five years, was named to the newly created homicide panel. By 1975, he was in charge of the panel.

"He had the reputation of being one of the best homicide prosecutors the office ever produced," Barnett said.

Even then, he was genial and courteous, defense attorney Roland Rubalcava of Santa Ana recalled. "He's got these white teeth, and he'd smile and talk to you. ... He kept getting all these convictions," Rubalcava said.

Then, one day in 1977, as he was trying a murder case, he got a note from the office receptionist that Gov. Jerry Brown's office had called asking if he might be interested in a judgeship.

"I still have the note somewhere at home," Briseño said. "I knew it was a keeper."

Brown appointed Briseño to the Municipal Court in Santa Ana that year. At 37, he was one of the youngest judges in the state and the second Hispanic judge in Orange County. Brown elevated him to the Superior Court in 1977.

He heard general trials, then family law, then juvenile cases. As the presiding juvenile judge, he made the then-novel decision to split the dependency and delinquency cases into separate calendars. "I'm very proud of that one," he said.

Juvenile was his favorite assignment because it allowed him really to affect young people's futures.

Briseño has been hearing felonies since 1994 and long-cause cases since 2001.

Barnett said Briseño is "an exceptional trial judge" who understands trial tactics, law and evidence. Although he is very tough in sentencing, he is fair to both sides, Barnett said.

Satriano said the judge was meticulous about making a clean record in the Alcala case, which will be appealed automatically. Alcala had been sentenced to death twice before for killing 12-year-old Robin Samsue, but the convictions were reversed.

Off the bench, Briseño likes studying the history of the Civil War and World War II. And his great hope is that, some day, somebody will say he is a good golfer.

## LAWRENCE BROWN

By Emily Green

SACRAMENTO - As the 14 jurors prepared to hear the closing arguments in the case of a man facing life imprisonment, Judge Lawrence Brown gave them an unusual directive: Don't nod off.

This kind of talk is quintessential Brown, say his colleagues: funny, a little inappropriate and disarmingly effective. For the next 30 minutes, as Brown monotonously read aloud jury instructions before closing arguments - instructions that could have put just about anyone to sleep - the jurors paid attention.

Gov. Arnold Schwarzenegger appointed Brown in January to the Superior Court in Sacramento County. Brown has long roots in the prosecutorial world - he once headed the California District Attorneys Association and worked at the U.S. attorney's office - and he readily talks about his idyllic upbringing compared to the circumstances of many of the people who appear before his court.

Brown jokes that he grew up on the "mean cul-de-sacs of Santa Rosa," where he had two "loving and supportive parents," was a member of the Cub Scouts and even had a paper route.

"It was really devoid of the adversities people in high-crime areas face every day," Brown said. "I consider it important to keep in perspective that many of the persons coming through the criminal courts did not have the type of upbringing or opportunities I had."

Yet in policy, consistent with his background as a prosecutor, Brown has supported tough sentencing practices. While at CDAA, he regularly advocated on behalf of the three-strikes law, life sentences for first-time rapists, and enhanced sentencing for people who use guns while committing felonies. Now, as a judge, Brown is coming face-to-face with many of the sentencing laws he helped enact.

The same jury that Brown told to pay attention during closing arguments was weighing the fate of a man who, while robbing a convenience store, shot in the head the store owner, after the store owner shot him first. The defendant claimed he slipped after being shot and accidentally fired his gun. A previous jury had found him guilty of two counts of attempted second-degree robbery but acquitted him of attempted murder. The victim lived but suffers from some mental impairment. The jury was hung on the question of whether he had used the gun with the intent to cause great bodily injury. It was this final allegation the jury in Brown's courtroom was considering.

They ultimately convicted the defendant, who will see his stay in prison enhanced by a 25-years-to-life sentence.

The sentence enhancement derives from a 1997 law that Brown helped write when he worked at CDAA.



"It has all come home to roost, I guess," Brown said. "I have no buyer's remorse, but it is different when you serve as a judge and you see that individual right across from you in the courtroom. It's no longer just some name or some statistic. It's a person who may have made some very poor decisions and may have had a very difficult life and there they are facing this sentence. It's much more real than when you just simply have a policy debate. And I think that's going to take some time for me to work through."

Brown, half-jokingly, said another surprise about the job is his newfound appreciation for judicial discretion.

"I spent a lot of time at one point in my career curbing judicial discretion. I've now come to realize the error of my ways. I'm a born-again judicial discretioner," he said. "I was just appointed to the California Judges Association's criminal law and procedure committee and I immediately contacted my old organization - the DAs - to let them know I would be keeping a watchful eye at any improper attempts to limit judicial discretion."

Brown, a California native, is a 1989 graduate of the UC Davis School of Law. He spent the first five years of his legal career as a deputy district attorney in Ventura County. When Brown's then-supervisor, Greg Totten, was tapped in 1994 to be CDAA executive director, he hired Brown as deputy director. Totten left CDAA in late 1996 and Brown became executive director. He was just 32.

Brown spent the next six-and-a-half years heading CDAA, leaving in 2003 to become first assistant at the U.S. attorney's office in Sacramento. In January 2009, Brown became acting U.S. attorney after McGregor Scott stepped down.

Scott Thorpe, the current head of CDAA, who has known Brown for more than 20 years, said Brown's mix of honesty and humor makes him easy to like - even among people who don't agree with him.

"People trust him. He doesn't say things just to please who he's talking to," Thorpe said. "He has a good ability to deal with controversy without making it personal, and that's important and effective."

Michael Bowman, a veteran defense attorney who represented the man charged with using the gun to cause bodily harm, said Brown's humility on the bench was striking.

"He was thoughtful without being arrogant," Bowman said. "There is not a trace of arrogance in him at all, which is nice. He was clearly intelligent without a need to prove it."

Still, Brown said, he loves the new judicial role of having "the final word."

Brown lives in Sacramento with his 11-year old son. In his spare time, he likes to take photos and play tennis with his son. His favorite recent book is "The Nine," by Jeffrey Toobin.

## TERENCE L. BRUINIERS

**Terence L. Bruiniers has taken on nearly every role in the legal system: cop, prosecutor, litigator and judge. Now, as an appellate justice, he's backing efforts to make the courts electronic and efficient.**

By Laura Ernde  
Daily Journal Staff Writer

SAN FRANCISCO - A photo of three young men leaning against a patrol car holding tear gas canisters and riot gear sits prominently in the office of 1st District Court of Appeal Justice Terence L. Bruiniers.

The guy out front is Bruiniers, who was an officer with the Berkeley Police Department during the tumultuous years from 1967 to 1973.

"My wife notes that after I left, the riots seemed to stop," Bruiniers said with a wry smile.

Coming from a working-class family with six younger siblings, Bruiniers had to work at least part time all the way through school.

His undergraduate classmates didn't know he was a police officer and his law school classmates didn't care, although Bruiniers does remember raising some eyebrows on student-election day. Dressed in full riot gear, he stopped at the polling place to cast his vote.

Having already testified in numerous criminal cases, he already knew his way around a courtroom when he got hired as a deputy district attorney in Alameda County after law school.

Bruiniers spent seven years as a prosecutor. He handled the case of then-1st District Court of Appeal Justice Paul Halvonik and his wife, who were caught growing marijuana at their house. Halvonik pleaded guilty and later resigned from the bench.

Not long after, a former classmate at UC Berkeley School of Law sought out Bruiniers' litigation skills for use in the corporate world. He joined a 10-lawyer firm in San Francisco, doing a variety of business and commercial work.

As a partner at Farrand, Cooper & Bruiniers, he met clients who ran computer companies. As a result, he developed a lifelong interest in technology.

Bruiniers, 64, has served on the Court Technology Advisory Committee to the Judicial Council, the policy-making arm of the courts, since 1999. As vice chair, he's one of the biggest backers of the plan to create a statewide computer case-management system, which has been criticized for costing more than expected.

Bruiniers said the court system needs the efficiency the new system provides, especially in lean budget times.

He saw the need first-hand while serving as presiding judge of Contra Costa County Superior Court just before being appointed to the appellate court in 2009.

The court's criminal, civil and family law files are all stored in separate computer systems, making it impossible to access information between them. The county rents a former grocery store to house files that are stacked from floor to ceiling.

The inefficiency of the court's computer case-management system is not unique to Contra Costa County, he said.

"No modern business would operate that way, and we can't afford to either."

Even at the appellate court, records aren't yet electronic, he said, pointing to a cart filled with the information about just one case.

Bruiniers said he doesn't mind reading briefs on the computer or on his Kindle electronic reader.

Bruiniers was tapped for the superior court bench by Gov. Pete Wilson in 1998 and handled a wide variety of criminal and civil cases. One of his first assignments was to take over a complex insurance bad-faith trial from a judge who had become ill.

To keep his promise to the jury that he would wrap up the case on time, he reduced break times, which caused some grumbling from his court staff.

But the lawyers said they appreciated how quickly he got up to speed on the case, as well as his reasoning.

Bruiniers also made a tough decision in a child custody case, carving out an exception to the presumption that a custodial parent is allowed to move away with the children. Although the appellate court reversed him, he was vindicated 6-1 by the state Supreme Court.

Bruiniers said he never considered applying for the Court of Appeal until he was tapped to fill in on the court's Division 5 for several months.

Gov. Arnold Schwarzenegger appointed him to the same division, where he joins Justices Barbara J.R. Jones, Mark B. Simons and Henry E. Needham Jr.

Simons said Bruiniers brings a lot of experience to the job. It's rare to have a justice who spent time as a lawyer in both the criminal and civil arenas.

"He has a very strong background," Simons said. "I think he's a terrific colleague. He's extremely easy to work with."

Bruiniers hasn't been on the court long enough to gauge his jurisprudence, although he doesn't seem to shy away from taking bold stances in his written opinions.

Earlier this year, the state Supreme Court asked his court to take a fresh look at a criminal appeal in light of a U.S. Supreme Court ruling overturning a conviction because the defendant's uncle was excluded from jury selection. *Presley v. Georgia*, 2010 DJDAR 830.

Bruiniers wrote a unanimous published opinion upholding a San Mateo County burglary conviction where friends and family members were similarly shut out of the courtroom. *People v. Bui*, 2010 DJDAR 5105. The state Supreme Court denied review.

In his spare time, Bruiniers said he enjoys traveling with his wife, Susan Bruiniers. The two met in college while working at a local restaurant. He tended bar and she was a waitress.

The couple has one daughter, Lisa, who graduated from Golden Gate University School of Law in San Francisco but is not a practicing lawyer. She recently moved to Colorado.

Life as an appellate court judge is much calmer than being on the trial court, said Bruiniers, but he rarely misses being in the center of the action.

"If I had known how much I'd enjoy it, I would have applied sooner," he said.

## KENNETH M. BURR

Chris W. Vincent  
09-15-2010

### **Q. What do you enjoy most about being a judge?**

A. Probably the variety. And seeing attorneys do good work. I think that at this level what most judges want to see are good trial skills. You really want to avoid becoming involved. You just want to let the attorneys do their thing. And good trial lawyers I find to be a pleasure to watch, because that's my background. I appreciate the craft and enjoy it when it's practiced at a good level.

### **Q. What do you enjoy least about being a judge?**

A. Attorneys who are not well-prepared, and attorneys that are not civil to one another. They seem to go hand in hand.

### **Q. What advice do you have to offer to new attorneys?**

A. It seems so simple to tell people to be prepared. But yet it's amazing how ill-prepared so many people are. And when we talk about preparation, it's not only the knowledge of their case, but anticipating what issues can arise. Be prepared for those, and sometimes even anticipate those problems. Talk to the other side and see if it's a problem. If it's a problem, then you're prepared to deal with it. Many times it's not a problem, but you've talked to the other side and you've resolved those issues. Or, at the very least, you've reduced what is an issue.

### **Q. To make case management conferences run more smoothly, what should attorneys have prepared and what should they be thinking about beforehand?**

A. It seems so basic, but you would be surprised how many attorneys are not prepared. They send in the case management statement form that's been issued by the Judicial Council. From my perspective, and this may be sacrilegious, I think it's a useless piece of paper. I've got to hunt through it, and attorneys fill it out, and they keep that format on their computer, and every time they need an update, they just change the date. They don't really give me any new information, and I have to hunt through it. The other thing about the form that I don't like, and I don't want to speak for my colleagues, but I'm at an age where if you put some stuff on that form, in the limited amount of space that it gives you, it's using such small type, I have a hard time reading it — assuming you give me something on there. And most of the time, it just fills out blanks. You check this box, you check that box. It really doesn't tell me, why haven't you noticed the depositions of these witnesses? Why haven't they been taken? What really is at issue here? The idea of a summary of the case — give me an idea of what the case is about. This is an intersection accident. It took place on such and such a date. Sometimes it can be very good and that's all you need. Where who was hit by whom. And that's OK, that's fine, and that gives me an idea for the initial case management conference, but I really far prefer, and I tell attorneys the old way of doing it, with the pleading form, just put down there what's relevant to where we're at

right now. We're still awaiting the releases from the doctors to respond to our subpoenas or SDT's. We're still awaiting the return of the pathology from the plaintiff's pathologist so we can send it to our, the defense, pathologist. The plaintiff has passed away and we are in the process of making a motion to amend the complaint to add a wrongful death cause of action along with a successor in interest. That tells me a lot more.

**Q. What are you looking for when you review a brief?**

A. We've moved into briefs, which is a little different. Now what we're talking about is again the clarity of what are the issues? And what evidence do you have to support your position? The clearer that is laid out, the better it is. Again, it's another form of advocacy. And I'm using it in its broadest sense because advocacy is more than just mere argument. It's a way of communicating effectively your position and the basis of your position, conceding what's obvious. You can't fight everything. You're going to have weaknesses, and you can concede those. So despite that, we've got this, and this outweighs this. Throw away that which you can't dispute and let's focus on what's really important.

**Q. In your experience, how can attorneys help the court promote settlement of disputes?**

A. Be realistic. Be honest with yourself, with your client, and with the other side. An overused term, but one that is really lost sight of, is civility. Being a lawyer, this is a profession, and it's an honor to be a part of this profession. Lawyers love to think of themselves as gladiators, gunslingers, whatever, fighting the good fight. We like this image of knights in shining armor. Well a lot of that has its basis in the idea of the knights of the round table — very noble warriors, if you will — who had an ethic, and an ethos, that respected the opponent and would fight the fair fight. If somebody used trickery and deceit, that was to be discouraged and viewed with great contempt. That is below our conduct. And that was always the part of the profession that I really enjoyed as a lawyer. I had the good fortune to try a lot of cases, probably more than any prosecutor in my period of time, probably because I went to trial more than most folks, probably more than anybody in the county. So I tried a lot of cases, and I enjoyed the trials with good lawyers on the other side where we became good friends. You can be friends and still fight tooth and nail in a very ethical fashion. The profession has gotten larger with modern-day communications. One of the things that would keep attorneys in line, and be more civil, was that they knew that they couldn't try some underhanded thing because they're going to run across this lawyer somewhere down the line. And in the small, specialty bar groups, like criminal law, family law, asbestos, everybody knows that, and it's really pleasurable to handle cases in these areas because of the professionalism of the lawyers. Because they know that they are going to be dealing with these lawyers in other cases. You can represent your client diligently, forcefully and exert every single right that your client has. At the same point in time, you do it in a civil, ethical, professional manner, and you're respected for that. And you respect the opposition. And that really is cool.

**Q. How do you deal with situations where an attorney fails to provide courtesy copies, or provides an incomplete set?**

A. Their motions may not get heard because we haven't had time to review the materials. Some judges don't want courtesy copies, and maybe many of my colleagues like to look at stuff online. That's part of their generation. It's not my generation. It's not my eyes. They've got younger eyes. Looking at this screen here is problematic for me. But some judges don't want courtesy copies, and they'll tell you that, because they can't afford to have paper mounting up. We prefer it because I like to write on this stuff sometimes and I don't want to mess up their original copies that are filed. But every judge is different in that regard. And if somebody doesn't supply courtesy copies, it just slows down the processing from our end.

**Q. Do you tend to decide motions solely on the briefs or do you prefer to hear oral argument?**

A. I want to hear oral argument. We issue tentative rulings, and the idea isn't that it's cast in stone, but based upon what you presented to us, this is where I'm headed. And I do that for a couple of reasons. One, you can focus your argument, and if you know oral argument isn't going to get any better than your briefs, then we just don't need a hearing, do we? The tentative ruling will prevail. But, if you think, after reviewing the tentative ruling, that I've missed the point, then I certainly want to hear from you. And again, we've given you a tentative ruling, so don't go back to square one. Let's focus on the issues that we've raised in the tentative ruling because we've given it thought, and if you realize, OK, he's covered it, there's nothing more I can add, I leave that up to the attorneys.

**Q. How has technology impacted litigation, especially in jury trials?**

A. A lot of people think that because they're taught how to use PowerPoint in law school, if they use PowerPoint, they're really hotshot trial lawyers. It's only a tool. And it's only as good as the craftsmanship of the slide and what it illustrates. If you put a slide up that shows a jury instruction, what I frequently see is an entire slide filled up verbatim with the jury instruction. Well you've got a couple of problems. If you put something up on a screen, jurors can do one of two things — it's not just jurors, it's anybody — they can read or listen. So if you put something up on the screen, you've got to stop. Because if you put it up there, you want them to look at it. But you don't want to start asking questions of your witness because everything you ask them is going to be lost. I use the example of jury instructions, the verbatim thing, that's more verbiage, more legalese. What you want to put up are the key phrases, points, that illustrate, and you fill in the gaps. And as long as it corresponds with the jury instruction, then it will trigger with the jurors when they hear and when they read through the instructions back in the jury room how it fills in. You've got to decode that stuff for them, as opposed to just assuming they understand it. We have made great strides in the new jury instructions, but what are they based on? They're based on statutes. They're based on case law. And we have problems deviating very far from it. And what are we talking about? We're talking about legalese, so again, you've got to decode it. And putting up a slide full of verbiage is a poor use of PowerPoint. It's a poor use of communication. You've got to pick your shots.

**Q. What are the most common reasons for sanctioning an attorney?**

A. If they don't do what they are supposed to do. I've been really fortunate here in asbestos for the last couple of years. I shouldn't have to. If I say how much time do you need, and you give me an estimate that's reasonable, I'll go along with it. And you should be able to get it accomplished. If you can't get it accomplished, explain why. And then we finally reach a point where we set an order to show cause why you shouldn't be. And if you've shown me good cause, then you won't be sanctioned.

**Q. Is there a dress code in your courtroom?**

A. It's a profession. It is rather ironic that we now wear uniforms. You look at people with suits and ties on and it sort of gives us away. People know that we're doing something. I remember one attorney, when I was a lawyer, and of course I'm dating myself, he wore a sportcoat and slacks when he was in court, and I just couldn't fathom doing something like that. And I asked him, I said, "Why do you do that?" And he said, "I want my clients to be able to identify with me." And the current trend, especially down in Silicon Valley, starting in the '90s, is casual Fridays because we're dealing with young entrepreneurs and brilliant kids straight out of college who are very casual, and we want them to feel comfortable around us. And in the office, that might be one thing, but I think in the courtroom, it's not respect to me but respect to the institution.



## ELLEN CHAITIN

10-19-2010

**Q: What do you enjoy most about being a judge?**

A: The problem-solving aspect of it, through the law.

**Q: What do you enjoy least about it?**

A: When lawyers aren't prepared.

**Q: How do you deal with situations where an attorney doesn't provide courtesy copies to the court, or provides an incomplete set?**

A: Well, it often is difficult for me to proceed if I don't have courtesy copies. It just depends on a lot of variables. Sometimes, if it's a calendar kind of situation, I can read the courtesy copy or I can read the motion during a break. Sometimes I have to put it over. In my last assignment, I had a big sign on the door, "Remember Courtesy Copies," and that didn't always work. Because I like to take work home with me in the evening to catch up on the next day, so I'm not going to take the whole file, especially if it's just a particular motion on calendar, so I get my courtesy copies and I put them in my briefcase and I take it home. So I'm at a real disadvantage, and they're putting their client at a disadvantage by not supplying them.

**Q: Do you decide motions based solely on the briefs, or do you prefer that the attorneys also argue the motion?**

A: I find that attorneys want to argue, so I always give them an opportunity to argue. I'm not going to say that it never sways the court because sometimes, actually, the oral argument does move you in a direction you didn't necessarily think you were going to go in — there's some clarity to an aspect of the argument that for whatever reason didn't jell in the papers — but mostly oral argument is not that important in making the decision, you know, based on what I have observed over the years.

**Q: If an attorney becomes hostile during an argument, how do you handle that?**

A: I attempt to point out to the attorney that he or she is being hostile, and it will not serve any benefit to his client. It's unnecessary, we're all professionals here. I would prefer that the attorney highlight the strength of the case rather than making the case about the attorney. Attorneys really need to, and this is hard for lawyers — because some of us, not me any longer, but when I was a lawyer — have big personalities, so it's very important to keep that big personality in check. It's not about the lawyer, it's about the case.

**Q: To make case management conferences run smoothly, what should the attorneys have with them in the courtroom, and what information should they have ready to present to you?**

A: All relevant information. All documents, all relevant information. So we can really get a very clear overview on what needs to come next in the case.

**Q: What impact has technology had on litigation, especially in jury trials?**

A: Well first of all, the judges get Real Time [transcription], and that's an enormous advantage. Now that I've spent a number of years with Real Time, I don't know how I ever survived without it, it's such an advantage. And in terms of the technology, I have two responses to that question. One is, technology could be an enormous tool for the jury to break things down and make it more understandable, but I have also seen lawyers get so lost in technology that they've lost touch with the jury.

**Q: In your experience, how can attorneys help the court promote settlement of a dispute?**

A: First, it's important for the lawyers to engage in good faith settlement, and you know settlements are a two-way street, obviously, sometimes more than a two-way street, sometimes a three-way street, etc., but you know, sometimes one of the lawyers gets stuck. What's important for settlement is for the lawyer to be as prepared as possible. I've done a number of settlements where the lawyers really did not, they're not up on the details they need to be up on to make educated judgments about their case. They don't take the settlement as seriously as it needs to be taken. But if the case is worked up and the lawyers have realistic views about the pros and the cons — and you know counsel and the court speak separately with permission of the other counsel, and sometimes they bring their clients in — then it becomes useful.

**Q: Is there a dress code in your courtroom?**

A: I like lawyers to be dressed professionally. Having said that, there is latitude. It used to be that lawyers — that male lawyers — would only wear suits. Well, now you see sport coats, which is more informal than I would say 30 years ago. You see shirts other than white or blue, which is different than it was traditionally, you see more colorful ties. Occasionally you'll see more casual shoes. And with the women, well, women didn't really start out with a dress code, because women weren't — when I first went to law school in 1970, we only had 10 percent women in the class. So there wasn't necessarily a formula for our dress when we got out of school, and so women tend to be dressed in suits, and pant suits, skirts. Mostly lawyers are dressed appropriately. From time to time someone will be dressed inappropriately.

**Q: What are the most common reasons for sanctioning an attorney?**

A: Sanctioning is an extreme remedy. In my 18 years on the bench, it has rarely happened. I give lawyers lots of warnings. I explain to them that if there's anything I dislike more, it's sanctioning an attorney. But you know, when there's purposeful lack of disclosure in discovery, that really disrupts the natural flow of a case, and that's very significant, and it can have major detrimental impact on a case, so that's something that I see and the court takes very seriously.

**Q: Do you participate in any community activities?**

I do. Well, for a couple of years I taught honors seminars at a local high school in the evening on different aspects of the law. One year it was famous trials of the 20th century, and one year it was the development of civil rights and the law. I participated on numerous panels, discussions, and have met with numerous boards, numerous foundations wanting to know about various topics, educating themselves. So, things like that.

**Q: What advice do you have to offer new attorneys?**

A: Don't be scared. Don't be nervous. And the way to compensate for being nervous is to be so overprepared that you know the case better than anyone else in the courtroom. Check out the judge, check out opposing counsel. Learn as much as possible about them, because some of the lawyers in the courtroom may have been appearing in front of the judge for many years. So try to make up for the lack of experience with just getting the general information, if the judge has any particular rules or preferences, it's good to know that beforehand.

**Q: What are the most common mistakes you see experienced attorneys make?**

A: They're just not prepared, and they think they can bluff it, and at some point they just can't. Or, they don't take it seriously enough and a legal issue comes up and they're just not prepared.

## ANDREW Y. S. CHENG

**For San Francisco County Judge Andrew Cheng, a fan of Russian literature, contemplating the fairness of the criminal justice system is much more than a philosophical exercise.**

By Laura Ernde  
Daily Journal Staff Writer

SAN FRANCISCO - San Francisco Superior Court Judge Andrew Y.S. Cheng remembers the moment he was confronted with sending a criminal defendant to jail for the first time.

The defendant was facing up to six years in prison for selling cocaine when Cheng accepted the jury's guilty verdict and remanded the tearful defendant into custody.

"That was an extremely grim moment," Cheng said. "The gravity of what we do every day is never lost."

Cheng, 43, didn't have much time to get acclimated to criminal law when he was appointed to the bench in September. After a 17-year career practicing civil law exclusively, Cheng has been handling nothing but criminal assignments, which he credits for giving him a fast education on being a judge.

"To me, the biggest adjustment is the pace," he said.

Every morning at the Hall of Justice, Cheng sees dozens of defendants charged with misdemeanor crimes. His afternoons are reserved for misdemeanor and felony trials, with the caveat that his schedule can change at a moment's notice.

While he was being interviewed for this story, he was interrupted by a phone call informing him that he would be handling a preliminary hearing in less than two hours so he would have to quickly get up to speed on the case.

In contrast, in Cheng's last job as deputy chief of the civil division of the U.S. attorney's office in San Francisco, he would work on one case for years all the way to the 9th U.S. Circuit Court of Appeals if necessary.

In one of his more interesting and complex cases, he defended an inspector in the Office of the Inspector General of the U.S. Postal Service against a charge of malicious prosecution in a witness-tampering case. Ultimately, Cheng was able to shift blame to the prosecutor, who was immune from being sued. The 9th Circuit affirmed the lawsuit's dismissal.

Cheng spent six years in the U.S. attorney's office and was in no hurry to leave when members of the Asian-American Bar encouraged him to apply for a judgeship. A process he assumed would take a long time turned into a very quick appointment.

Cheng was one of five people Gov. Arnold Schwarzenegger picked for the San Francisco bench in September 2009. The group has come to be known as the "Fab Five."

One practice that makes Cheng unique is his use of e-mail to communicate with attorneys, something more often seen in federal court than in state court.

"Wow, that makes things so much easier and faster," said San Francisco criminal defense lawyer Steve E. Teich. "He's very responsive."

The parties in a murder case were able to resolve a witness' scheduling conflict in advance of a preliminary hearing, saving the court a lot of wasted courtroom time, Teich said.

Cheng also encourages the lawyers to resolve conflicts between themselves, only stepping in when they can't come to an agreement, Teich said. Teich described Cheng as studious. "He researches. He's super smart. He tries to just shoot right down the middle."

Deputy Public Defender Phoenix Streets had an auto burglary trial with Cheng in March that went off without a hitch. His client was acquitted, which Streets attributed to his client's credibility on the stand rather than any particular ruling in his favor.

"He seemed very smooth," Streets said of Cheng. "He's very organized and very friendly."

Cheng started his legal career as an associate at the firm then known as Pillsbury, Madison & Sutro in San Francisco. After a two-year clerkship with U.S. District Judge Sarah Evans Barker in Indianapolis, he worked as an associate at Steinhart & Falconer.

Cheng was drawn to the public sector, the San Francisco city attorney's office, in 1997.

Cheng said he was lured by the opportunity to work on groundbreaking litigation against the tobacco industry. Also, he felt like he wouldn't become a "complete lawyer" until he got some trial experience. He worked his way up from trip-and-fall cases to handling complex commercial tax and energy cases.

That trial experience, even though it was civil and not criminal, made his transition to the bench easier, he said.

Many of the attorneys in his misdemeanor court are as new to the courtroom as he is new to criminal law.

"We're learning together. We're patient together," said Cheng, who teaches trial advocacy at UC Hastings College of the Law in San Francisco.

Cheng was born in Ann Arbor, Mich., and grew up in Muncie, Ind., where his dad was an economics teacher at Ball State University.

He was one of two Asians in his high school, the other being his older sister. That made him, unfortunately, an infrequent target of racial slurs. He also encountered a lot of people who were simply unfamiliar with people of different ethnic backgrounds.

"It was fine, but I certainly understand what racism has meant to people," he said.

He took an early interest in debating, which was a harbinger of things to come. During his senior year at Columbia University, he had to decide between going to graduate school for history or law school.

Although he enjoys history, he couldn't picture himself spending all his time in libraries and decided on Yale Law School.

Cheng toyed with the idea of building his career in Indiana, but one fateful plane trip would steer him toward the San Francisco Bay Area for good.

On his way back to San Francisco from Indiana in the early 1990s, he connected in Denver and sat next to a young woman who would become his wife. His wife, Yvonne, is a native of the San Francisco Bay Area and belongs to a family of fifth-generation Californians.

They live in Piedmont and have three children, Samuel, 12, Joshua, 10, and Annie, 8.

In his leisure time, Cheng plays classical piano and tennis. He likes to read American history and Russian literature.

The classic Russian authors examine the hefty questions such as what constitutes just punishment and how do you live the good life. Although his new job rarely gives him that luxury, he's adjusting just fine to the idea of quickly gathering facts, making a decision and not looking back.

"It's the ability to work every day by making the world a little bit better with good decisions," he said.

## MING CHIN

*It's been 10 years since Ronald George became chief justice of the California Supreme Court. The Recorder reflects on his legacy with a series profiling five of the seven justices who have been on the court the longest.*

Mike McKee  
The Recorder  
May 02, 2006

Looking frail and pale, Justice Ming Chin gingerly made his way to his seat near the far end of the California Supreme Court bench during oral arguments early last month in Los Angeles.

The 63-year-old was only three months removed from surgery for subdural bleeding, and court regulars were curious about how he would fare in the first arguments he had attended in person since December.

Chin put any worries to rest almost immediately by joining the fray with a few well-placed questions that kept attorneys on their toes. He obviously was on top of his game mentally, and the next day even had a familiar spring back in his step.

In an interview last week, Chin said he hasn't resumed running but has played a few games of tennis with longtime friends. And he and his wife, Carol, were invited guests at an April 20 White House luncheon honoring Chinese President Hu Jintao.

After celebrating his 10th year on the high court on March 1, Ming said he feels healthy enough to stay on for a long time to come.

"I have no plans to leave," he said, noting he expects to run for retention when he's up again in 2010.

That shouldn't surprise anyone who's familiar with Chin, a former captain who won the Army's Commendation Medal and Bronze Star during a year in Vietnam. He moves with purpose, speaks robustly and is considered by many to be the bench's most active judge.

"What impresses me about Ming Chin is his energy level," says Santa Clara University School of Law professor Gerald Uelmen. "This guy must put in a lot of hours. His productivity is just astounding."

In the decade prior to April 1, Uelmen notes, Chin, who's on the conservative wing of the bench, had authored 158 opinions for the California Supreme Court, 12 more than Chief Justice Ronald George, his closest competitor.

"He has a reputation," Uelmen says, "of [having] the fastest chambers on the court."

Quantity, however, doesn't diminish quality. And many predict Chin's rulings will stand the test of time.

"They are not simply law review articles," says Dennis Maio, a counsel in Reed Smith's San Francisco office. "They are opinions, and they are intended to resolve issues and provide guidance beyond the facts of the cases."

Chin said last week that he once was introduced as a justice whose opinions are full of courage and clarity a description he found fitting.

"That's what I try very hard to do," he said. "Whether or not you agree with the opinion, you know what I'm trying to say in the shortest possible route."

A former deputy district attorney in Alameda County, Chin is widely viewed as both pro-prosecution and pro-business.

The former can be seen in decisions such as *People v. Monge*, 16 Cal.4th 826, a 1997 ruling that said retrying a prior felony conviction allegation after remand for insufficient evidence didn't subject a defendant to double jeopardy, and *People v. Humphrey*, 13 Cal.4th 1073, a 1996 decision that allowed battered woman's syndrome to be used as part of a murder suspect's self-defense claim.

As examples of Chin's pro-business leanings, some point to his 2004 opinion in *Wiener v. Southcoast Childcare Centers*, 32 Cal.4th 1138, and his 2001 decision in *Merrill v. Navegar*, 26 Cal.4th 465.

In *Wiener*, Chin held that property owners cannot be held liable for a third party's unforeseeable criminal act, while in *Navegar*, he ruled that gun manufacturers aren't liable for negligence even if their weapons are used in a crime.

Dennis Henigan, who argued *Navegar* on behalf of the victims and families involved in a notorious 1993 shooting rampage in a San Francisco high-rise, still believes the decision was "quite outrageous."



So Henigan, legal director for the Washington, D.C.-based Brady Center to Prevent Handgun Violence, was pleased in September 2002 when the California Legislature in a direct response to *Navegar* passed a law permitting suits against gun companies for willful or negligent acts or omissions in the design, distribution and marketing of firearms or ammunition.

"I really felt, in a way, our clients were ultimately vindicated," he says.

Deborah La Fetra, principal attorney for the Pacific Legal Foundation, a conservative Sacramento-based organization, says that *Wiener* was likewise watered down but by the court itself.

When the ruling came out, La Fetra hailed it as a major victory for landowners. But, she says, the court, in a couple of 2005 rulings by Chief Justice George, weakened *Wiener*.

La Fetra is referring to *Delgado v. Trax Bar & Grill*, 36 Cal.4th 224, and *Morris v. De La Torre*, 36 Cal.4th 260, in which the court placed more liability on businesses to protect individuals from criminal assaults on their grounds. Chin concurred in both.

La Fetra, who participated as an *amicus curiae* in *Delgado*, *Morris* and *Wiener*, says the court "seemed to move away from the bright-line, heightened security requirement discussed in the *Wiener* case and more toward a sliding-scale balancing test."

She says that "leaves landowners very uncertain as to what their duties are and what their potential liability is."

The decisions also somewhat undercut Chin's reputation as pro-business.

Chin's greatest legacy in most observers' minds began when he was on San Francisco's First District Court of Appeal, but it has followed Chin onto the high court in both rulings and speeches.

Specifically, Chin is a nationally renowned expert on DNA evidence.

"He frequently speaks at conferences and symposia," says Uelmen. "He's kept up on it. I think he has an abiding interest in the science."

Chin first gained fame on the DNA front in 1992, nearly 3 1/2 years before joining the Supreme Court, when he ruled in *People v. Barney*, 8 Cal.App.4th 798, that while DNA "fingerprints" represented a useful forensic tool, the statistical model used to analyze them wasn't generally accepted in the scientific community.

He reaffirmed that holding seven months later in *People v. Wallace*, 14 Cal.App.4th 651.

The rulings infuriated the law enforcement community, including prosecutors. But in 1998 the state Supreme Court with Chin on board, followed Chin's logic in *People v. Venegas*, 18 Cal.4th 47. A year later, however, the court finally relented, holding in *People v. Soto*, 21 Cal.4th 512, that the science had been accepted.

Oakland appellate specialist Jon Eisenberg says Chin should be proud of his early rulings on DNA.

"This was at the dawn of the DNA era," he says, "and what Chin said was, 'This technology is just about there, but the prosecutors are currently overstating its significance because it hasn't quite been perfected yet. We are going to hold them to the line.' These were very cautious opinions."

Since then, Chin has participated in national reports on DNA admissibility and has toured the country giving lectures to groups as small as the Placer County Bar Association and as big as the FBI's Second International Symposium in Quantico, Va.

He also heads up the Supreme Court committee that helps update technology at courts throughout the state and has been in the forefront of making sure judges can handle scientific issues such as gene therapy and forensic DNA.

"We are not generally versed in science," he said last week, "and we need concentrated programs to bring judges up to speed on the science involved in these particular issues. And it's going to get harder."

Outsiders often describe Chin as quiet and self-effacing, but as his stance on DNA proved, he isn't afraid to take an unpopular stand. He proved that again 17 months after joining the high court when he sided with the majority in striking down a state statute requiring minors to get parental consent before having an abortion.

Stephen Barnett, an emeritus professor at Boalt Hall School of Law, believes that possibly was Chin's most courageous act on the court. Outraged anti-abortionists were so upset that they tried to oust Chin and George, who wrote the ruling, on the November 1998 ballot.

They failed, and won Chin many fans.

"He threw caution to the wind and did what he thought was right," Eisenberg says. "I thought that was admirable."

As Barnett says: "You can build a reputation by not worrying about your reputation."

## JAMES COLLINS

**San Francisco County Superior Court Judge James Collins translated his goodwill as a defense attorney into good deals for his clients, and his solid reputation has won him many friends in the Hall of Justice.**

By Laura Ernde  
Daily Journal Staff Writer

SAN FRANCISCO - In one fell swoop, San Francisco County Superior Court Judge James Collins denied a defense lawyer's request to suppress evidence and cheerfully suggested the prosecutor consider offering him a plea deal.

"At trial, I don't know I'd want to be the district attorney," Collins said as he wrapped up a hearing that exposed the thin evidence linking the defendant to drugs found on a busy Mission District street.

Collins, 66, can size up a criminal case in seconds flat. He's been doing it his entire career, first as a police officer in San Francisco's seedy Tenderloin district and then as a well-known defense lawyer.

"This building has been my home for 40 years," Collins says of "the hall," short for the Hall of Justice at 850 Bryant St.

Collins was born and raised in San Francisco during a time when many of the city's movers and shakers were Irish Catholics like himself who went to St. Ignatius High School.

"He's a San Francisco original," said Russ Giuntini, the former chief assistant district attorney.

Collins' good reputation and easygoing nature won him many friends in the hall, and he developed a reputation for translating that goodwill into good deals for his clients.

"He was so in with the prosecution that he almost didn't seem like a defense lawyer at times," said San Francisco defense lawyer Ken Quigley.

Collins was able to get good deals for his clients because he had a sense of what was fair for both the prosecution and the defense, Giuntini said. Also, prosecutors trusted him enough to talk about the cases frankly.

"His word was money in the bank, as they say," Giuntini said. "He's a guy of extraordinary integrity. It was always comfortable to talk to Jim about a case."

As a result, many high-profile clients sought him out. Collins also represented nine Catholic priests during the clergy abuse scandal. Judges and police officers in particular turned to him when they got into trouble.

One of those judges is now his boss, James J. McBride. In 1999, Collins helped McBride avoid a trial on misdemeanor spousal abuse charges by agreeing to undergo a year of counseling. He can't talk about other judges he represented because their cases never became public.

Another reason Collins got good deals was his ability to take cases to trial. In 2004, he persuaded a jury to acquit off-duty police officer Alex Fagan Jr., who was accused of attacking two men in what became known as the "Fajitagate" scandal.

Last September, Collins traded the stress of dealing with high-profile cases for an appointment to the bench. He said he considers himself lucky to be able to finish his career as a judge and is enjoying it even more than he thought he would.

Attorneys said Collins made a smooth transition to running a criminal courtroom, where he likes to lighten the tension with jokes.

"He's a calming and stabilizing influence in what can be a very frenetic building," Quigley said.

Earlier this year, Collins conducted a trial for a father and son who were charged with running an illegal marijuana operation at their house. When the distinctive aroma of eight cardboard boxes full of leafy green evidence filled the courtroom, Collins joked that the jurors might not be able to safely drive home after court, Quigley said.

"I try to make the court what I wanted as a lawyer - a judge who's going to rule but makes the experience the least stress-involved," Collins said.

He recently started an assignment that's new for him as well as the San Francisco court system. Under the pilot felony law-and-motion calendar, Collins handles motions filed after the preliminary hearing but before trial.

Although prosecutors don't often praise defense-lawyer appointments to the bench, Giuntini called Collins a great pick.

"He has an innate sense of justice and what's fair for both sides," he said. "I would trust him making those decisions in a second."

Collins doesn't have a typical judge's résumé. He dropped out of the University of San Francisco and pursued a career as a police officer instead.

After he quit drinking, he needed something to occupy his evenings, so he enrolled in night law classes at the now-defunct Lincoln University in San Francisco.

He wasn't planning to get his law degree until he had the occasion to watch the trial of a fellow police officer.

"I said, that looks like a lot of fun," he said. His friend's defense lawyer, James Martin MacInness, encouraged Collins to stick with the career change.

During his years as a defense lawyer, Collins said he only refused to represent two clients because of personality conflicts.

"I think I liked every client I ever had," Collins said. "My favorite case was always the one I was doing at the time."

Collins has two adult children: His daughter, Tara Collins, is an assistant to City Attorney Dennis Herrera, and his son, Jimmy Collins, is finishing a master's degree in sports management and serves as the quarterback coach at City College.

The judge lives in Marin County with his wife, Kathy Mahoney, a deputy city attorney in San Francisco. In his spare time he enjoys golf, movies and reading.

## JOSEPH F. DE VANON

**Los Angeles Superior Court Judge Joseph De Vanon learns about myriad subjects at the Pasadena Courthouse.**

By Emma Gallegos  
Daily Journal Staff Writer

PASADENA - After three decades dealing with criminal cases - first as a deputy public defender, then as a Superior Court judge- Joseph De Vanon was assigned a civil calendar at the Pasadena Courthouse in 2004.

"This was kind of a nice change. This is the kind of stuff you don't stay up at night worrying about - you don't have second thoughts about what you did or didn't do," De Vanon said, noting his decisions no longer mean life or death for a defendant. "That's not to say it isn't important, but it's a different kind of important, because it's all people fighting about money."

Still, it wasn't easy, leaving behind a world he knew so well and entering one with complex issues ranging from medical malpractice to real estate to patent infringement.

"When I first came over, it was kind of unsettling because I felt like you had to be at the top of your game in all these fields," De Vanon said. "It's just a matter of getting used to it and realizing that you don't have all the answers. Or you put the lawyers to work on it, and have them file briefs and get you up to speed on the issue."

Attorneys said he is unfazed by complicated legal issues, and that it's always clear he has read and considered the briefs.

"He carefully considers the argument, and he's going to do his homework," said Gregory R. Vanni of Thon Beck Vanni Callahan & Powell.

The change of pace has given De Vanon the chance to tackle all sorts of subjects - occasionally outside the confines of the courtroom. For a case he was deciding this year, he made a trip to La Vina, a neighborhood in Altadena where the homeowners were battling the county's effort to reopen historic trails that crisscross their properties in the scenic foothills of the San Gabriel Valley.

In the criminal courts, De Vanon got the chance to learn about cutting-edge science in expert testimony given in the case of the "Angel of Death" respiratory therapist at Glendale Adventist Medical Center who was convicted of killing some of his patients. The case involved exhuming bodies, and defendant Efren Saldivar pleaded guilty in 2002 to six murders and one attempted murder.

Now that he's on a civil calendar, De Vanon says he enjoys regularly listening to expert testimony in medical malpractice suits. He says the best part of his job is sitting back and watching good lawyers go head-to-head.

Attorneys who often appear before the judge say he is upfront about his concerns.

"He will lay out the facts that were important to him... the reasons why he's come to whatever conclusion he's reached," said Nicole Davis-Tinkham of Collins Collins Muir + Stewart. She often represents Caltech as a defendant in liability cases.

But if attorneys are doing their job and trying their case, he stands out of their way, attorneys say.

De Vanon describes himself as a long-time conservative with deep roots in the community. He grew up in San Marino, married his high school sweetheart, Madelyn, and raised their three children together in the San Gabriel Valley.

In his spare time, he speaks to community and school groups about the justice system. He volunteers to help students perform mock trials, sometimes in the classroom of his wife, who is a teacher in the Pasadena Unified School District. Once, he even brought famed trial lawyer Thomas Girardi along for Girardi's lone venture into criminal law in the made-up case of the *People v. Frog* - based on the events from the children's book series "Frog and Toad."

Although De Vanon was a public defender, he was able to win his judgeship and elevation to the Superior Court with the support of law-enforcement groups and prosecutors such as Los Angeles County District Attorney Steve Cooley.

He has a particularly good relationship with the local bar, which recently honored him with its Judge of the Year award.

Recently, De Vanon worked with the Pasadena Bar Association on a settlement program to relieve the court's case backlog. He assigns accomplished attorneys cases that stand a chance of settling out of court - a system that has resulted in about 100 resolutions.

"He cares about the system and taking the time to start a program like this," said Steven Yee, an attorney at Yee & Belilove and president-elect of the Pasadena Bar Association. "Why do more? It's a lot of extra work."

The settlement program has been a good opportunity for De Vanon to get to better know the local bar while helping to streamline his new corner of the court system.

"You could be selling shoes someplace - this is a lot better than that," De Vanon said. "It's like 'Law and Order,' but a little more interesting, and you actually get to be involved in the process."



## ROBERT A. DUKES

**Judge Robert A. Dukes has held leadership roles in L.A. County and statewide. His take-charge style is reflected in a silver bull on his desk, a gift from a colleague.**

By Pat Alston  
Daily Journal Staff Writer

POMONA - A tiny silver bull has a place of honor on the desk of Judge Robert A. Dukes.

The miniature bovine was a parting gift from Contra Costa County Superior Court Judge Lois Haight when the outspoken Dukes stepped down a few years ago as a member of the board of the California Judges Association.

"She appreciated my candor," Dukes said with a sly smile. "No bull."

Haight said she admires Dukes' ability to "take the bull by the horns."

"I think he's a very honorable and courageous man," she said.

Over the years, Dukes, a former presiding judge of the Los Angeles County Superior Court, has earned a reputation for speaking his mind when it comes to judicial politics and the business of running the state's largest court.

"Few people ever have to wonder what my views are on any significant matter," Dukes said.

Lawyers who frequently appear in his general civil trial court see a different side to Dukes. Ever the gentleman, they said, he is a courteous, patient and accommodating bench officer, who deals with the frustrations of civil litigation with great restraint.

"He has a very comfortable courtroom," Glendora plaintiffs' lawyer Stephen L. Belgum said.

Just don't be late. Dukes takes the bench promptly at 8:45 a.m., and trials begin at 9:30 sharp.

"You can set your watch by it," the judge said.

Los Angeles attorney Susan L. Snipes describes Dukes' courtroom as "user-friendly."

"I've never seen him lose his temper, no matter how sorely tried," said Snipes of Lewis Brisbois Bisgaard & Smith.

At most, attorneys will detect "a slight uptick in his gaze and tone" should someone overstep the bounds of courtroom decorum, Diamond Bar defense attorney Marc W. Hawkins said.

A jury will be none the wiser, Hawkins said, because Dukes strives to avoid influencing the triers of fact by his tone of voice, facial expression or body language.

"He tries to preserve the neutral environment," Hawkins said.

Yet there is no doubt who is in charge of Dukes' courtroom, according to Snipes.

"You always know there's an iron fist in the velvet glove and ... you'd best not push too far," she said.

After four years in the county court's top administrative post, Dukes relishes the relative tranquility of his home court in Pomona, where he began not only his judicial career 23 years ago but also his life. Dukes, a third-generation Pomona Valley resident, came close to being born at the Los Angeles County Fairgrounds. His mother went into labor while attending the fair.

"I've been back to the fairgrounds every birthday since," he said.

A devoted booster, the judge serves on the Los Angeles County Fair Association's board of directors.

Dukes, of Welsh and Scottish descent, graduated in 1966 from Bonita High School in La Verne, where he was the editor and chief photographer of the school paper and yearbook.

"At one time, I thought about going into journalism," he said.

He enrolled at the University of Redlands, however, with the idea of following in his father's footsteps and becoming a doctor. His dismal grades nixed that idea, he said.

"I was on both academic and social probation," he said.

His youthful escapades came to a head one night when, in an inebriated state, he leapt from a dorm window. He was hoping to evade an advancing posse of school officials investigating rumors of an unauthorized party. He landed at the feet of the dean.

Dukes managed to redeem himself, graduating in 1970 with a degree in economics.

"I had no idea what I was going to do," he said. "I just wanted to get through college."

His maternal grandfather, former state Assemblyman Ernest R. Geddes, encouraged him to go to law school - not to become a lawyer, necessarily, but to learn "how to think."

Half way through his first semester at Loyola Law School, however, Dukes got drafted. So he dropped out and reported for his physical, only to be classified 4F because of debilitating migraines. By that time, it was too late to pick up where he had left off at Loyola, so he got a job with Aetna Casualty Insurance Co. and, in 1972, married.

Dukes and his wife, Mary Dukes, now have two daughters, Jennifer Gomez and Lauren Dukes, and 7-month-old grandson Liam Robert Gomez, the judge's pride and joy.

Dukes, as a representative of Aetna, was at a settlement conference one day when the insurance company's attorney, Fulton "Bill" Haight, asked him why he didn't get his law degree. Dukes gave it some thought and then called up his lifelong buddy, Richard Heimerl, and said, "Hey, you wanna go to law school?"

After he graduated, Dukes spent four years with the district attorney's office and then a year on his own before hooking up with Heimerl in 1981 to form Heimerl and Dukes.

"We had a really fun time," Dukes said.

Six years later, Gov. George Deukmejian appointed Dukes to the Los Angeles Municipal Court. A year later, he became presiding judge of the Pomona Municipal Court, the first in a string of administrative posts that, over the years, would consume a chunk of his time.

Deukmejian elevated Dukes to the Superior Court in 1989, and he served as supervising judge of the East District from 1995-98.

After unification of the county's superior and municipal courts in 2000, he took on the most challenging management roles of his career, first as assistant presiding judge and then presiding judge. During his tenure in that post, he faced a budget shortfall in excess of \$57 million, which, led to employee layoffs, courtroom closures and the shuttering of several courthouses.

"[Layoffs] tear you up inside," he said.

Now that he's back in Pomona, he said, "I'm the happiest judge in Los Angeles County."

His former longtime clerk, Dennis Lloyd, who recently retired, said Dukes always was respectful of his staff.

"He was a great guy to work for," Lloyd said. "He was intelligent and humorous, which is a great combination."

Dukes presided over some unique cases, he said, among them a Federal Employers Liability Act lawsuit that resulted in a \$45 million verdict, the largest award in U.S. history for a FELA case. *Doi v. Union Pacific Railroad Co.*, KC051273 (L.A. Super. Ct., filed 8-27-07).

Donald S. Britt of The Crow Law Firm in Sacramento, one of the lawyers for the plaintiff in that case, said not only was he impressed with Dukes' knowledge of the law but also his integrity.

"[He's] a straight-shooter," Britt said.

## ELDEN FOX

**Twenty-five years as a prosecutor and judge in Beverly Hills has given Elden Fox a good sense for how to navigate this rarefied environment of money and movie stars.**

By Gabe Friedman  
Daily Journal Staff Writer

LOS ANGELES - Earlier this year, Los Angeles County Superior Court Judge Elden Fox received a strange letter from Eddie Brewer, whom Fox prosecuted, twice, on five counts of murder in the 1980s.

Brewer, still in San Quentin Prison and quite ill, told the former prosecutor he was finally willing to finger his accomplices - offering up the last piece of the puzzle that would put the case to rest.

Fox said he passed the letter to the district attorney's office and never learned what came of it.

Attorneys who appear before him say that would be characteristic of the judge: He may have had a long, fruitful career in the Los Angeles district attorney's office, but those days are behind him since he assumed the bench in Beverly Hills in 1991.

"Sometimes, when DA's are appointed to the bench, they become like a second prosecutor in the courtroom," said Bob Moore of Moore, Sorensen & Horner in Beverly Hills. "And he's just not that way."

In fact, one deputy district attorney felt Fox was biased against prosecutors.

"With regards to defendant's rights, he'll go over the top," said Janis Johnson, a deputy district attorney who prosecuted a kidnapping and rape case, in which Fox sentenced the defendants to 265 years in prison. "He ordered In-N-Out burgers for the defendants, but he did not get full restitution" for the victim, according to Johnson.

Fox responded that he bought the defendant's lunch out of his own pocket because they had complained about missing dinner for several days because of the commute to court, and were hungry. As to restitution, he said he ordered what he considered an appropriate amount under the circumstances - that the defendants were imprisoned and without assets to repay much.

Fox's wife, Janet Fox, continues to prosecute narcotics cases for the Los Angeles County district attorney's office in Van Nuys. They both say their views on cases, particularly narcotics cases, sometimes diverge.

"As a deputy district attorney, I don't always agree with his decisions, but I will tell you he always thinks about it," she said. "He really takes it seriously."

The judge explained that when it comes to simple possession cases, he sees a clear need for a viable alternative to prison - which is a huge drain on resources and a "revolving door."

Fox said he often offers a choice to a defendant who has been convicted of a non-violent misdemeanor and has no previous criminal history or record of violence: The defendant can accept a prison sentence or a large chunk of community service to be completed by a deadline.

Fox pointed out that a 90-day prison sentence, for instance, often turns into less than two weeks because the prisons are so overcrowded. Lindsay Lohan, whose driving-under-the-influence and probation case was recently transferred to Fox, served 13 days on a 90-day sentence.

So the judge will offer the defendants the right to avoid prison time altogether, perhaps by doing graffiti removal three or four days a week for several months. "It has to be finished within a specified time period to make it onerous enough that's it's like a full-time job," he said.

Having worked as the deputy district attorney in charge at the courthouse in Beverly Hills, Fox is accustomed to the celebrity cases unique to his courtroom.

He handled the prosecution of Cathy Smith for the manslaughter of John Belushi in 1982 and the case against Zsa Zsa Gabor in 1989 for slapping a Beverly Hills police officer. Behind the bench, he presided over the shoplifting case against Winona Ryder in 2002, and the drunken driving and vehicular manslaughter case against Lane Garrison in 2007.

Cases like those have given him plenty of opportunities to weigh the issue of cameras in the courtroom. His philosophy is that it's best not to let the media in during the evidentiary portion of a trial, but it's all right during a sentencing.

"I think it really colors testimony, so I don't allow them in there," Fox said, adding that he believes the trial becomes theatre.

Besides celebrity ordeals, the courthouse sees other cases particular to the 90210 zip code.

Joe Markus, a deputy district attorney who has appeared before Fox numerous times, recalled being shocked while listening to the charges against one defendant who had allegedly stolen 600 pairs of vintage jeans - not from a department store or boutique but a resident's personal wardrobe.

"I remember laughing because it was from one person's house," Markus said. "Judge Fox is extremely aware of the uniqueness of his jurisdiction. He understands the circumstances of what goes on in his courtroom very well."

His well-known sense of empathy doesn't mean he's warm and fuzzy with all the attorneys who appear before him, however. Markus described his style as old-school.

"He comes from a different generation of brevity," Markus said, explaining that the judge stays in control of his courtroom and often knows case law dating back further than any attorney in his courtroom.

In fact, Fox came of age as the turbulent 1960s were ending. He graduated from UCLA in 1969 with a major in political science and history. With the Vietnam War draft in effect, Fox found an Army Reserve Unit in the city of Bell - the 506th maintenance unit - that kept him out of combat.

Around that time, several friends were applying to law school. Fox had thoughts of becoming a teacher like his father but decided to apply to law school instead.

After gaining admission to the University of San Diego School of Law, he found a thrill in the back-and-forth parrying of moot court.

"I would never tell anyone that being a lawyer was something I wanted as a small child," Fox said, "But I always wanted to be a prosecutor. I don't know why."

Graduating from law school in 1973, he immediately applied for a job as a prosecutor in the San Diego County district attorney's office. He loved the weather. But it was the Los Angeles office that offered him a position.

Eventually, he landed a spot in the special trials unit, where he handled the prosecution of Eddie Brewer, the convicted murderer who refused to finger his partner in the crimes.

Brewer was convicted of five murders: three in an office building in Encino and two at home in Bel Air - all execution-style. In the first trial, the jury split 10-2 and one juror became romantically involved with Brewer while he was in prison. The judge declared it a mistrial.

The second trial in 1985 lasted nine months, and the jury convicted on all charges and recommended life in prison without parole. But Fox could never persuade Brewer to turn state's evidence against the suspected accomplice.

In 1986, Fox moved to the courthouse in Beverly Hills as the deputy-in-charge. Four years later, Gov. George Deukmejian appointed him to the Beverly Hills Municipal Court and he took the bench in January 1991. He was elevated to the Superior Court upon unification in 2000.

## RONALD GEORGE

*It's been 10 years since Ronald George became chief justice of the California Supreme Court. Cal Law reflects on his legacy with a series profiling five of the seven justices who have been on the court the longest.*

Mike McKee  
The Recorder  
April 25, 2006

Even after 10 years on the job, Ronald George shows not the remotest sign of stepping down as chief justice of the California Supreme Court.

At a spry 66, he's as tireless as the Energizer Bunny, whether he's grilling attorneys during oral arguments, playing the political game with legislators in Sacramento or just working a roomful of admirers with a firm handshake and a big smile.

And he genuinely loves what he's doing.

In fact, as his one-decade anniversary as the court's top dog quickly approaches this Monday, many predict George could still be chief justice in 2016, and possibly 2026.

A fit man who hikes, skis and runs marathons including those in New York and Boston, George has already served as chief justice longer than all but three of his 26 predecessors. Former Assembly Democrat Phillip Isenberg, a fan of George's who is a partner in Sacramento's Isenberg/O'Haren, crows "10 more years, 10 more years" when the moderate Republican's name comes up.

"People like him, people trust him, people believe in him even when they disagree with him," Isenberg says.

Certainly, another 10 or 20 years as chief justice would cement George's legacy. But even now, friends, acquaintances and critics say, George has made a sizable mark.

If he resigned today, they say, the native Los Angeleno would go down in history as an astute administrator who reshaped the state's judicial system and its facilities, and as a savvy politician who, through his rulings and persuasive personality, muscled up the judiciary as a legitimate and independent third branch of government.

"No one disputes that the chief justice is a great jurist," says state Sen. Joseph Dunn, D-Garden Grove. "What few understand is how well he has managed the development of the judiciary both

within the branch and as to the other two branches of government. We are poised to secure the independence and security of the judicial branch in California solely because of Chief Justice Ron George."

Over time, however, the chief has garnered critics who believe he's cozied up too much to the legislative and executive branches of government. And some outright enemies think he's consolidated too much power in his office while discouraging dissent by his colleagues.

George's supporters see those criticisms as politically naïve.

In fact, Dunn, chairman of the Senate Judiciary Committee, says George understands politics in a way "that I have never seen in any previous chief justice."

Gerald Uelmen, a professor at Santa Clara University School of Law who follows the court, agrees, saying that the chief has "generally come away from Sacramento with more than he went there with."

That's likely because of what Jake Dear, a senior attorney on the chief's staff, calls George's "force of personality."

"He's got a remarkable and rare ability to engage others on a personal level that both inspires and leads," Dear says. "And that, I think, is the key to his success."

## **LAYING DOWN THE LAW**

George himself has modest hopes for how he will be treated by history.

And he's surprised to hear that some attorneys and academicians compare him favorably with Phil Gibson, the chief justice from 1940 to 1964 who's often viewed as the court's greatest administrator, and with Roger Traynor, chief from 1964 to 1970 and commonly considered the court's finest scholar.

"I would hope that the court under my legacy would be considered a court that is open-minded and not in lockstep," George says. "A court in which the alignments of the justices and the resulting decisions are not always predictable, and a court in which the law is fairly and evenhandedly dispensed."

George also hopes that his court reflects "a system that's treated as a co-equal, independent and accountable branch of government, not just in theory, but in reality."



Then-Gov. Pete Wilson named George to the bench in 1991 and elevated him to chief justice five years later, following a stellar career as an appellate justice, a trial court judge and a prosecutor. In fact, as a judge he presided over the trial of the Hillside Strangler and as an attorney argued before the U.S. Supreme Court no less than six times.

Even so, George's 1996 confirmation as the state's 27th chief justice wasn't a given.

A month earlier, he had angered right-to-lifers and given fellow Republican Attorney General Dan Lungren cause for concern by dissenting in a ruling that upheld a law requiring parental consent for minors' abortions.

Fifteen months later, George confirmed Lungren's fears by authoring a 4-3 ruling that reversed the earlier decision. That bold about-face in *American Academy of Pediatrics v. Lungren*, 16 Cal.4th 307, led to an unsuccessful campaign to have George voted off the bench.

Since then, George has written dozens of opinions that have earned him friends and enemies alike.

Many have addressed the judiciary's interaction with the legislative and executive branches of government particularly the separation of powers while others have focused on making sure the judicial system runs smoothly and answers to the people.

"What he tries to do is realize the law is a practical thing," says Dennis Maio, an of counsel in Reed Smith's San Francisco office who served as a research attorney on the high court for nearly 20 years. "A lot of what he has to do as an administrator is to keep the system working."

As examples, a couple of lawyers point to George's rulings in 2001's *People v. Williams*, 25 Cal.4th 441, which held there's no right of jury nullification, and 2004's *Lockyer v. City and County of San Francisco*, 33 Cal.4th 1055, which said officials acted outside their authority by issuing marriage licenses to same-sex couples.

In both, says J. Clark Kelso, a professor at Sacramento's McGeorge School of Law, the chief justice was asking, "Are we a country of laws or a country of individuals? And really, in both cases, [he made] very strong and very proper assertions that we're a land of laws."

Appellate specialist Jon Eisenberg, an Oakland-based of counsel for Encino's Horvitz & Levy, says it's obvious George "believes in the [judicial] system and in fostering public trust in [it]. And he sometimes has the opportunity to do that in his opinions."

## COURTING REFORM

It's as a court administrator that most hold George in high regard.

In particular, says Stephen Barnett, a professor emeritus at Boalt Hall School of Law, George will be hailed for getting trial courts brought under state funding, merging the superior and municipal courts and getting legislation to transfer ownership and management of California's 451 courthouses into state control.

"In almost all these efforts," Barnett says, "George has been an effective spokesman and lobbyist for the state's judicial branch."

George touts the structural reforms himself and would be pleased if future generations recall them as having provided the judicial branch "with more stability and augmented resources to enable the improvement of services to the public."

Important byproducts, he says, were jury reform, more interpreters, improved technology and self-help centers for people who can't afford lawyers.

"It's all about increasing access to the courts," he says, adding that he's not only a spokesman for the judiciary, but entrusted to "make the system work better."

But while George's populist approach is appreciated by most, some critics contend his genial demeanor masks a thirst for unprecedented power for his own office.

Specifically, he's been accused of attempting to wrangle power by giving the Judicial Council over which he presides more authority over state courts. And in doing so, some say, his rulings have ceded too much to the Legislature and governor.

"Indeed," Barnett claims, "this has sometimes come about, arguably, at the cost of Supreme Court decisions giving away too much to the legislative branch."

As examples, he points to 1999's *Senate of the State of California v. Jones*, 21 Cal.4th 1142, which took Proposition 24 aimed at cutting legislators' pay and taking away their authority to set electoral district boundaries off the March 2000 ballot, and 2000's *Obrien v. Jones*, 23 Cal.4th 40, which gave the Legislature and governor authority to make some State Bar Court judicial appointments that traditionally had been made by the Supreme Court.

To some, those raise worries about George's dedication to the separation of powers. Even former Justice Janice Rogers Brown, dissenting in *Obrien*, argued that George had "blithely

welcome[d]" the executive and legislative branches into a core judicial function.

Kelso cites two 2002 rulings authored by George that he believes make the point even stronger. They are *In re Rosenkrantz*, 29 Cal.4th 616, which set a high bar for any court to overturn the governor's parole decisions, and *Manduley v. Superior Court (People)*, 27 Cal.4th 537, which gave prosecutors discretion to file certain charges against minors in criminal court rather than juvenile court.

"For me," Kelso says, "a somewhat more assertive reassertion of separation of powers would not be a bad thing. But to Chief Justice George's credit, he's consistent in how he approaches this."

### **SEEKING A PLACE IN HISTORY**

Some also accuse George of hogging the court's important cases, squelching dissent by fellow justices and letting docket delays run amok.

But the positive comments far outweigh the negative.

Dunn laughs off critics who believe the chief defers to the other branches of government, noting a 2005 George ruling that put a controversial redistricting measure back on the ballot.

"Just ask the Democratic leadership in the Legislature about deference," Dunn says. "That was based upon the law, and not politics."

Similarly, Joseph Grodin, a professor at Hastings College of the Law, dismisses skeptics who say George has too much clout within the court.

"He's just one vote among seven," notes Grodin, himself a justice on the California Supreme Court from 1982 to 1987.

Grodin, a Democrat, credits George for presiding over a "cautious court" that has taken strong stands on the independence of the state Constitution, especially regarding privacy, free speech and job discrimination.

"They've simply sometimes said, 'We don't agree with the United States Supreme Court,'" Grodin says. "And that's a healthy thing."

Eisenberg says George showed a sensitive side by ruling favorably toward women and minorities in four cases involving sexual harassment, hostile work environment, reproductive rights and private club discrimination.

Those cases, Eisenberg says, suggest "that [George's] jurisprudence in this regard isn't just case by case, but part of a larger societal vision."

As part of his efforts to bring the courts closer to the people, George took the unusual step of taking oral arguments on the road once a year for the last five years, treating students from San Diego to Redding to live court sessions that were also televised statewide.

"He has conducted one of the most successful outreach and communication efforts anyone has ever seen," Kelso says.

And, Eisenberg says, he's done it with humility.

"Ron is the kind of chief justice who people automatically respect," he says. "He is not like some judges who lord it over the rest of the world as if God selected them."

Whether George ranks among the giants of the bench, only time will tell. Longevity is one thing, but many pundits say the George court lacks one thing – a ruling of such historic significance that it becomes synonymous with the court itself.

"He's still young and active," Grodin says. "He may be remembered for things that haven't happened yet."

Such as, many say, same-sex marriage.

Meanwhile, George is enjoying the attention around his 10-year anniversary, and making it clear he wants to hang around a while longer.

On Friday, during a ceremony honoring George at the Judicial Council, his wife of 40 years, Barbara, joked that he always swears that "next year things are going to slow down." And they never do.

She also said his bench days got off to an auspicious start when – during a Chinese luncheon to celebrate his first judicial appointment to the Los Angeles County Municipal Court – his fortune cookie read: "Judge not lest ye be judged."

Well, George has been judged by others and given more than passing grades. And if his health holds, he might give William Beatty – chief justice for more than 25 years between 1889 and 1914 a run for his money.

"I can say most definitely that no greener pastures beckon," George says. "Really, I cannot imagine anything I'd rather be doing."

### **Ronald George's 10-years as chief justice**

- 1996-1997: Newly confirmed chief justice visits courts in all 58 counties.
- 1997: Legislature approves transition from county to state funding for trial courts.
- 1998: Voters pass Prop 200, paving way for the unification of counties' municipal and superior courts.  
George, Justice Ming Chin win retention election despite opposition from social conservatives over 1997 abortion decision that struck down parental consent law.
- 1999: One-day or one-trial jury service introduced.
- 2001: Nonjudiciary court personnel changed from county employees to trial court employees.
- 2002: Governance of court facilities transferred from counties to state.
- 2005: New budget process helps provide stability; plain-English rewrite of civil and criminal jury instructions completed.  
George floats possible Article VI revisions that include changing: the length of judicial terms, the way bench salaries are set, the way new judgeships are created, and the composition of the Judicial Council.
- 2006: Statewide uniform civil fee structure takes effect.  
State legislators dash officials' hopes of having bond money earmarked for court construction.

## ERNEST GOLDSMITH

10-26-2010

### **Q: What do you enjoy most about being a judge?**

A: Well, I think it's an absolutely fascinating calling. It is an intellectual challenge every day, and I feel part of something that I have great respect for and pride in — that is our judicial system. I feel privileged to work in it. I think it's an outstanding system. I'm familiar with systems in other countries. ... I feel that this is a unique position and again, a great intellectual challenge.

### **Q: What advice do you have for attorneys on how to conduct *voir dire* ?**

A: Well, I've often talked to attorneys in seminars about that. And I don't think there is a generic or cookie-cutter type of *voir dire* . I think that one has to think long, and hard, and deeply about what your case is about and try to distill some questions that are going to force the prospective juror to focus on his or her feelings that may involve a bias or prejudice that might affect the rights of your client. I think there is no standard *voir dire* .

I think that if you're asking me what I would tell attorneys, is that to tailor that *voir dire* to your case, because all too often, I see a generic *voir dire* . I think it's the judge's duty to do a generic *voir dire* and of course to ask some questions that pertain to the individual case, but I think that the lawyer should size up individuals based on the background they have revealed in the *voir dire* , what they've done, who they are, where they work, background, and see how that might bear on the essential issue that they want to deal with in their case and of course, to figure out what the other side needs to deal with. So I'm saying tailor it to the case once you know whom you're dealing with, who that juror is.

### **Q: What impact has technology had on litigation, especially in jury trials?**

A: The significant impact in many ways [is] that new courtroom technology is available to illustrate problems and issues that the litigant wants to show the jury or the judge. I don't mean just statements or words being flashed on the screen. There is a great deal more than that. There are all kinds of visuals and ways in which there can be an interplay between, say, an argument or an opening statement and visuals that go right to the heart of what they are talking about — photographs, diagrams — all this expressed electronically and easily. [It's] certainly made a big impact in the courtroom. And if mastered is a great aid to the attorneys.

There are other issues, too. There is electronic discovery. Meaning attorneys are forced, particularly in a commercial case, to discover from all the media storage everything that pertains to the case. It could be accounts, communications, e-mails, all sorts of things we didn't deal with years ago, and of course, it's had a big impact and a lot of fallout. It's very expensive to do some of this kind of discovery, but I don't know how else you are going to litigate a case if you don't have discovery that's stored electronically, and so you have to often incur a lot of expense to analyze that data — so that's certainly an impact, a fallout, but that's a fact of life. The law keeps up with the world.

Another thing, that I have been intimately involved with, is the electronic filing of pleadings and service of them. Judge [Tomar] Mason and I worked for several years to institute a program of mandatory electronic filing and service in all asbestos cases. And at that time, asbestos cases accounted for probably 75 percent of our civil litigation, and the paper component for the court was staggering. And what we ended up with was, what I would say, a nearly seamless program where all the pleadings are filed electronically from the attorney's office and served to the other attorneys from the attorney's office. And as to the court, in the five years or so that this program has been in effect, we have statistics to show that there are millions of pages that have not been filed in paper but have been filed electronically, to which we have instant access to.

**Q: What advice would you give attorneys with regard to opening statements?**

A: I'll emphasize that opening statements in most cases are very useful and important. They should be carefully prepared and concise, so that the jury has something to work with in their mind. Of course, what they say should be accurate, too. I think that it's just part of good legal workmanship. They say that the opening statement is the roadmap to the evidence from the standpoint of that party, and that's just what it should be. [I would tell attorneys] to keep that in mind and to do a careful job and make it so that whoever hears it has something palpable in their mind about what this case is about.

**Q: What advice would you give attorneys with regard to closing arguments?**

A: Closing argument is the ballgame. In many cases, it can determine the outcome the way it's presented. And attorneys have different styles and they should determine how they can express themselves. As long as they do it factually and accurately, and to the point. Dramatics don't seem to make any difference in my experience. Some attorneys think it does. I have not seen that affect outcomes. I think juries appreciate a good workmanlike job that tells what the evidence is, what it means, why it means that, how it dovetails with the law — just working with facts and law, back and forth, like in an exam.

**Q: What should attorneys keep in mind when they prepare jury instructions?**

A: There shouldn't be any mystery — it's what fits the case. In California, we have comprehensive standard jury instructions, which are quite well-thought out, and they cover many or most cases. But having said that, if there are special instructions, at the outset of the case, they should be presented. And attorneys should be prepared to argue them from the beginning, as to why and how the special instruction is appropriate. The instructions are going to make or break their case.

**Q: Are there any prevalent mistakes that you often see experienced attorneys make?**

A: I have a substantial motion practice and single assignment cases that I see that are law and motion matters that are heard by the judge when the case is singly assigned. I think it's important to understand what the questions are in the judge's mind that would cause the decision to go one way or the other. And of course, I think it is incumbent upon the judge to offer the attorneys arguing the motion what they think. Presumably, the judge has read their papers and has at least a tentative idea, in many cases, about what the decision should be and I think that should be shared with the attorneys, and the attorneys should be prepared to deal with what's really relevant that will effect the outcome one way or the other.

**Q: When you decide motions, do you prefer that the attorneys argue the motions or do you usually decide just on the briefs?**

A: Oh, I want to hear argument, virtually in all cases. Most of the time I like to tell the attorneys my thoughts after studying the pleadings, and try to draw out from them argument about ... maybe I'm wrong, or maybe I didn't see something, or give enough emphasis to something, and it's their job to bring that out. Also, as I just mentioned, it is the judge's job to give the parties a pretty good idea of what the judge is thinking when you come out on the bench. And I'm not averse to changing my mind if I have a particular idea when I walk out there, and sometimes, I'll take it under submission because I have another outlook that was presented to me that I didn't think about when I read the papers. I think oral argument is valuable. It often zeros in on what's really decisive, what's really important for the decision maker.

**Q: What advice do you have to offer new attorneys coming into the field?**

A: That's a tough one. I guess to know that they are going to have to work hard and give it their all. That's what this profession demands. And I think they shouldn't leave their scholarship skills at the law school door. They should carry them with them. This profession is based on scholarship — it's a learned profession.



## **GEOFFREY A. GOODMAN**

**Even after joining the bench last year, Judge Geoffrey Goodman still finds time for hobbies like rowing and playing harmonica in a blues band.**

By Fiona Smith  
Daily Journal Staff Writer

SACRAMENTO - When Judge Geoffrey Goodman presided over his first trial, he not only played referee - he also, inadvertently, played matchmaker.

In the misdemeanor trial on driving-under-the-influence charges, defense attorney Timothy Balcom fought and won his client's case. Then he won over his opponent, then-Deputy District Attorney Lindsey Phillips. The pair began dating soon after the trial was over and came to see Goodman several months later with a special request: Because he had presided over the trial where they met, would he marry them?

Goodman agreed, and will be presiding over the wedding in October. Meanwhile, the new judge is busy handling a daily avalanche of cases as he assigns out trials, takes pleas and handles preliminary hearings out of Sacramento's main courthouse.

Appointed to the bench in 2009, Goodman left private practice, where he primarily did white collar criminal defense, and is enjoying the change.

"One of the things you learn about private practice ... is you're rarely in court," Goodman said. "Almost everything settles and, here, I'm actually in court every day, so that is a lot of fun. I actually really like all of the interaction with all the parties and the participants and so, in that sense, it's a very invigorating job."

While court often feels like a zoo, Goodman does a better job than many others in managing the calendar, said Kerry Blackburn, a deputy district attorney who appears before him frequently.

"He's got a fairly dry sense of humor but not inappropriately so, and like all new judges he's still getting his feet wet," Blackburn said.

Goodman handled several misdemeanor trials as his first assignment on the bench, and private defense attorney Joseph Rose appeared before him in a multi-day workplace sexual harassment case.

"I thought he did an excellent job," Rose said. "He was smart and he grasped the issues in the case and managed to sniff out the red herrings."

Goodman was also very careful to not waste jurors' time, he added.

"There was a lot of pressure on the attorneys to keep the case moving," Rose said. "When the jury was back from lunch, he expected us to be ready to present our case. There wasn't a lot of room for continuances."

The hardest thing so far is presiding over cases acknowledging there are things he doesn't know, Goodman said.

"I thought making decisions, just being decisive, might be difficult," he said, "but I've found that an issue may come up and I'll see it in a lot of different ways, but after I've let the attorneys talk it out, I'm comfortable making a decision, recognizing that it may not be right, but at a certain point you have to make a decision."

Before taking the bench, Goodman built a long career in criminal law, starting out as a deputy district attorney in Los Angeles, where he helped launch the county's hardcore gang unit in the late 1970s. He then moved to Sacramento and got a taste of state politics when he became an analyst for the state assembly's criminal justice committee. While there, Goodman worked on drafting legislation to reform the state's drunk driving laws and on legislation to implement the state initiative that created the first victim's bill of rights. He then decided to return to being a prosecutor, this time with the state attorney general's office. Goodman eventually became chief of its major fraud unit and was the lead prosecutor in a successful case against the leader of a \$75 million Ponzi scheme involving more than 5,000 investors.

One of Goodman's most satisfying cases was a Medi-Care fraud prosecution he handled after he went to the U.S. attorney's Eastern district office and became chief of its white-collar crime unit, he said. Goodman's target was a man who ran a 99-bed nursing home near Sacramento who had billed Medi-Care for \$4 million worth of catheters over four years. The owner was actually using the money to build another nursing home, Goodman said, and would hold pizza parties where he had his employees make fake invoices the night before Medi-Care auditors were to show up.

Goodman got a guilty verdict in the case, boosted by a last-minute discovery of two sets of accounting books in the suspect's own handwriting. After six years as a federal prosecutor, Goodman decided to enter private practice, and he spent close to a decade doing white-collar criminal defense and civil litigation before he was appointed.

When not in court, he enjoys rowing in a non-competitive crew club, and he sings and plays the harmonica in the blues band, The Legendary Mike McGowen and the Mighty Delta Roadmasters. Goodman said he has never taken formal singing lessons but remembers well his first performance, when he was auditioning for his high school drama club's production of the Broadway musical "Camelot," which starred Richard Burton in the original cast.

"I sat down with the record and I just got Richard Burton down," Goodman said. "I could just mimic him. And so the director, who was this big old bear of a guy, was sitting out in the audience and I go up for my audition and I'm about 30 seconds in and he says 'Cut the Richard Burton crap and sing it.' Richard Burton sort of talked it. And I said 'Sing it? I can't sing.' He said, 'Sing.' And I started just singing."

Goodman grew up in the Los Feliz and Silverlake neighborhoods of Los Angeles, where his father ran a pharmacy for many years. Goodman was in rock bands while a teenager but was also a passionate debater. He continued to do competitive debate when he attended USC as an undergraduate, and it was that experience that started him on his career path to become a lawyer, he said.

## SCOTT M. GORDON

**Judge Scott Gordon worked on an international war-crimes tribunal and taught judges in emerging nations how to build justice systems.**

By Pat Alston  
Daily Journal Staff Writer

LOS ANGELES - Within the ranks of the men in blue exists a culture of good will. When a fellow officer has a problem, someone's there to help.

"Got a guy," they call it, running the seven letters together like one word.

That's Scott Gordon, according to Jim Martz, Gordon's longtime friend and former colleague at the Santa Monica Police Department.

"Scott is the guy you can rely on when the cause is just," said Martz, a Palm Beach County, Fla., judge.

That selflessness has taken Gordon, a Los Angeles County Superior Court judge, from Europe to Africa to help right wrongs and bolster the self-confidence of emerging democracies as they learn to stand on their own.

As a prosecutor in the 1990s, Gordon spent two months assisting an international war-crimes tribunal in The Hague, Netherlands. He has taught judges and other legal professionals from Eastern-bloc countries and the Middle East how to build justice systems and battle corruption.

"Scott's a 'service' guy," Martz said. "He has a need to do good."

For the past 20 years, Gordon has taught as an adjunct professor at his alma mater, Southwestern University School of Law.

"It helps you keep up on the law," Gordon said.

Today, the judge presides over a family-law department, which he has been doing for most of his eight years on the bench - much of that time as a commissioner. This evening at Southwestern, he is set to take the oath of office as a judge.

Friday, he will be back in Dept. 88 at the Stanley Mosk Courthouse in downtown Los Angeles, where he is known for his keen intellect, even-handedness and people skills.

Among the cases that have come before him recently are pop singer Britney Spears' child-custody matters and the high-stakes break-up of Los Angeles Dodgers owner Frank McCourt and his wife, Jamie McCourt.

"It's not for the faint of heart," Spears' Century City attorney, Stacy D. Phillips, said of family law bench officers.

"Most people don't want to be there," said Phillips of Phillips, Lerner, Lauzon & Jamra. "They don't have the stomach for it."

"He loves it," she said of Gordon. "You can tell."

What is intriguing, the judge said, is the breadth of cases that come before him, from drug-addicted and abusive parents to "very caring, very capable parents... engaged in conflict over the child."

"Those are very hard cases," he said.

"The key," he said, "is trying to make the call that's in the best interests of the child."

Often, however, that's not readily apparent.

"There's a lot of gray," he said. "It's like my hair: It's all shades of gray."

As a prosecutor, Gordon specialized in domestic violence, child abuse and sexual-assault crimes. He also was instrumental in state legislation to increase the penalties for parents whose abuse or neglect leads to the death of a child.

His background, knowledge of the law and respect for litigants and lawyers make him an ideal family-law judge, according to West Los Angeles attorney Sorrell Trope of Trope & Trope, one of Frank McCourt's lawyers.

"He's extremely intelligent... [and] very conscientious," Trope said.

A few years ago, in a very complex case, Gordon provided the lawyers with a 50-page final ruling, said Beverly Hills attorney Daniel R. Barbakow of Barbakow & Ribit.

"I don't know where he finds the time," Barbakow said.

Barbakow described Gordon as both thoughtful and decisive.

"He is fearless in making his rulings," the lawyer said.

He also has "*sechel*," Barbakow said.

"[It]'s a Yiddish term that means a little more than brains," Barbakow said. "It's sense."

"Scott Gordon has that kind of sense."

Gordon, 53, a 1974 graduate of South High School in Torrance, spent two years at the Air Force Academy in Colorado Springs, Colo., before reassessing his career options.

"The Vietnam War was de-escalating," he said.

So he came home and enrolled at California State University, Dominguez Hills, where he majored in public administration. In 1977, he joined the Santa Monica Police Department.

He remembers how tough it was, as a young patrol officer, to arrive at a home where divorcing parents were embroiled in a heated dispute over visitation.

The first thing Gordon would ask to see was the court order. Sometimes that was no help. It might state "every other weekend" or an even more vague "reasonable visitation."

"I remember thinking, 'What's reasonable?'" he said.

Gordon was still working patrol in 1981 when he enrolled at Southwestern. He made detective a year later and, in 1983, married Lisa Campanaro, now chief operating officer of a real-estate development company. The couple has a 20-year-old son.

Gordon left the department his last semester of law school to clerk for Shield & Smith, a civil firm. He remained with the firm for a few months after he passed the Bar Exam.

"But criminal law was where my heart was," he said.

In 1986, Gordon went to the district attorney's office.

Over the years, Gordon developed an expertise in domestic violence, a specialty that led him to work on the O.J. Simpson criminal trial. He was a founding member of the district attorney's Stalking and Threat Assessment Team, one of the first units in the nation to prosecute stalking cases.

In 1997, he was one of three prosecutors chosen by the American Bar Association to serve as legal specialists for the United Nations International Criminal Tribunal for the former Yugoslavia. He spent two months in The Hague, where he reviewed alleged evidence of war crimes to determine whether the suspects should be brought to trial.

While he was there, he began a successful campaign, with Martz's help, to seek donations of computer equipment and other supplies for the cash-strapped tribunal. He and Martz did the same thing two years later for the Rwanda tribunal.

"He's gone on many of these misadventures with me," Gordon said of his good friend and former colleague.

Gordon volunteers as a faculty member of the Central European and Eurasian Law Initiative (known as the CEELI Institute), the ABA's Prague-based legal assistance program.

He was a special assistant for policy and legislative issues relating to child abuse, domestic violence and sex crimes when he decided to leave the DA's office in 2002 to become a court commissioner.

"It was a wonderful transition," he said.

That's been the pattern throughout his law-enforcement and legal career, he said. "I went to the next level when I still loved what I did."

## MARCELITA V. HAYNES

**After a career as a prosecutor and a defense lawyer, presiding over a criminal court docket comes easy for Los Angeles County Judge Marcelita V. Haynes.**

By Gabe Friedman

LOS ANGELES - From the time she was 8 years old and watched Perry Mason on television, Los Angeles County Superior Court Judge Marcelita V. Haynes knew she wanted to be a lawyer. So it is fitting she now presides over one of the busiest criminal courtrooms in the state - the Metropolitan Courthouse in downtown Los Angeles.

Here, she sees defendants who were arrested by Los Angeles County Sheriff's Department in Huntington Park or Norwalk making their first appearances on charges of robbery, murder or drug-related crimes. Her job entails presiding over felony arraignments and preliminary hearings - and providing a cursory analysis of the basic evidence - for defendants.

Criminal law is not easy, she said, but it comes naturally to her. After working as a defense attorney and a prosecutor, and serving a long stint on drug court, she is familiar with the scene.

On a recent morning, a flurry of defendants and lawyers moved in and out of her courtroom as the judge wrapped up loose ends for a trip to Hawaii.

The judge transferred to the Metropolitan Courthouse this summer from the downtown Los Angeles criminal courts, and handles a purely felony caseload.

"It's less formal [in here], which is disconcerting to me," said Haynes, "because I'm a formal person."

On the bench, Haynes has a commanding presence. Wearing a headset microphone and quick to crack a joke, she is easy to remember, lawyers say.

'I'm not soft on crime, but I'm a softie when I know somebody's a drug addict.'

"She's demanding, and she's commanding," said Tal K. Wolf of Wolf Felony Law. "She keeps the lawyers on both sides on a very short leash. She's no-nonsense, and she's very efficient."

Other judges also had positive things to say about Haynes.

"She has a wealth of knowledge, and experience, too, at the criminal courts downtown," said her colleague, Judge Mildred Escobedo. "She is here at Metro truly as a mentor to the young judges."

Raised by her grandmother in the Baldwin Hills neighborhood, Haynes is a true Angeleno.



She explained her desire to enter law as occurring through an osmosis-like process. She knew she wanted it, and she charted a path. At California State University, Los Angeles, Haynes majored in political science and prelegal studies, graduating in 1973.

She studied at UCLA School of Law, graduating in 1976 and passing the State Bar in 1977. During law school, she began thinking about labor law, and found her first job as a field attorney at the National Labor Relations Board.

While there, she acted as a neutral, ensuring unions held fair elections and presiding over hearings when labor disputes arose.

"It wasn't sitting at a desk all the time. You got out in the field, but you also got to play hearing officer," the judge recalled.

She once narrowly escaped a major ruckus when the teamsters' candidates won an election in Orange County and the rival union erupted in anger, Haynes said.

In 1979, the public defenders in Los Angeles County went on strike, and lawyers began receiving appointments to fill in the gap in representing indigent defendants. Haynes said she seized the opportunity because she had always held a keen interest in criminal law.

After several years, Haynes joined the district attorney's office and began prosecuting murder and robbery cases.

"I got tired of representing guilty people," the judge explained about her decision to switch sides. "I also think the DA has more power than anyone in the courtroom,"

If that sentiment strikes some as controversial, defense attorneys who appear in her courtroom say she doesn't prejudge defendants.

"I really don't get that from her," said Adam P. Sostrin, an alternate deputy public defender who appears regularly in her courtroom. "In fact, I get that from a lot of judges, but not her. She seems to really feel for them, and I just can't believe she meant that [in a negative context]."

Haynes prosecuted cases for about 10 years, moving through several offices, including downtown and Torrance.

In 1993, Gov. Pete Wilson appointed her to the Compton Municipal Court. The judge had family members who lived there and, sitting on the bench, she was able to witness the city from a different perspective. During courts unification in 2000, she was elevated to Los Angeles County Superior Court.

After voters passed Proposition 36 in 2001, a law that allows nonviolent drug and alcohol offenders to receive treatment rather than jail time, Haynes took a position on the drug court, where for the first time there was ample funding for programs. For nearly three years, the judge

tried to make a difference with addicts in her courtroom. It had a profound effect that she is eager to discuss.

"I'm not soft on crime, but I'm a softie when I know someone's a drug addict."

Since funding has been cut for drug-counseling programs, she said one of the hardest parts of her job is seeing defendants struggle with a substance abuse problem. Too often, the existing programs have no space or are too expensive for people to afford, but sobriety makes people more productive and beneficial to society, the judge said.

Since drug court, the judge has moved around from criminal courts to her current position in Metro. Technically, she becomes eligible for retirement in two years, but Haynes said she would like to continue working for at least five more years.

Lately, a passion for international law has taken root, and the judge is considering programs to advance her knowledge in that area.

"That's my next goal," she said. "You always have to have a goal."

## MARTIN JENKINS

Mike McKee  
The Recorder  
September 21, 2009

As a young football player at Santa Clara University, Martin Jenkins had it in his head that he might like to one day be a high school teacher or coach. But his own coach had a different idea.

The legendary George "Pat" Malley, who coached or served as athletic director at SCU for 26 years, advised Jenkins he had the makings of a "fine lawyer," and hooked him up with a group of other black students who were studying law. They told Jenkins what the legal profession was all about, that he could do good and make a difference in the world.

"A lot of that resonated with me," Jenkins, [now an associate justice on San Francisco's First District Court of Appeal](#), [said last week](#).

So with his interest stirred, Jenkins promptly set off to, um, the National Football League! As an undrafted free agent, he wound up as a defensive back for the Seattle Seahawks.

Jenkins didn't like it, though, and felt he didn't fit in. So after a couple of pre-season games he turned his back on NFL fame and glory — before the club had a chance to push him out the door.

"That decision was going to be made for me," Jenkins said. "I wasn't that great an athlete."

Football's loss was the law's gain. Jenkins went on to work as a prosecutor in Alameda County, serve as a civil rights lawyer for the Department of Justice, hold down a post as a trial lawyer for Pacific Bell, serve eight years as a judge on the Alameda County municipal and superior courts, and sit on the Northern District of California bench for 11 years.

Leaving that federal, tenured job early last year shocked many in the Bay Area legal community, with some speculating he was burned out or perhaps being primed for the California Supreme Court. But Jenkins insists he was simply looking for a change, and he has enjoyed himself, although the First District's been quite different from his old job.

"The most obvious," he said, "is that trial judges are mightily involved in helping settle the record. You sort of shape and help the lawyers sculpt that record.

"On the appellate court," he added, "the case comes to you pretty complete" and "the force of your decision can have binding effect."

Justice Stuart Pollak, one of Jenkins' colleagues in Division 3, said the new kid "hit the ground running."

"That's a trite statement, but never more aptly applied," he added. "He's just fit right in from the get-go."

No one is more astounded by his legal journey than Jenkins, who came from a humble, but proud, origin.

Jenkins was born in San Francisco and raised in the city's Ingleside district. His mom was a nurse for a while and his father a janitor with the city for about 40 years, mostly at Coit Tower where, Jenkins said, he washed windows, cleaned toilets and occasionally escorted tourists by elevator to the top.

"You couldn't have told me," Jenkins said, "when I graduated from law school in 1980 that I would have done the things I've done."

"Man," he added, "I've been given a lot."

Jenkins' mom has been gone for 17 years and his dad for four, but the things they taught him — the value of hard work, the importance of an education and esteem for others — still define him. Jenkins gets teary at their memory.

"It was important for them that you treat everyone with respect," he said, adding later with a laugh that "you better get top marks in department."

Jenkins' new job gives him more time to do the community work he loves. He's on the boards of the University of San Francisco, where he graduated from law school, and the St. Thomas More Society. He's also involved with his Catholic church.

But Jenkins sparkles most when talking about the four to five hours one day each week he volunteers at an inner-city middle school in Oakland.

"I do everything from photocopying to talking to kids about career issues," he said.

Upon learning that one boy not paying attention in English class had dreams of being a pro football player, Jenkins brought in his old Seahawks contract and explained what several clauses meant.

"I told him," he said, "'That's why this English class is so important.'"

Jenkins said he's not sure he got through, but feels if he helps "one or two [kids], that's more than I could hope for."

Attorneys say Jenkins brings not only a human touch to the bench, but a strong intellect and an ability to focus issues.

Martha Boersch, a partner in Jones Day's San Francisco office who appeared before him in federal court, called Jenkins a hard worker who can snap attorneys in line if need be.

"He's very civil," she said. "But he's got a temper — which you'll see now and then. But if you do, he apologizes for it."

Paul Fogel, an appellate specialist in Reed Smith's San Francisco office, said he was impressed both times he appeared before Jenkins in the First District.

"He gets right to the heart of things," Fogel, who recently was appointed to the Alameda bench, said. "He wants to know what the bottom line is on a practical level."

Jenkins keeps busy, too. Since being confirmed to the First District in April 2008, he has authored 80 rulings, six of them fully or partially published.

Among them are *People v. Thorn*, 176 Cal.App.4th 255, in which he and Justices William McGuinness and Peter Siggins rejected an argument that a carport is not part of an inhabited building under the state's burglary statutes.

And in [\*Burns v. The Neiman Marcus Group Inc.\*, 173 Cal.App.4th 479](#), he held that a man whose secretary used his credit cards to run up a bill of about \$1 million at the retailer couldn't sue the store for common law negligence. In that case, McGuinness concurred and Pollak dissented.

So far, Jenkins has been "quite impressed" with the "level of judging" coming up from the trial court.

"They have to make some pretty tough calls in a restricted time frame," he said.

Jenkins advises lawyers in his court to be prepared, punctual, civil and responsive to justices' questions.

"Sometimes even if lawyers don't think the question is pertinent," he said, "they should endeavor to answer."

Even after 17 months, Jenkins still finds himself absent-mindedly headed some days to his old office across the street.

"I keep walking into the district court," he said. "The guards are good enough to tell me, 'Judge, you don't work here.'"

## JOYCE KENNARD

*It's been 10 years since Ronald George became chief justice of the California Supreme Court. The Recorder reflects on his legacy with the last in a five-part series profiling those justices who have been on the court the longest.*

Mike McKee  
The Recorder  
May 23, 2006

Former U.S. Supreme Court Justice William Brennan Jr. once said the right to dissent is "one of the great and cherished freedoms" and that judges' dissents should be looked at in evaluating their careers.

"Saying, 'Listen to me, see it my way, change your mind,' is not self-indulgence," he said. "It is very hard work that we cannot shirk."

Based on that speech, given at Hastings College of the Law 12 years before his 1997 death, Brennan would likely find California Supreme Court Justice Joyce Kennard quite refreshing.

The 65-year-old justice celebrated her 17th year on the court on April 5, and although she doesn't plan to leave anytime soon, she long ago cemented a legacy as the court's greatest dissenter. Possibly the most individualistic justice on the Supreme Court, she often finds herself at odds with her more conservative colleagues.

Kennard started early. On the third case in which she participated  $\zeta$  issued on June 29, 1989  $\zeta$  she took exception to a majority ruling by then-Chief Justice Malcolm Lucas in a zoning case about what constituted an "adult motion picture theater." And she's never looked back.

Just since Jan. 1, 2002, Kennard has authored more than 50 dissents, nearly twice that of any other justice in that time and many of them in death cases an area some critics say her court comrades take too lightly. She's also partially dissented in dozens of others cases, disagreeing on certain points of law but concurring with the result.

Much of that has to do with what many call Kennard's "fiercely independent streak." But some say it's the result of a subtle leftward shift in political philosophy during her years on the bench. Appointed to the Supreme Court by former Gov. George Deukmejian  $\zeta$  a law-and-order type the former prosecutor has, through her rulings and dissents, positioned herself slightly left of center, making her possibly the most liberal of the bunch.

Whether it's because her office was right next door to Stanley Mosk, the liberal lion of the court, for 12 years or because she found the court disturbingly unbalanced when liberal friend Allen Broussard left in 1991 as the *Los Angeles Times Magazine* once speculated the change hasn't gone unnoticed.

"Somewhere along the way, the mold either didn't fit or simply broke," Paul Fogel, a partner in Reed Smith's San Francisco office, said while introducing Kennard a few years ago at a judges' night function in Berkeley. Deukmejian, he said, would probably find Kennard's opinions "shocking and even disappointing."

In a recent telephone interview, Fogel said Kennard "knows how to speak her mind" and is "not going to simply be brought along by the others for the purpose of forging a majority."

Joyce Luther Kennard, of course, is known for more than her dissents.

She's authored many important rulings, such as 1991's *Sands v. Morongo Unified School District*, 53 Cal.3d 863, which declared religious invocations and benedictions at public schools unconstitutional, and 2002's *Kasky v. Nike*, 27 Cal.4th 939, which held that a corporation's public statements about labor practices are commercial speech that can be regulated.

Kennard also headed up a task force that devoted six years to updating and simplifying the appellate rules of court an arduous process that brought the rules into the 21st century and will be used by grateful appellate lawyers for decades to come.

But it's the dissents that distinguish Kennard, and she knows that too, proudly pointing out many herself. But Kennard says her positions are what they are.

"When I work on a case, I'm not working towards a particular result because at the start of the case one knows too little about the case," she says. "And it's only after all the research is done that you'll have a better idea."

As with Brennan, Kennard finds dissent indispensable.

"It tells the public, 'By the way, I have a different view. Here are my reasons,'" she says, "and probably good God, don't hold me to this number, but I think there may have been a half dozen dissents that have had an impact on the California Legislature."

Court watchers think it's closer to a dozen.

Jon Eisenberg, an Oakland-based of counsel for Horvitz & Levy, and Stephen Barnett, an emeritus professor at Boalt Hall School of Law, recall a 1992 Kennard dissent that jolted the Legislature into action.

In *Neary v. Regents of the University of California*, 3 Cal.4th 273, the court, in a ruling authored by Justice Marvin Baxter, upheld the concept of stipulated reversal, giving appellate courts the authority to reverse a trial court's judgment as part of a stipulation in settling a case.

Kennard dissented, arguing that when a court renders a judgment, "it is not just deciding who wins and who loses, who pays and who recovers. Rather, the ultimate purpose of a judgment is to administer the laws of this state, and thereby to do substantial justice."

The state Legislature agreed, and nullified *Neary* while enacting the principles laid out by Kennard.

Last year, even the U.S. Supreme Court vindicated another Kennard dissent when it reversed the California court in *Johnson v. California*, 125 S.Ct. 1141, ruling that the state had made it too difficult to claim racial bias in jury selection. The high court took the rare step of mentioning Kennard by name, and the case was reargued by the California court just last month.

If there are any complaints about Kennard, they have to do with her questioning style during oral argument. As long as a DNA strand at times, her questions frustrate some who appear before her.

"As an advocate, you only have a very limited amount of time to get your major points across while answering questions from the bench," says one attorney who requests anonymity. "And repeated, lengthy questioning from a single justice can eat up precious time."

Kennard says she's just trying to "shed some light" with her queries. And she often apologizes in the midst of asking one.

Most attorneys defend Kennard, saying it helps develop the issue. "I prefer dialogue," Fogel says, "even if it starts with a long monologue."

Kennard means well, and just about everyone talks about her big heart.

Peter Belton, a research attorney for the Supreme Court for more than 40 years before retiring last year, says Kennard whom he worked with in revising the rules of the court "sees through the issues to the real people behind them." And he believes her life experience has much to do with that.



Kennard's Dutch father died in a Japanese prison camp when she was an infant, leaving her and her Chinese-Indonesian mother to fend for themselves in an internment camp. After World War II, they lived for a while in a Quonset hut in New Guinea, where Kennard, being mixed race, learned what discrimination was all about.

At 16, an infection forced Kennard to have her right leg amputated above the knee while living in the Netherlands. Four years later, though, she made it to California, put herself through law school and the rest is the stuff of fairy tales.

In her own way, Belton says, Kennard is very much like Mosk, with whom he worked for 37 years.

"He didn't just view people in the abstract," Belton says, "and I think he sensed that [about Kennard] from the beginning."

Kennard has won admiration from both the left and the right, with Barnett gushing that she may well be the best sitting state court jurist in the country. And it's well known that Kennard puts in long hours in her chambers and at home.

So while a dissenter Kennard might be, a dissident she isn't. She's well liked on the court and the loyalty of her staff is almost legendary.

"I adore them and they are my friends," Kennard says. And that's key to her success.

"When I look back at life," she says, "I think one of the most wonderful things is the importance of my friendships. They help me carry on in life."

## **BARRY KOHN**

**Respect for proper procedure and belief in the law pervades Commissioner Barry Kohn's court, even when it challenges the basis of his own marriage.**

Thursday, November 11, 2010  
By Pat Alston

LOS ANGELES - Superior Court Commissioner Barry Kohn married two years ago.

Under a chuppah, the traditional Jewish marriage canopy, this one fashioned creatively from a gay-pride rainbow flag, Kohn exchanged wedding vows with his partner, Will Harrison.

Kohn and Harrison were among the 17,000 gay and lesbian couples who married during the summer and fall of 2008, the beneficiaries of a state Supreme Court ruling overturning California's ban on same-sex marriage. Kohn's brother, Melvyn, and sister-in-law, Judge Wendy Kohn, were his "best people." Judge Zeke Zeidler officiated.

Four months later, Californians passed Proposition 8, an amendment to the state constitution that sanctions marriage only between a man and a woman.

Although the marriages performed during that window remain in effect, the subsequent ban saddens Kohn, a soft-spoken man with a lilt in his voice who has devoted the better part of his life to the law.

In the nearly 29 years he has spent on the bench, Kohn (pronounced "cone") has presided over criminal and limited civil matters that have shined a light on some hot topics, from slumlords and foreclosures to medical marijuana and taco trucks.

Last year, Kohn delivered his decision in the so-called taco wagon case, ruling that the city of Los Angeles overstepped its authority when it imposed an ordinance prohibiting food vendors from parking in a single location on a city street for more than an hour. He agreed with the UCLA School of Law students who brought the vendors' appeal to the Superior Court that the city ordinance was unconstitutional.

An indecipherable signature on a declaration will annoy Kohn, who will wonder out loud why the lawyer made no effort to see that the declarant's name was printed below the signature.

In addition to handling at least 90 percent of the court's limited pretrial motions for unlawful detainers, the commissioner presides over some unlawful-detainer trials, other limited civil matters and failure-to-appear trials.

Kohn, known as an even-keeled bench officer, is thorough, always prepared and a stickler for the rules and proper procedures, according to lawyers who regularly appear before him at the downtown civil courthouse.

"He reads everything you give him, which is very unusual," said West Hollywood attorney Deborah Friedman, who represents landlords in unlawful detainers.

"He is, in many ways, encyclopedic in his knowledge of the law," said Santa Monica attorney Craig Mordoh. "He'll say, 'You didn't comply with this section or that.'"

Lawyers say Kohn may appear easy going, but he maintains control of his courtroom.

"Shy, he is not," said Peter H. Wodinsky, who frequently makes appearances in Kohn's courtroom.

One of the commissioner's pet peeves is lack of proofreading of documents submitted to the court, the attorney said.

An indecipherable signature on a declaration, for example, will annoy Kohn, who will wonder out loud why the lawyer made no effort to see that the declarant's name was printed below the signature.

"But he's not one to say you'll win or lose on a document. He's always willing to listen - and learn," Wodinsky said.

"In many ways, it's a very relaxed courtroom," Mordoh said. "But he has his ways, and his ways are different from other judges."

For example, Mordoh said, there's a brief process in evictions known as a prove-up, "where the defendant didn't show, and the lawyer has to put his case on."

In the commissioner's courtroom, Kohn puts on the case.

"He asks all the questions of the witness," Mordoh said, adding that it can be a frustrating experience.

Kohn, whose father, Michael Kohn, was for many years managing partner of Loeb & Loeb and also served as president of the Los Angeles Police Commission, grew up with high standards, both in terms of work product and professional attire, Friedman said.

"He [is] always well put together," she said, "and likes you to come in professionally dressed, in a nice suit, with a jacket - men and women."

Kohn always is respectful of counsel and considerate to unrepresented litigants, said Claudia Medina of Eviction Defense Network.

"He really has a belief in making the justice system accessible to all," Medina said.

A native of Los Angeles, Kohn graduated in 1961 from John Marshall High School. Four years later, he received a degree in political science from UCLA, then decided to follow in his father's footsteps and pursue a career in the law.

First, however, came "the grand tour" of Europe. It began in Stuttgart, where Kohn picked up a brand new, sky blue Volkswagen "bug," and ended in Paris, which he fell in love with and made his home base.

He returned to Los Angeles in time to begin fall law classes at USC. As soon as he took the State Bar Exam the summer of 1968, however, he headed back to England and France, with the idea of living abroad. He was in Paris when he received a night wire from his parents and a telegram from close friends, congratulating him on passing the exam. The consul general at the U.S. Embassy swore him in.

He remained in France for almost a year, until the reality of making a living sank in. When he returned home, he began practicing real-property law with a Beverly Hills attorney. Two years later, he opened a criminal-law practice in Los Angeles. In December 1981, the judges of Los Angeles County Municipal Court elected him a commissioner.

Kohn was 36 in 1979 when he publicly acknowledged his homosexuality. A few years later, he was diagnosed with HIV, some years afterward developing AIDS.

"I never got one of the infections you get from low T cells," he said on a recent morning, wearing his signature lavender tie and eyeglasses with emerald-green frames. "I never got cancer of the skin, never opportunistic infections. But my immune system was low."

In 1992, his first partner, Bruce Stohl, died of AIDS.

Today, Kohn takes four antivirals a day, plus a dozen or more vitamins. Nerve damage to his feet has slowed his gait.

"My balance is terrible," he said.

But he gets along just fine with a cane.

For the most part, he is in good health and fine spirits. He exercises every day, doing "a little routine" at work, including three sets of 80 push-ups and 250 sit-ups. He also works out at the gym on weekends.

He's in bed by 8 p.m. and up at 2 a.m., to give himself enough time for his morning ritual. He snoozes another hour while riding the Metrolink from his ocean-view home in Orange County to downtown Los Angeles.

At times, Kohn asks himself why he has survived when so many people have fallen to AIDS. His doctor recently told him there are several reasons: He's diligent about taking his medications; he exercises regularly; he keeps his mind active; and he's in a committed relationship with Harrison, his partner of 13 years.

"It's Will," Kohn said softly, nodding his head.

## **SANJAY T. KUMAR**

### **Superior Court Judge Sanjay T. Kumar Settling Into New Role - Well, Almost**

By Emma Gallegos

LOS ANGELES - Superior Court Judge Sanjay Kumar's chambers on the sixth floor of the civil courthouse in downtown Los Angeles still have an unsettled feeling. The bookshelves are full, but the walls are completely bare.

It's been a busy year for Kumar. In January, he moved from the San Fernando Courthouse, where he had been hearing criminal cases, to his new calendar assignment in the appellate division of the Superior Court. There, he hears appeals on misdemeanors, landlord-tenant disputes and small civil cases.

His years taking on appellate cases for the state attorney general's office serve him well in his new position. During his tenure from 1990 to 2001, Kumar handled appeals by the Menendez brothers, who were convicted of murdering their parents, and by savings-and-loan kingpin Charles Keating Jr.

In that time, Kumar pored over court transcripts as a prosecutor. Now he's doing the same thing from the bench.

"[This] is kind of like going home," he said.

But before he'd even had a chance to settle into his new digs, Kumar was tapped to temporarily fill in on the 2nd District Court of Appeal. That experience, which ended in September, was a welcome shake-up, he said.

"Eventually, I'm going to unpack and hang up my pictures," Kumar said, laughing. "I'm not this boring."

'He was the superstar from day one in every court that he worked.' Justice Sandy Kriegler

#### **2ND DISTRICT COURT OF APPEAL**

Putting off unpacking may even be Kumar's way of tempting fate: He is still waiting to hear about a pending application for a permanent position on the appellate court. Gov. Arnold Schwarzenegger is expected to announce a slew of appointments before leaving office in January.

The judges who worked with Kumar during his temporary stint on the court this summer praised his clear, concise opinions.

"I would hope that he would be appointed to the California Court of Appeal, and be given a hard look [for] the [state] Supreme Court job," said Justice Paul A. Turner, presiding justice of the 2nd District's Division 5. "But that is for the [current and future] governors to decide."

While on the appellate court, Kumar drew attention with an opinion overturning a lower court's decision to bar the Los Angeles Times from printing a photograph of a defendant in a murder trial, calling it "an unconstitutional prior restraint on speech." The lower court had said its decision was a way of balancing with the First Amendment the defendant's right to a fair trial.

"Although the original order may have been issued to preserve the integrity of eyewitness identification, the record does not demonstrate it is substantially probable that either the integrity of the identifications or the defendant's due process rights are at risk absent the prior restraint," Kumar wrote.

"As a court commissioner, he really took off," said Associate Justice Sandy Kriegler, who concurred with Kumar's opinion and who has known the judge since his days at the attorney general's office. "He was the superstar from day one in every court that he worked."

Kumar has a reputation for being a research whiz, according to Kriegler and attorneys who appeared before Kumar, whether a case involved the First Amendment or a misdemeanor.

"If something came up that he wasn't familiar with, he would go into chambers and check the law right then," said Randy Tennen, a defense attorney in Pasadena who appeared before him at the San Fernando Courthouse. "He would have us into his chambers while he checked it." This served Kumar well during his stint on the Court of Appeal, when he didn't have any research attorneys.

Although criminal law is his forte, he penned the opinion for a case involving tax law, affirming a lower court's ruling in a case filed by individual taxpayers against the State Board of Equalization and the insurance commissioner.

"It takes quite a bit to faze me," Kumar said. "There are issues that have come up that I haven't seen before, but that's OK with me, though. I just go to Lexis and research it and get a good understanding of it."

Kumar describes himself as a family man with a penchant for barbecuing and cooking for his wife and two sons. Before he came to California to attend Pepperdine University School of Law, he grew up in Chicago and sometimes wears ties depicting Marc Chagall's windows and other works at the Art Institute of Chicago.

Attorneys who have appeared before him describe him as even-keeled and pleasant, saying he expects attorneys to be prepared but doesn't get impatient or flustered.

"He's easygoing, and he tends to make people comfortable and maintains a professional atmosphere," said Shannon Knight, a deputy district attorney in San Fernando.

She said Kumar was always sensitive to the families of victims in the courtroom; she especially appreciated his delicate handling of a sensitive case involving a robbery that led to the gruesome death of one of the robbers' stepfather.

"It was a pleasure to appear before him," Knight said, "and I was disappointed when he left."



## JOHN J. KRALIK

**After a 30-year civil litigation career, Los Angeles County Judge John Kralik has a reputation as an 'extremely positive person' on the bench.**

By Pat Alston  
Daily Journal Staff Writer

EAST LOS ANGELES - There's a 10-year-old in John Kralik's life - a girl with curly red hair and a bright smile, whose framed photographs decorate the judge's chambers. She's Kralik's daughter.

The thought of her makes him smile.

"The best thing about her is that she's just a very positive, bright, happy child, who just sort of brightens the day of everyone around her," the judge said. "She always has a positive outlook."

That's what attorneys say about Kralik, who found himself in unfamiliar territory when he joined Los Angeles County Superior Court in November. Kralik, a veteran civil litigator, is assigned to a criminal calendar at the East Los Angeles Courthouse.

"He's very positive," antitrust lawyer Ronald C. Redcay said of his former colleague.

"He always sees the glass as half-full - or full, even," said Redcay, managing partner of Arnold & Porter in Los Angeles.

"He's an extremely nice person," Deputy District Attorney Ty Anis said. "He cares about people. He takes the time to talk to you - defendants, victims, whoever.

"He is willing to listen to attorneys' arguments," the prosecutor added. "He's a very approachable judge."

Veteran criminal defense attorney Mark J. Geragos appeared before Kralik after immigration authorities detained and sought to deport a legal resident who pleaded guilty more than 10 years ago to assault. Kralik found "exceptional circumstances" in the man's case and set aside his plea, Geragos said. *People v. Stepanian*, 6EL09047 (L.A. Super. Ct., filed 1996).

Although Kralik had been on the bench only six months when the case came before him, Geragos said, "it was apparent to me that he had done his homework. He had read the operative [U.S.] Supreme Court case."

While waiting for the case to be called, the attorney said, he observed Kralik in session.

"I was genuinely impressed by him, both by his intellect, demeanor and easy mannerisms," Geragos said.

"He's very calm, very patient, very respectful to people," said Deputy Public Defender Michael J. Solis, who also described the judge as impartial and "very fair."

Kralik acknowledged a steep learning curve when he left a 30-year civil practice to take the bench.

"[There] was a period of adjustment that was difficult for me," Kralik said.

The judge handles misdemeanor arraignments, pretrial motions and post-conviction matters in the morning and conducts trials in the afternoon. The cases range from petty thefts and prostitution to DUIs and domestic violence.

When he encounters an area of law unfamiliar to him, Solis said, he will research it himself.

"He won't just go by what one side or the other says," the defender said.

Kralik, 55, was born and raised in Cleveland, Ohio, the second of John and Rita Hennessy Kralik's nine children. His father, a heart surgeon, hoped his children would follow in his footsteps.

"He wanted all of us to be doctors," he said.

Kralik was 10 when his parents sent him and three of his younger brothers to St. Aloysius Academy, a boarding school in Bryn Mawr, Pa.

"Some days, I was a little homesick," he said, "but I got to play sports a lot, and I learned discipline in studying."

He also helped serve mass every day, a privilege he had enjoyed as an altar boy at his church.

After four years, he returned home to attend Gilmour Academy, an all-boys high school, in Gates Mills, Ohio, a suburb of Cleveland, where he was on the varsity cross-country and track teams and a swimmer.

To this day, he runs marathons, most recently as a fund-raiser for the Leukemia & Lymphoma Society. He also ran Disneyland's half-marathon earlier this month.

Kralik finished high school a year ahead of time and, three years later, completed his courses for a degree in English from the University of Michigan.

"I was in a hurry," he said with a smile. "I wanted to get on with things."

To avoid paying out-of-state fees for law school at his alma mater, he worked for a year to establish residency - a period of time he laughingly refers to as "the lost year."

Between his first and second years, he was a summer associate at Squire, Sanders & Dempsey, the largest firm in Cleveland at the time. The next summer, he worked at Hughes Hubbard & Reed, an international law firm with a prestigious New York City address: One Wall St.

Kralik spent two weeks in Hughes Hubbard's New York office and six weeks in the Los Angeles office, returning after his 1979 graduation to do "every kind of litigation," he said, "including insurance litigation." It was at Hughes Hubbard that he met Redcay

"He was a prime recruit for our firm when we hired him," Redcay said, adding Kralik made partner at the earliest possible moment.

One of the firm's oldest clients was the Boy Scouts of America, and Kralik worked on two high-profile cases.

In one, a former honored scout sued the organization in the early 1980s for rejecting him as an assistant scout leader. He was gay. He claimed it was a violation of the Unruh Civil Rights Act. The scouts won a defense verdict in 1990. When the appellate court affirmed the judgment, the plaintiff took his case to the state Supreme Court.

The question for the high court, said Kralik, who by that time had left the firm, was whether the Boy Scouts was a business establishment and, thus, could not discriminate against its leaders on the basis of sexual orientation. The court found it is a charitable organization. *Curran v. Mt. Diablo Council*, 17 Cal.4th 670 (1998).

Kralik also worked on the case of twin 10-year-old brothers who objected to uttering "God" in the scout oath. Although the trial court and the 4th District Court of Appeal found in favor of the plaintiffs, the state Supreme Court reversed the lower courts' rulings. *Randall v. Orange County Council*, 17 Cal.4th 736 (1998).

Kralik left Hughes Hubbard in 1993 to become a senior attorney at the Atlantic Richfield Co., which had a large legal department.

"It was a departure for me," Kralik said.

One of the pluses was working again with Redcay, who asked him to head the litigation practice group.

His cases included ARCO's lawsuit against Aetna Casualty & Surety Co. after the insurer balked at reimbursing the oil giant for costs associated with EPA-ordered cleanups. It was one of the largest environmental insurance coverage cases at the time, Kralik said.

The case, which went to the appellate court, ended with a confidential settlement. *Home Insurance Co. v. Superior Court of Los Angeles*, 46 Cal.App.4th 1286.

Kralik left ARCO in 2000 to open his own practice.

"There were good years and bad years," he said.

Kralik, twice divorced and the father of two adults sons, as well as his daughter, applied for a seat on the bench in 2006, was interviewed by the State Bar's Commission on Judicial Nominees Evaluation in 2007 and the Los Angeles County Bar Association's sub-committee on judicial candidates in early 2008. And then he waited.

In mid-2009, Sharon Majors-Lewis, Gov. Arnold Schwarzenegger's judicial appointments secretary, summoned him to Sacramento for an interview. Within weeks, he got the appointment.

"I'm really blessed to have this job," Kralik said. "I'm a lucky man."

A few years ago, he decided to express his gratitude to those who had given meaning to his life, during good times or bad.

"I decided to make things better by writing one thank you [a day] for a year," he said.

Hyperion plans to publish that collection of letters in December. The title is "365 Thank Yous."

One of them is a letter to his daughter.

## RICHARD KRAMER

08-24-2010

### **Q. What do you enjoy most about being a judge?**

A. It's fun. It's interesting, challenging and zero stress. Because I don't care who wins. The stress in this profession is the result generated when you're a lawyer and you want to win, or maybe you don't want to lose, or maybe you don't want to lose a lot as opposed to a little. But the stress, in my view, comes from the need to have a result. When you're a judge, you don't have that stress at all. The result you need is that you need to work hard, make sure that you are not infected with inappropriate concepts — like you're getting mad or you're impatient or you're stupid or you haven't taken the time to get informed.

My first day in trial as a judge, it's 4:30 and I'm in my office looking around saying, "Wow, I can't believe I'm here." And then it suddenly hit me, something's wrong here. And then it hit me, I wasn't tired. ... And even when you're working, it's not like it's easy work. It's very engaging work. But when you don't care who wins, then you get to enjoy the law and the process. And I happen to like that a lot.

### **Q. What advice do you have to offer new attorneys?**

A. I think every human can be categorized, in personality traits, as one of the characters in "Winnie the Pooh." And for whatever reason, Eeyores become lawyers. Tiggers become lawyers, too. Sometimes Kangas become lawyers; they tend to be probate lawyers. But litigators often exhibit Eeyore characteristics: Oh no, this is not good, what am I going to do next? That kind of thing. So one piece of advice would be, if you're that personality trait to begin with, and I think pretty much it's immutable, I think you should recognize that and do your best to work around it. Otherwise, you're not going to have a fun career, and you're not going to enjoy yourself. And if you get too Eeyore-ish, and too wrapped up in the problems here, this job will kill you eventually. So the first thing is to understand what you are, and keep it in perspective, or else you're going to be miserable.

Second would be: The law is kind of neat. You're a young lawyer, and you have a license. There are probably hundreds of jobs you could have. I don't mean individual jobs. I mean types of jobs. And some are more drudgery than others, and some are more engaging than others, and some are more stressful than others, and some are more remunerative than others, some are more psychologically satisfying. I think you should recognize that there are plenty of choices. And you should do your best to put whatever shape you are into that size hole.

And then a third is: No matter what, there's no easy way. You've got to work hard. It helps if you're enjoying yourself, but there's no easy way in this profession because it's a serious profession. Work hard and get somewhere. And someday, if you can do it, be a judge. It is a wonderful job.

**Q. For case management conferences, what kinds of things should attorneys have prepared when they come in?**

A. It's all routinized in this department [complex litigation], and the case management conferences are intended to manage the cases and to monitor progress. What must be done is I have to get written case management conference statements, which is part of my courtroom rules, that describe what's going on and what, if anything, you want me to do about it, what you want to do next, and what else you need to tell me. That's what I tell them, literally, in those words. That's what goes in a case management conference statement.

**Q. How do you deal with situations where an attorney doesn't provide courtesy copies or provides an incomplete set?**

A. Well, first I don't have it, so I don't read it. And secondly, I have a "welcome to a complex litigation department" speech that I give everybody, and I explain to them that if I don't get courtesy copies, it is likely I'm not going to get what they want me to read. So please give me the courtesy copies. I get them regularly. If I don't have them, then I get one. I'll say, "OK, I didn't get X. Would you give it to me?" And then I'll go read it. You can't really blame people. I can't conceive that lawyers are not giving me courtesy copies so I won't get to read it. Something's happened. It got into the basket out front and somebody stole it, or they put it in somebody else's basket. Life happens.

**Q. Do you tend to decide motions solely on the briefs, or do you prefer to hear argument?**

A. Yes. It depends. I just said yes to both of them.

**Q. So what kinds of factors go into determining which is appropriate?**

A. I have two jobs that affect this. One of them is to do the best job I can, and if somebody wants to explain something to me, I should listen. The second is I'm also supposed to make a good record, because much of what I do goes to the court of appeal, either in writs or appeals. I don't think that's because of the quality of my work. I think it's the nature of my cases. And therefore, I should, for the court of appeal and the litigants, err in the favor of a more inclusive record. If that includes oral argument, so be it, because it's going to get reviewed.

**Q. How do you feel about the use of motions for summary judgment or motions for summary adjudication in a complex case department?**

A. Motions for summary judgment and summary adjudication are, in my mind, not designed for a complex litigation department with a single-assigned judge who is doing his or her job. And therefore, the things that don't quite fit must be considered. For example, we spend a lot of time in here trying to get to the bottom of what the case is all about. We're looking for the most bang for the litigants' buck and the court's buck. So we often try to identify questions which, when resolved, will make something happen in the case. Important questions. Summary judgment and summary adjudication can't do that. You've got to do something that disposes of the cause of action, or an affirmative defense, or something. They are limited. Summary judgment and

summary adjudication cannot resolve a fact question. If there's a single issue of material fact, the motion is denied, and then you're stuck. See, in the law and motion department, they don't care, because they wave goodbye and it's over. But I'm still stuck with the case. And it may be that all you had to do was call one witness and ask three questions.

**Q. What are you looking for when you review a brief?**

A. Every brief answers three questions. Question one: What the hell's going on here? And the reason I said that, instead of, "What's going on here?" is that I'm real busy. So it sort of [sets] the tone. What the hell's going on here? Tell me what's the deal. Second question: What do you want me to do about it? Very clear, precise, what are you looking for? And question three: Why should I do that instead of what the other side wants? That's it. And that's every oral argument, too.

**Q. How would you like to see attorneys handle discovery disputes?**

A. How much time you got? Do you know about my cookie lunches? A cookie lunch is, you come in at lunch — that's why it's called a cookie lunch — no court reporter, and I'll do whatever you want. If you want me to talk concepts, I'll talk concepts. If you want me to talk categories, I'll talk categories. If you want me to go through a thick stack of interrogatories, fine, I do it. And I don't make rulings. I just say, "This one's too broad, I think." And they catch on. It's called cookie lunch because you have to bring chocolate chip cookies. Don't bring me a lunch, but somebody brings cookies. You don't tell me who does. And the cookies have to be good cookies; not like a bag of Chips Ahoy, but something that's sold by the cookie. And the reason for that is, you can't act like a jerk when you're eating chocolate chip cookies. I swear, this is what I believe and this is why I do it. People start to get hot and heavy, and I'll say, "Take a bite of your cookie, will ya?" It just changes the thing. The lawyers go, "Oh look, we've got cookies. It's just like school." I'm not kidding you. The idea is to get people in a receptive mood to work on this. I would say three quarters to 90 percent of my discovery disputes get resolved with the cookie lunches.

**Q. In your experience, how can attorneys help the court promote settlement of disputes?**

A. I happen to believe in Adam Smith economics. The invisible hand. Rational business people will make rational business decisions. Much of what we do here, because litigation is so expensive and because there's usually a rational economic resolution, is to work the case with that in mind. So you've got to identify what are the impediments to the invisible hand working. And they're usually lack of information, greed, fear, foolishness, whatever. So we track our activities to remove the impediments to the invisible hand, and then it happens. It just happens. I really believe in that. I did this for my whole legal career. So what the lawyers can do is to understand that's what's going on and to participate in identifying those things which will most likely remove more of the impediments to the invisible hand and get this thing going.

**Q. What impact has technology had on litigation?**

A. It has a huge impact, both in terms of efficiencies and potential for abuse. This department, this room that you're sitting in, has the ability to do anything. We are right up to date with whatever the lawyers walk in with. You can plug your computers into my computer that's in this podium and do your wizardry. I've got videoconferencing. I've got all kinds of broadcast stuff. So there's an ability to present whatever you want to present. Sometimes that's efficient, and technology does enhance the process. It also has a potential for abuse, but that's just my job. The other area is in what the clients are doing, what the businesses are doing. This is e-discovery. The quantity of documents being generated. The inability to control the generation of documents. The problems with the economic and rational storage of documents. The difficulties in retrieving them for production. That's exploded. But it's quite manageable. I teach this stuff. I teach a lot of e-discovery stuff. That's a lot of my extracurricular stuff. And they've got these pithy little things like, there's no such thing as "any and all" anymore, and you get what you need, not what exists. Little things like that help put things in perspective.

**Q. In your experience, what are the most common reasons for sanctioning an attorney?**

A. I've once sanctioned somebody for lying to me, but that was at the Hall of Justice. I sanctioned another lawyer for behavior that was inappropriate and had to do with causing a witness to not show up for a deposition when a bunch of lawyers showed up. But that's rare and it's certainly not common. It wouldn't be anywhere up near most common.

**Q. Is there a dress code in your courtroom?**

A. Yes.

**Q. What is it?**

A. Proper business attire. One time, a guy came in with a very nice gray business suit, a white shirt and a tie, business shoes, and no socks. I couldn't believe it. I looked at him and I said, "Did you forget your socks?" And he said, "No, I didn't forget my socks." But I couldn't figure out how you could forget your socks. You could forget your tie, or leave your jacket in the car ... maybe. But not your socks. He said, "Socks restrict my ability to think, so I can't wear socks." And you get paid for responding to these things, so I said to the guy, "So here's the problem. I can't use a subjective standard of what would impair your ability to think because somebody else may have another article of clothing that they say makes it harder for them to think, and it might really be inappropriate for them to be here without that piece of clothing. So I'm not going to allow you to do that. But what I will do for you is you can come without your socks, and think on the way to court, and write it all down. Then you can sit outside and put your socks on, and come in and read to me what you were able to think out, and as soon as you're gone, take off your socks." And I said, "Do we have a deal?" And he said, "Yeah," and that was that. The fact of the matter is, this is the state of California in here and there has to be a certain degree of formality. Period. So business attire.



## GREGORY H. LEWIS

**Gregory H. Lewis of Orange County has a thing for lawyers, three-piece suits and getting to "the nub" of the cases he presides over.**

By Don J. DeBenedictis  
Daily Journal Staff Writer

SANTA ANA - Several years ago, Orange County Superior Court Judge Gregory H. Lewis presided over 3½ months of trial in a difficult, hard-fought business fraud lawsuit.

It was "one of the hardest cases in Orange County history," said defense attorney Gary A. Waldron. Nevertheless, Lewis kept his cool and treated everyone fairly.

"It speaks volumes for his personality and his ability to get along with people," Waldron said. "He's a good judge, a friendly judge to both lawyers and jurors."

The attorney on the other side of that case went a bit further.

"He's a great judge," said Daniel J. Callahan of Santa Ana's Callahan & Blaine. "He's calm, well-reasoned and exceedingly professional."

Other lawyers agreed, and Lewis returned the compliment.

"I really admire all of these lawyers," the judge said about most attorneys who come to his civil trial courtroom.

During an interview in chambers, Lewis spent nearly as much time talking about lawyers as he did about himself.

Unfortunately, as a judge, he can't pal around with those lawyers outside court.

That probably was particularly true after the case Waldron and Callahan tried, *Beckman Coulter Inc v. Dovatron International Inc.*, 01CC08395 (Orange Super. Ct., filed June 28, 2001). It produced the largest verdict in Orange County history, \$934 million for Callahan's client.

The September 2003 verdict included about \$931 million in punitive damages, which would not have survived appeal. So just two months later, Lewis settled the case for \$23 million, which included \$18 million in punitives and \$3 million in attorney fees.

"I settled it about 20 minutes before I would have lost jurisdiction" by ruling on the final, post-trial motions, Lewis said.

Oddly, shortly after the Beckman case ended, the judge ran into Waldron at an airport as Lewis and his family were waiting to board a flight to Europe. They did not have a long chat.

"You'd like to sit down and have a cup of coffee with these guys, but [as a judge], you just can't do it," he said.

His fondness for lawyers extends to loved ones, including his wife, Joanne Schwartz, and his daughter, Kate Lewis, a deputy public defender in Orange County. Another daughter is a nurse. One son works for the State Department in Kiev, Ukraine, and another son, Jason Lewis, is a top model and actor who appeared throughout the last season of "Sex and the City" as well as the franchise's second movie.

One lawyer the 72-year-old judge speaks especially highly of is his stepfather and former law partner, Tad Hagee, who died in January at the age of 94.

Born and raised in Long Beach, Lewis said he was something of a troublemaker in his youth - until he joined the Army after high school.

"My mother said she never got a better night's sleep than the night I left to go into the service," he said.

The Army gave him "the opportunity to get out and grow up."

After returning home in 1958, he attended Long Beach City College and California State University, Long Beach, graduating in 1963.

Lewis then joined his father and Hagee in the oil business. They were "contract petroleum land men," he said, who negotiated mineral-rights leases for oil companies.

After a while, Lewis realized the lawyers he sometimes dealt with "knew more about real property and contracts than I did," so he enrolled in Western State University College of Law, graduating in 1973.

He stayed in the oil business with Hagee - his father had died a few years before - and they bought a handful of wells across Southern California.

Lewis joined Hagee's law practice in 1978.

"It was a good practice, no particular specialty," he said.

Impressed by many of the judges he appeared before, he applied for the bench. Gov. George Deukmejian appointed him to the Municipal Court in Santa Ana in 1988.

Over the next 10 years, he handled all types of municipal court cases. "It was lots of fun."

Since unification made him a Superior Court judge in 1998, Lewis has been assigned to hear civil cases.

Hagee's influence remains.

"He often wears three-piece suits," Brian Daucher of Sheppard Mullin Richter & Hampton's Costa Mesa office said about the judge. "He's kind of got an old, folksy manner."

Enterprise Counsel Group's David Robinson called Lewis a "courageous" judge who goes "right to the nub" of a case, even sometimes when attorneys might rather he didn't. In one big set of cases, Lewis refused to dismiss claims against four local hospitals on procedural grounds but was flexible to allow them to stay open for patients, Robinson said.

"He just tries to do the right thing," Robinson said.

Daucher said Lewis was "insightful and courageous and thoughtful" in a case against Cisco Systems.

He also does his own research on difficult issues of law, Daucher said.

"After oral argument, he'll give you a detailed oral opinion," he said.

But that means Lewis expects attorneys to give him good research, too. Lawyers appearing before him should "expect to be asked probing questions ... about their legal understanding" of their cases, Waldron said.

"He's looking for real answers, because he wants to [decide] it right," he said.

Santa Ana plaintiffs' attorney Eric V. Traut of the Traut Firm also described the judge as thoughtful.

But Traut said "the best part about him is he's not rushing you through your case" and allows lawyers time to present it properly.

Lewis, in fact, noted that some cases "seem to go on and on" but that even a fourth continuance can be justified sometimes.

Even so, "he does not let lawyers intimidate him," Traut said. "He does not put up with any shenanigans."

Callahan said the same thing. Lewis "does not appreciate it when someone tries to get personal and petty. He believes the legal profession is a profession and not a dog fight."

"[Attorneys] lose a lot of points if they try dirty shenanigans," he added.

Still, the judge has a good sense of humor. During one trial, Callahan asked for a chambers conference to discuss an objection, but he really just needed a chance to go to the restroom.

Since then, Lewis has referred to a request for a restroom break as a "Callahan objection."

## JACQUELINE H. LEWIS

**Superior Court Commissioner Jacqueline H. Lewis thrives on guiding youths to rise above the challenges that bring them to her dependency courtroom.**

By Pat Alston  
Daily Journal Staff Writer

MONTEREY PARK - There was something about the 15-year-old gang member in Jacqueline H. Lewis' dependency courtroom. The boy, permanently injured in a drive-by shooting, had more than a little attitude.

"He was not an easy kid," Lewis said.

Everyone told Lewis, a Superior Court referee at the time, that she was wasting her time. But she encouraged the teenager to keep moving forward.

"I just thought, at heart he was a good kid," she said.

When he turned 18, he asked the court to terminate jurisdiction over him. Case closed.

Time went by. Lewis had no idea whether he was in jail, or even alive.

Then one day a few years later, she spotted him at a batting cage with a young boy - his son.

"You probably don't remember me," she recalled telling him. "But I was your judge."

"He dropped everything he was carrying and picked me up," Lewis said, still a little amazed by the humongous hug.

"You were more of a mother to me than my mother ever was," he said. "You believed in me."

He was working part-time, he told her, and taking some community-college classes.

"For me, that was the biggest success story," she said.

People who work in dependency court, as Lewis has done both as a lawyer and a bench officer, sustain themselves on the positive steps a child, or parent, takes, she said.

"There are days, when you just wonder if you're spinning your wheels and ask yourself, 'What are we doing here?'" she said. "Sometimes these kids are so difficult to reach."

And then along comes a young person wounded by life who manages to rise above the pain.

"This is the reason we're doing this," she said.

Lewis has been doing it for almost two decades, the last 13 years as a bench officer. She also teams up with Commissioner Anthony A. Trendacosta to train lawyers, social workers and fellow bench officers in dependency case law.

"She's an excellent teacher," said San Diego Superior Court Judge Susan D. Huguenor, president of Juvenile Court Judges of California.

Earlier this year, the group named Lewis Juvenile Court Judge of the Year.

"She's done a remarkable job in keeping juvenile court judges in California current in the law," Huguenor said.

Children's movie posters, sports pennants and a veritable kingdom of colorful bears, monkeys and other plush animals dwell in Lewis' fifth-floor courtroom at Edelman Children's Court in Monterey Park.

Her chambers figuratively glow from the lighthouse theme that dominates the decor, a reflection of the "beacon of light" she has followed in dependency law.

Lawyers describe her as a compassionate, hardworking and, most of all, knowledgeable bench officer.

"She is incredibly talented in the law," said Senior Deputy County Counsel Randall Harris, whose office represents the Department of Children and Family Services.

"We put new lawyers in there to train them, because she knows the law extremely well," said Kenneth A. Krekorian, executive director of Los Angeles Dependency Lawyers, which provides counsel for indigent parents.

On a recent Wednesday morning, Lewis had 33 matters on her calendar involving the welfare of more than 60 children.

"Sometimes I feel more like a traffic cop than a bench officer," the commissioner said.

Estaire R. Press, staff attorney with the Children's Law Center of Los Angeles, which represents minors, said she admires Lewis' "super-human efforts" to keep the calendar moving.

"I'm a good multi-tasker," Lewis said.

When it comes to the welfare of children, Press said, Lewis will call in as many social service workers as it takes to resolve a problem.

"I can't say we haven't had our moments," Press said, acknowledging a little head-butting from time to time. "But, by and large, when I step back from the heat of that, I can see why she made a decision and why it was in my client's best interests."

"She really cares about these kids," Press added. "Maybe that makes the job a little harder for her."

Born in Inglewood, Lewis was 9 when her family, including three siblings, moved to Westchester - close enough to Playa del Rey that she could pedal her bicycle to the beach.

She graduated from Notre Dame Academy in West Los Angeles in 1982 and, four years later, from Loyola Marymount University, where she majored in business.

Her Croatian father, who taught her how to polka, encouraged her to try law school. She wasn't convinced. To appease him, she took the Law School Admission Test. She figured the results of the exam, which she took without any preparation, would convince him she wasn't cut out for the law.

Her plan backfired when she scored high on the test. So she enrolled at UC Berkeley School of Law, with the idea of becoming a business lawyer. After her first year, however, she decided to take a sabbatical.

"I was a little disillusioned with law school," she said.

After enduring the terror of moot court, she said, "I had no desire to be in a courtroom."

So she went to Texas, where her then-fiancé was living. It turned out to be a wise move.

"I came to a lot of conclusions that year," she said.

Marriage was out. Law school was in.

She returned to Berkeley and interned at a domestic violence clinic, helping clients apply for temporary restraining orders. Fridays found her in the courtroom. She loved it, she said - so much so that after the internship ended, she continued to volunteer at the clinic.

Her only disappointment was that her dad never got to see her sworn in as a lawyer. He died unexpectedly six months before her graduation.

Lewis wasn't sure what she wanted to do with her degree, other than work with children. She assumed that would mean going into family law.

"In law school, I never heard of dependency court," she said.

All she knew was she wanted to work with children.

Someone suggested she apply at Auxiliary Legal Services, the agency that staffed the Los Angeles county counsel's office in dependency court.

Unfortunately, the office wasn't hiring at the time. When a slot opened up a few months later, however, they called her for an interview. They hired her on the spot.

She spent six years with the office, part of that time assigned to the courtroom of Judge Michael Nash, now supervising judge of Children's Court. It was in Nash's courtroom that she met her husband-to-be, Richard Lewis, the judge's bailiff. The Lewises, who have been married 19 years, have two children: Michael, 14, a high-school freshman, and Megan, 11, who just started middle school.

Lewis joined the Superior Court as a juvenile dependency referee in 1997, a post she held until 2008, when the judges of Los Angeles County Superior Court elected her a commissioner.

Off the bench, Lewis is "team mom" for Michael's soccer team and a devoted fan at Megan's swim meets. At home, the commissioner likes to lose herself in on-screen romantic comedies or in the pages of light reading. She also kicks up her heels on the dance floor every now and then.

## **RICHARD J. LOFTUS, JR.**

SAN JOSE - Superior Court Judge Richard J. Loftus Jr. jokes he is the "black sheep" of his family because he attended law school instead of following the family tradition of becoming a police officer.

His father and other male family members were police officers, and one of his seven children is on the San Jose police force.

Loftus, 65, followed a different path. A journalism major in college who followed Sen. Robert Kennedy for a newspaper article about his 1968 presidential campaign, the future judge said he was "fascinated by the law."

"In the '60s, the whole notion of law and order was being questioned," Loftus said. "Lawyers really make a difference, judges even more so. The rule of law is what makes our society work as well as it does."

Now, Loftus is about to take over as the Santa Clara County Superior Court's next presiding judge after being selected by his fellow jurists for the job last month. He will succeed Judge Jamie Jacobs-May in January.

Loftus is prepared for the position, having spent the past two years as assistant presiding judge. But he has a lot of matters to deal with - from absorbing more than a dozen new judges on the county bench to administrative work to finalizing a new courthouse planned for what is now the parking lot of the main courthouse in San Jose.

"We have a culture of excellence in this court," Loftus said. "My challenge will be to continue that."

Attorneys who appear before Loftus describe him as a hardworking and diligent jurist who is willing to do his own research and is very knowledgeable about commercial transactions.

Bernard Greenfield, a partner at Trepel McGrane Greenfield, said he was impressed with Loftus' willingness during a breach-of-contract trial to debate an evidentiary issue outside the jury's presence.

"I remember being on my toes debating this ... issue with him," Greenfield said. "It was like a law-school debate. He's capable of processing a lot of information."

Edward Kraus, a partner at Creech Liebow & Kraus who represented the plaintiff in a personal injury lawsuit against Safeway, Inc., said Loftus is a thoughtful judge who is neither too formal nor too casual.

"He saw right through the issues and was pretty good about trying to resolve it as well," said Kraus, whose client lost her case. "He's very bright and evenhanded."



Andrew Olsson, an attorney with Robinson & Wood who tried and won a breach-of-contract case before Loftus in June, said he was impressed by the judge's professionalism and quick grasp of the underlying factual and legal issues, which involved website design.

"He listened and was not curt" during the proceedings, said Olsson, echoing comments of other attorneys who say they admire Loftus' judicial temperament.

San Francisco attorney William Gwire said Loftus is "smart, fair and considerate."

"He didn't jump in on questioning of witnesses and let the lawyers run the case," Gwire said.

A native of Detroit, Mich., Loftus went to college at the University of Detroit, then taught high school for a few years before going to University of Michigan Law School. His wife, Karen, gave birth to twins the night before he started law school.

After he graduated in 1972, he went to work for General Motors as a management and labor lawyer, but quickly decided during the energy crisis that having his career "tied to some guy selling cars ... was not a good future."

He decided on California after visiting the General Motors plant in Fremont on a pleasant February day, then boarding a plane to snowy Michigan. "I thought, 'I think I'm going the wrong way here.'"

He moved to the San Jose area, but it took a few years to get established as an employment law attorney. He got a job at Hoge Fenton Jones & Appel, then moved to Patterson & Taggart, representing school districts in collective bargaining negotiations with unionized employees. In 1979, he offered to open a San Jose office for Littler Mendelson, where he would stay until Gov. Pete Wilson appointed him to the bench in 1998.

Loftus was the last Superior Court appointee before the Santa Clara County courts consolidated, and he is a past president of the Santa Clara County Bar Association.

"The cooperation of the bar association and the court is just tremendous," he said, noting its record for resolving cases before trial and its extensive use of pro tem judges.

During his years on the bench, Loftus has handled several different assignments, including several years in family court, delinquency court, and felony trials. His current assignment is civil trials.

"One of the reasons I became a judge is that I enjoy different areas of the law," Loftus said. "It's refreshing to learn something new and different. Now I get to use all of my law school classes."

Loftus said there is a lot more focus on alternative dispute resolution today than when he was an attorney. "We used to try a lot of cases," he said. "That's not true anymore."

He said the "small town" quality of Santa Clara County courts, despite being in Northern California's largest city, still exists. But as more cases are tried by out-of-town attorneys, "the sense of cooperation among the legal profession has suffered."

Loftus warns attorneys to protect their reputation with judges. "Lawyers need to advocate for their client," he said. "But if they advocate too much [by taking questionable actions], they lose credibility."

Loftus is an adjunct professor of labor and employment law at Lincoln Law School in San Jose.

When he is not working, Loftus and his wife, who works as a part-time bookkeeper, spend a lot of time taking care of their six grandchildren. All of them, Loftus said happily, live nearby.

## ROBERT C. LONGSTRETH

**Early in his career, San Diego County Judge Robert C. Longstreth worked on a case involving the use of Agent Orange in Vietnam and helped investigate the Iran-Contra affair. He says he likes cases involving 'real world' issues.**

By Pat Broderick  
Daily Journal Staff Writer

SAN DIEGO - Robert C. Longstreth received a trial by fire early in his legal career when he was plunged into a high-profile Agent Orange case.

Vietnam veterans and their families brought a class action against chemical manufacturing companies for injuries they claimed resulted from exposure to the herbicide, used to kill vegetation that provided cover to enemy soldiers. The companies in turn looked to the government to assume liability. By the time Longstreth was assigned the case in 1984, it already had been under way for a few years.

"There were five of us, all of whom were young lawyers," said Longstreth, now a San Diego County judge presiding in family court. "We were essentially the government trial team. We worked pretty much round the clock."

The focus at that point was a ruling that the government could be sued by chemical companies for claims that wives and children of servicemen suffered birth defects and miscarriages as a result of the servicemen's exposure to Agent Orange.

Longstreth, as lead counsel, argued two of the appeals in the 2nd U.S. Circuit Court of Appeals, and the government ultimately prevailed. It was a heady experience for a young lawyer, but not one he anticipated as a young boy in Madison, Wis.

A friend's father was a lawyer, who became an early mentor, and by fifth grade Longstreth found his career path.

"I wasn't particularly interested in academics," he said. "I liked real-world issues and real-world problems. Being a lawyer gave you a chance to address those."

Longstreth enrolled at Yale Law School, where he earned his degree in 1981, and then clerked for U.S. District Judge Herbert J. Stern in New Jersey for two years.

In 1983, he headed to Washington, D.C., where he worked as a trial attorney in the U.S. Department of Justice's torts branch, representing the government and individual federal employees in a variety of tort-related litigation, with a focus on radiation and dioxin exposure litigation.

After a stint working for Wilmer, Cutler & Pickering in Washington, he became attached to another famous case when he went to work for the Office of the Independent Counsel on the

Iran-Contra affair. That political scandal involved officials of the Reagan administration, including Oliver North, a staff member of the National Security Council, and John M. Poindexter, Reagan's national security adviser. North and Poindexter were accused of using funds raised by covert arms sales to Iran to aid the Contra rebels against the Sandinista regime in Nicaragua.

Longstreth represented the prosecution against claims of improper use of immunized testimony and assisted the office in its investigations.

"Everybody was wondering if it would reach to the White House and be possible grounds for Reagan to be impeached," he said.

While North and Poindexter were convicted of obstructing justice and other offenses, their convictions were overturned on the grounds that testimony given at their trials was influenced by information they had given Congress under a limited grant of immunity.

Longstreth, 53, credits those now-historic cases with teaching him how to be a lawyer.

"You could really focus on the craft of practicing law," he said. "When I came to work for a private firm, there was a whole other set of things I needed to learn, in terms of dealing with clients and developing business. It's helpful not to have to do all that at once."

In 1989, Longstreth made the move to San Diego, spurred on by his wife, Veronica Longstreth, who had earned her undergraduate degree at the University of San Diego.

He got a job at what was then Gray Cary Ames & Frye and is now DLA Piper, where he would remain until he took the bench in 2008.

Michael S. Tracy, a partner at DLA Piper, recalled how Longstreth would commute between San Diego and Washington, winding down his work on Iran-Contra.

"It's like everything else with him," Tracy said. "He feels a sense of responsibility for things, and he wanted to see them through."

Kurt Weissmuller, a partner at Alston + Bird in Los Angeles, worked with Longstreth several years ago when both were representing defendants in a secondhand smoke case.

"We would work to coordinate strategy with other members of the defense group," Weissmuller said. "He was very bright and creative, and always had something to add of substance to our efforts."

After Gov. Arnold Schwarzenegger appointed him to the bench in 2008, Longstreth found himself to be among an unprecedented number of sitting judges in San Diego to be challenged in the June 8 race.

"It was like running a marathon," he said. "It's a great thing to have done but not so much fun while you're doing it."

Longstreth gets high grades from attorneys on both sides of the aisle.

"It's hard for young lawyers to appear before judges when they're trying to figure out how to be lawyers," said Trisha Amador, a deputy district attorney. "But he made such an impression by giving us guidance. I was so impressed by his demeanor."

San Diego defense attorney Michael Crowley credits Longstreth for being evenhanded, recalling the time the judge "latched onto an issue I hadn't thought of - to my embarrassment. But at least he is not one of those judges who do everything for the prosecutor and ignores an issue that occurs to them just because the defendant didn't raise it."

Todd Stevens, a partner at Keeney Waite & Stevens in San Diego, who appeared before Longstreth, gives him points for tapping into his experience as a civil litigator.

"He quickly understood the issues and cut to the core of the dispute and started the parties talking," he said. "He worked hard to get the case settled."

For Tracy, Longstreth is "fair, has a wonderful temperament, is very smart and does his homework."

"He combines all the best qualities we look for in a judge," Tracy said.

## **J.D. LORD**

By Ciaran McEvoy

LONG BEACH - As a reformed teen criminal, Los Angeles County Superior Court Judge J.D. Lord is known for handing down tough sentences to first-time offenders, recalling how his life's experience affected him.

At 15, he was convicted of a burglary charge in his native Kansas. Lord and his buddies had slipped into an unlocked home while its occupants were away, made themselves dinner, then left behind dirty dishes and a tip for the residents. Even though the local police viewed the incident as a prank, the judge sentenced Lord to six months in jail.

Lord, 59, credits the harsh sentence with turning his life around - and influencing his decision to now be equally hard on first-time offenders.

"It worked for me, and I figure it may work for them," he said.

His attitude has not gone unnoticed.

Jay M. Glaser of Glaser, Damone & Schroeder said Lord once was known for issuing 90-day jail sentences for people who drove with suspended licenses, showing a willingness to bring down the hammer.

Last summer, Lord sentenced two teenage boys to more than 200 years' imprisonment each for their roles in a 2008 killing spree.

But he also can show mercy. For example, Lord once overturned the misdemeanor conviction of a young girl tried in his court.

"He felt the public defender was ineffective," Glaser said. "He's got integrity. He's got courage. Fairness takes courage."

Timothy O'Reilly of Taubman, Simpson, Young & Sulentor said Lord can be stern but that he lets attorneys try their cases, and is respectful to all parties.

"Over the years, I've come to admire him," O'Reilly said.

Born in Wichita, Kan., John David Lord is the seventh of 15 children of parents who worked as clerks in the local court system.

Since he was 10, Lord has worn black to honor a vow he made to God when his ailing dog, Blackjack, recovered from an illness.

A bright child, he found primary school "tortuous" and "boring," frequently ditching class and playing chess in his free time.

After his release from jail, Lord eventually hitchhiked to his brother's house in California and got a waiver to join the U.S. Marine Corps, seeing combat in Vietnam. He became fluent in Vietnamese during his three-year stay in Southeast Asia.

Although he loved the Marine Corps, and quickly moved to the rank of sergeant, he quit after the corps declined to promote him to staff sergeant before he re-enlisted.

Lord then joined the Los Angeles County sheriff's department as a deputy, eventually working in the narcotics unit, where he posed as a drug dealer who sold heroin to high-school students.

The job came with hazards. During an argument, he once threatened to shoot a drug dealer's enforcer point-blank in the eyes, and was propositioned multiple times to share dirty needles with heroin users, a tricky request to deflect for an undercover officer.

Although he loved the rush of undercover police work, Lord decided to become a lawyer, taking night classes at the now-defunct Woodland University, Mid-Valley College of the Law in Woodland Hills.

After earning his law license in May 1980, Lord joined the Los Angeles County public defender's office - a fact that didn't sit well with some of his former law-enforcement colleagues. Just before Lord left the sheriff's department, a colleague barred him from access to the West Hollywood sheriff's substation files.

Switching sides, Lord relished the challenge of being a criminal defense lawyer.

"It's like playing chess, but you start off with a pawn and a king, and that's it," Lord said. "The other side has the whole battlefield."

But Lord grew uneasy with his work as the people he defended were facing more serious charges, such as rape.

"You can't have lawyers saying, 'I'm morally above this group of people,'" Lord said, explaining his decision to switch sides again to join the Los Angeles County district attorney's office in 1985.

Assigned to Compton, Lord thrived in a tough environment and enjoyed the gallows humor of his fellow prosecutors.

"The joke was, 'If they live, you file a misdemeanor. If they die, file a felony,'" Lord said with a laugh. "It wasn't quite that cold-blooded, but. ..."

In 1986, Lord became a senior prosecutor for the city of Torrance. His tough stance against the city's Mobil oil refinery - threatening to temporarily close them down instead of fining them - caused the oil giant to change how it handled pollution issues.

In January 1991, Lord was appointed to the municipal bench in Downey during the last days of Gov. George Deukmejian's administration. After the municipal and superior courts unified in 2000, he worked at the criminal courts building in downtown Los Angeles, then was assigned to Long Beach in 2001.

Lord said he likes to keep a relaxed courtroom.

"I am so informal that you have to remind yourself that court's in session," he said with a laugh, describing his courtroom demeanor. "Lots of people are nervous [in court]. There is no point in increasing everyone's anxiety."

In his free time, Lord is a member of Mensa, a society of people with high IQs, reads Russian literature and physics books, and loves dogs.



## STEPHEN M. LOWRY

**After two decades as a civil defense lawyer, Commissioner Stephen M. Lowry found an unlikely niche in a family-law court filled with unrepresented litigants.**

By Pat Alston  
Daily Journal Staff Writer

COMPTON - A bickering couple were testing Commissioner Stephen Lowry's kindly nature.

The man accused his estranged wife of sometimes thwarting his attempts to pick up his daughters, despite the commissioner's child-visitation orders.

The woman complained her husband sometimes waited until the last minute to cancel his weekend plans with the children.

Back and forth it went during a recent hearing until Lowry, a jovial fellow, finally had enough.

"Cooperate with each other!" he told the couple, neither of whom was represented by counsel.

When the man interrupted the commissioner midway through a question, Lowry peered over the glasses balanced half way down his nose and said, "Don't talk!"

The courtroom fell silent.

"You gotta give the poor, ol' bench a chance to ask the questions to get the information I need," the commissioner said, softening his tone.

For someone with no family-law experience, lawyers say, the new commissioner has adapted well to his assignment. His courtroom, the only one in Compton that handles family-law matters, draws mainly unrepresented litigants.

A former political science instructor, Lowry left the teaching field in his mid-30s to pursue a career in the law and spent 28 years as a civil litigator. He took the bench last October.

In addition to his family-law calendar, Lowry issues temporary restraining orders in domestic violence, civil harassment and elder-abuse cases. He also handles defaults, when a defendant fails to answer a civil complaint.

Attorneys who frequently appear before him say Lowry is a very friendly and reasonable bench officer. He listens to both sides and he has an excellent judicial demeanor.

"He treats each case as a person, a living human being, not just a case number," said Torrance attorney Nadine M. Jett.

"He always has a smile on his face," Downey attorney Richard J. Rosiak said.

Whittier attorney Dennis M. Schuster said his first impression of Lowry was "this burly guy" who probably was biding his time until something better came along.

Lowry proved him wrong.

"He reads everything before he comes out," Schuster said.

"It's a very difficult court," Rosiak said. "There's a lot of pro pers... a lot of restraining orders."

And therein lies the only problem, several lawyers said. Lowry tends to take calendar matters in order, rather than giving priority to cases represented by counsel.

"He takes domestic violence cases first because that's the law, then the interpreter cases, and then attorney cases," Schuster said.

"So if you've got cases in other courts, you're in trouble," Rosiak said.

Rosiak added, however, that if a lawyer has a short matter and brings that to the commissioner's attention, he will do his best to accommodate counsel.

"He's very, very fair," he said.

Born into a family of evangelical ministers in Salem, Ore., Lowry, 65, spent his early school years in India, where his parents found their calling as missionaries. The family settled in the ancient city of Madurai, the center of Hindu culture in southern India.

The weather was so hot most of the year that his parents sent him and his older brother, Heath, to an international boarding school in the cool Palani Hills.

What Lowry remembers most about his four years in India were the smells - the scent of jasmine in the air and the mouth-watering aroma of a fine curried dish.

"If I smell good curry anywhere," he said, "I start salivating."

The unpleasant odors also remain vivid in his memory: the "horrible cloying smell" of rosewater ice cream, for example, and the pungent, almost rancid smell of ghee, the clarified butter used in sacred rituals.

Lowry, a 1962 graduate of Roseville Joint Union High School in Northern California, returned to Salem to attend Willamette University, where he worked as a dorm adviser. His senior year, he got a job as a house boy at Chi Omega sorority, where he waited tables and washed dishes.

"There were a lot of pots and pans for 50 hungry women," Lowry said with his characteristic grin.

When he graduated in 1966, he sought deferment from the draft to pursue a Ph.D. in political science from the University of Pennsylvania. By the fall of 1969, he was working full-time as a political-science instructor at a Jesuit college, while working on his doctorate.

By the time Lowry completed his dissertation, the country was in an "economic malaise," he said. Of the 400 resumes he sent to universities and colleges, he received one response. It was from a small Catholic women's college that offered an annual salary of \$7,990.

"I decided to go to law school," he said.

Lowry returned to Penn in 1977, working seven nights a week as an unarmed security guard in downtown Philadelphia. When he graduated in 1980, he took, and passed, the bar exams in Nevada, Pennsylvania and California. The next year, he joined Morgan, Lewis & Bockius in Los Angeles as a commercial defense litigator, making partner in 1988. It was at Morgan Lewis that he met Jamie Fortney, another lawyer. The couple, who have been married 21 years, have two children: Cara, a college student, and William, a high-school freshman.

In 1997, Lowry became of counsel at Davis & Russo before teaming up with Anthony Russo to form Russo & Lowry, where he continued to do mainly defense work. He also handled securities litigation and some plaintiffs' insurance-coverage cases - when he wasn't pursuing his love of deep-sea fishing.

The year before he took the bench, he was handling Social Security disability cases as a contract attorney at Lowry & Associates, a company his wife set up. When he took the bench, Jamie Lowry took over for him.

The commissioner, a Civil War history buff with a "totally eclectic taste" in fiction and nonfiction books, said he finds his work on the bench rewarding.

"I like it," Lowry said of his family-law assignment, "because almost every day I leave here, I have made a difference in one or two people's lives. I feel like something decent has been accomplished.

"In almost 30 years as a lawyer, I didn't have that same satisfaction."

## CLARE M. MAIER

**Following an early career as a dancer and actress, Clare Maier set her sights on the law and found herself an entirely different audience as a judge.**

By Fiona Smith  
Daily Journal Staff Writer

MARTINEZ - By the time Clare Maier was a teenager, she knew she wanted to be in show business. After graduating from high school, she began a full-time career dancing, singing and acting on stage and in commercials.

But in her early 20s, she had to take time off to recover from foot surgery, and that set off a chain of events that led her away from the bright lights and into the law library.

Maier is now a judge in Contra Costa County Superior Court who savors the intellectual challenges of the job and the ability to help people change their ways.

On a recent Monday, Maier was overseeing her weekly drug court which allows people to avoid jail time for minor drug offenses if they successfully go through drug treatment. Maier was full of praise and led the whole courtroom in applause when one man spoke in court of finally kicking a decades-long addiction through the program.

"I was convinced that if he faced up to his challenge he would succeed," Maier told the courtroom. "I think you've lost 10 to 15 years - you're a different man ... I'm blown away."

While he shed tears of happiness, Maier had tough words for a mother of three, who broke down after explaining to Maier that she used methamphetamine to get her through her day.

"You're not exhausted because you need to take drugs - you're exhausted because you take drugs," Maier said. "I don't want you to lose your kids. I'm a mom. I don't want you to lose your job, but ... there can't be another relapse. If there is, I'm on the phone and talking to child protective services."

While Maier has only overseen the drug court since January, it is familiar territory to her, as she was the first public defender assigned to the court when it began in the county. Maier also handles misdemeanor domestic violence cases and a felony law and motion calendar out of Martinez. Before that, she handled preliminary hearings, misdemeanor trials and domestic violence in Richmond.

Lawyers appearing before her describe her as gracious, cheerful and energetic.

"There are some courts that are enjoyable and others that aren't and hers is. She's a great judge, stern when she needs to be, thoughtful ... and always respectful," said Thomas McKenna, a private defense attorney in Walnut Creek.

Nicole Herron, a deputy public defender, appears before Maier on her domestic violence calendar where defendants convicted of battery are ordered to take anger management classes in hopes of reforming their behavior. Maier really tries to treat the program as rehabilitative and allows defendants to get help for alcohol and drug abuse problems rather than automatically putting them into custody if they somehow violate the program's requirements, Herron said.

"She's really professional, kind to everyone involved and efficient ... and most important she really wants to see people succeed," Herron said. "She's not processing people through but working with them to make it a success."

Dana Filkowski, a deputy district attorney, said she is most impressed by Maier's willingness to help out when she introduces children involved in sexual assault cases to the courts to help them feel comfortable before a trial starts.

"She has always made her courtroom available and is absolutely wonderful with children," Filkowski said. "They're nervous and afraid and she is smiling and gracious, keeps her robes on for a few minutes to show that judges aren't scary."

Maier has also tried to help children who come to court because their parents have no one else to care for them. This was very common in her traffic and arraignment courtrooms in Richmond, Maier said. She brought bookshelves into court and, with her own money and the help of donations, filled it with books and a few toys to keep the children busy. She encouraged children to bring a book home with them if they liked it and has hoped to get enough collaborators on board to make it a permanent fixture in the court.

Maier was appointed in 2007, but she worked on the bench for six years before that as a pro tem in Contra Costa County, mostly in juvenile court. When she was first offered a job as a pro tem, Maier was working as a part-time public defender after recently having had a baby and had planned to resign and train to be a yoga instructor. She turned down the job offer and began an intense yoga training, but after six months realized she missed the intellectual challenge of being in the courtroom. She called back the judge who had offered her the job and took the bench in juvenile court while juggling her yoga training.

After one day on the job, Maier was sucked in completely and immediately thought about applying for a judicial appointment.

"It's the ability to say to somebody that they need to change their actions and be responsible for themselves and for what they've done," Maier said. "As a PD, I could say to somebody, 'How do you think a jury will respond to what you're saying?' not 'That's the biggest bunch of malarkey I've ever heard, a jury's going to come back guilty in two minutes.' You have to be tactful and diplomatic and gracious, which I'm not saying I don't employ those same words on the bench, but I can be more frank and also I really think I can make a difference."

And while Maier hasn't looked back on her short career in entertainment since she began life as an attorney, she has harnessed her love of movement by studying yoga as well as teaching aerobics since law school. For years, she taught aerobics six days a week in the early morning,

even through her pregnancies with her two children. While Maier has wound down her teaching recently, she did teach yoga to judges and clerks while at the Richmond court and continues doing it on her own.

Maier first got into dance and performance at home, growing up with a father who was an entertainer himself. He worked for years as a Broadway performer and taught Maier tap dance routines as a young girl. Her parents left New York City before she was born and moved to Reseda in the San Fernando Valley, where her father went into teaching to help support his growing family. Maier, the fifth of eight children, grew up poor and left home at 16 to support herself. She worked the graveyard shift as a waitress while finishing up high school, and after graduation entered show business.

She made a living at it into her 20s, making appearances as a dancer in the Steve Martin film "Pennies from Heaven" and in commercials for Van de Kamp's Bakery and Crystal Light. But when she helped out with producing a fashion show while recovering from foot surgery, Maier realized she enjoyed working behind the scenes more than being on stage. She noticed that most of the producers around her had law degrees, and so she decided to follow their lead.

Getting away from the entertainment industry and entering college was liberating for Maier, who began to see how little control she had as a dancer at an audition, where she was sometimes rejected in the first few minutes.

"That's called being typed out," Maier said. "I'm two inches too short or too tall or they're not looking for blondes and suddenly you go to school and the teacher doesn't care what you look like. I don't have to have any makeup on. You have a dirty sweatshirt on and you turn in a good paper, you get an A."

Once in school, though, her career ideas gradually shifted, and by the time she had finished law school she decided to try entertainment law and eventually litigation.

While she was practicing civil litigation at Cooley Godward Kronish, Maier realized she wanted to be in the courtroom more and left her job to become a public defender. It was also at Cooley where she met her husband Joseph Scherer, who still practices business law there.

## **SANDRA MARGUILES**

### **Newbie justice isn't afraid to 'mix it up' a little**

Mike McKee  
The Recorder  
March 11, 2003

Arguing before San Francisco's First District Court of Appeal recently, a defense lawyer trying to get a teen-age boy off a second-degree murder charge began belittling the evidence used for the conviction.

There was a "paucity" of evidence, he urged, resting mostly on confessions his frightened young client and an accomplice gave police soon after their arrest. Justice Sandra Margulies quickly spoke up.

"Confessions," she reminded the lawyer, "in which they both admitted they went into the business with the purpose of committing a robbery!"

Properly chastened, the lawyer went on, only to be stopped moments later when he indicated that his client, who didn't wield the gun in the 1997 shooting death of an Oakland furniture store owner, had not committed murder.

"What crime was committed," Margulies interjected, "if not murder?"

So it went with every lawyer who appeared that day. They were peppered with questions -- a good deal of them from Margulies. Fellow justices and attorneys who appear before Margulies, who joined the appellate court only 14 months ago, say she comes to the bench well prepared and isn't afraid to mix it up a little.

But Margulies, deflecting the attention, says that's true of all four justices in Division One. "None of us," she says, "are exactly shrinking violets."

Margulies, who turns 51 on Sunday, has hit the ground running in her new job. The youthful-looking justice, who walks as much as 20 miles a week "at a fast pace," has authored more than 60 opinions, and earned the respect of her fellow justices.

"She brings an enthusiasm to her job," says James Marchiano, the presiding justice of Division One. "She's in early, works well with everyone and has a very good rapport with the staff. She knows how to work with people. You can tell she's been a judge for many years."

Going on 18 years, to be exact. Republican Gov. George Deukmejian appointed Margulies, a dyed-in-the-wool Democrat, to the Alameda County Municipal Court in 1985. She later was elevated to the superior court, handling everything from probate to law and motion, before being appointed to the First District last year by Gov. Gray Davis.

Born in Oakland, Margulies graduated from Los Angeles' Southwestern University School of Law in 1977, then returned home to join the Alameda County district attorney's office, where she worked for eight years.

"I sort of fell into it," Margulies says. "I didn't go into law school with the idea 'I'm going to be a deputy DA.'" And being a judge, she says, was "the furthest thing" from her mind.

Carol Corrigan, a justice on the First District's Division Three who's known Margulies since the mid-'70s, calls Margulies "a quiet force."

"She's not a person who goes out of the way to draw attention to herself," Corrigan says. "You can always count on her for a well-reasoned, solidly grounded opinion."

She and Margulies are currently working on a task force, charged with the duty of turning everyday jury instructions into plain English without lessening their legal accuracy. "It's been a very challenging task," Margulies says.

Friendly, alert and direct even at 8:30 on a Monday morning, Margulies says she's made the jump to the appeal court with no regrets. She occasionally misses the "hustle and bustle" of the trial courts, but finds great satisfaction in her new world.

"I'm very busy here," she says, "but it's a more tranquil existence. It's a lot of reading, researching and writing."

When on the bench, Margulies expects lawyers to be organized, address the salient points and "answer the questions the justices ask them."

While she's cranked out more than three-score rulings, only two were published.

"My feeling is that a case should be published if it's an issue of first impression, if it's an issue that has application to a significant number of cases," Margulies says. "I don't believe in publishing for the sake of publishing."

Margulies' published cases are *Kanter v. Warner-Lambert Co.*, 99 Cal.App.4th 780, and *Hackett v. John Crane Inc.*, 98 Cal.App.4th 1233. In *Kanter*, the court threw out a suit challenging the labeling on lice-treatment drugs, saying that federal law pre-empted the claims. In *Hackett* it affirmed, but modified, a monetary judgment for a man's injuries for exposure to asbestos during his work career. Both were denied review by the California Supreme Court.

The arguments made an impression on Hassard Bonnington partner Philip Ward, who represented the defendant in *Hackett*.

"It was a very spirited exchange," he recalls. "Justice Margulies was very well prepared and participated to a considerable degree in the argument. I thought that she and the other justices sort of whacked the heck out of both sides."



Margulies lucked out when she arrived at the court. Her office, previously occupied by Justice Gary Strankman, is the old office used by the state's governors while in San Francisco.

"She's the only justice here in Northern California with her own bathtub and shower," Justice Marchiano says.

Her south wall is lined with photos of her family, including husband Bart Schenone, a probate lawyer with Hayward's Schenone & Peck, and her 14-year-old son Ben, outfitted in his uniform as the center of Piedmont High School's football team.

Friends say Margulies never misses one of Ben's games and that she adores Notre Dame football. She also confesses a love of basketball at UCLA, her undergrad alma mater. But friends say she's being modest about her UCLA sports knowledge.

"She's probably one of the few new justices who can name all of the UCLA basketball coaches," Marchiano says, "from John Wooden in the 1960s all the way up to the present time with Steve Lavin. She's a great sports fan."

Says Margulies: "We watch our share of ESPN."

## **CHRISTOPHER R. MARTIN**

**Christopher R. Martin of Monterey County went through several incarnations before becoming a Superior Court commissioner.**

By Rebecca Beyer  
Daily Journal Staff Writer

MARINA - Before he went to law school, Christopher R. Martin washed cars at a dealership, drove diesel trucks, worked nights cleaning a ski resort, tried out a stint as a jailer, guided white-water rafting trips and penned articles for various magazines and newspapers.

Eventually, Martin decided law was the career he ultimately wanted to cultivate. Twenty years later, it's clear that decision served him well. Martin, 55, was a deputy district attorney in Tulare and Monterey counties before taking a job in 2007 as a commissioner on the Monterey County bench. As a prosecutor, Martin often handled narcotics cases. He now presides over traffic and small claims cases where the infractions are somewhat less serious. But the commissioner has also presided over truancy proceedings, dealing with kids - and their parents - who are chronically absent from school. Attorneys who have appeared in front of Martin on such proceedings say he has transitioned nicely from prosecutorial advocacy to neutrality.

"When he was a DA, he was pretty no-nonsense - hard-nosed - but very fair and honest," said Jeffrey A. Gobell, a Salinas attorney who has known Martin in both capacities. "When he took the bench, I said, 'These are going to be some rough times.' But he really surprised me. He was very balanced. He really embraced the role of being a commissioner."

Martin said the hardest part of his job is staying composed through what can be daunting caseloads.

"You have to have the same cheerful face on at the end of the day that you have at the beginning," he said in his chambers at the Marina Courthouse. "My job is to listen and apply the law and to do it the same way with everybody who walks in the door."

Even still, "at the end of the day, you feel like a wrung-out wash rag," he joked. "But I'm still smiling."

Martin was born in New Orleans but lived there only six weeks before his parents moved to Southern California, "packed up in a U-Haul and an old Plymouth." His father was a doctor and his mother was a nurse who ultimately left her job to raise him and his four siblings.

As a youth, Martin became enamored with music. On a trip to visit family in Ohio, his cousin, decked out like Janis Joplin, took him to a roller rink where they saw the rock band Glass Harp perform.

"I got stoked with the guitar," Martin remembered.

Back at home in Sierra Madre, Martin glued a microphone to his dad's old guitar - which he laments would be worth thousands of dollars today if he hadn't done so - and plugged it into an amplifier. He and his band played the music of Eric Clapton, Cream, Creedence Clearwater Revival and Carlos Santana. (The musical endeavor was not just a phase. These days, Martin is a big fan of Texas roadhouse music. He also builds guitars.)

During summers at UC Irvine, where Martin earned an undergraduate degree in criminal justice, he drove a 1959 Kenworth diesel truck, filling trailers with wheat or picking up containerized freight at the port in Long Beach.

"Half the floor was rusted out," he remembered. "I'm thinking at any moment I could hit a bump and the seat would fall through the floor."

After graduating from Irvine in 1977, Martin drove to Colorado in his Volkswagen van, stringing together a variety of jobs that allowed him to earn enough money to take periodic chunks of time off to ski in winter or kayak in summer.

After considering a career in management of sports retail stores, he went back to school, earning a degree in journalism from California State University, Northridge, while boosting his grade point average to make himself a more attractive law school candidate.

Martin worked several years as a writer before starting at the University of the Pacific, McGeorge School of Law. When he graduated in 1990, he and his girlfriend - a woman he met in an introduction-to-magazine-writing class - married.

"I graduated in June, took the bar in July, got married in August and we spent every penny we had on our honeymoon in Australia," he remembered, laughing.

Once he found out he passed the bar, Martin took a job as an associate at Ross, Hackett, Dowling, Valencia & Walti in San Bruno, working on a variety of types of cases including civil, family law and business start-ups.

After a couple of years, he decided he wanted more trial experience and was hired as a deputy district attorney in Tulare County, working four years in Visalia. At first, he was "terrified" of trial work.

"You have to go in and lose a couple before you figure out what to present," he said.

Ultimately, Martin grew to love trial work, especially forensics. He said he enjoyed presenting evidence in trials involving firearms on "the striations on shell cases" or on chemical evidence in trials involving drugs.

In 1997, Martin and his family - he and his wife, who works in publishing, have two sons - decided to move to the coast. Martin took a job as a deputy district attorney in Monterey County, working 10 years there, including four as the prosecutor assigned to a multi-agency task force, reviewing search warrants, advising agents on the legality of their investigations and taking cases to trial. He was on call 24 hours a day for the job.

In his last years as a prosecutor, Martin handled juvenile cases. One case involved a 12-year-old who pleaded guilty to participating in the beating death of a homeless man. The case, which was confidential because of the defendant's age, ended with the youth being sentenced to a confinement facility for the maximum term, until 25 years of age.

Salinas attorney Gobell defended the youth in the case.

"We avoided going to trial on it," Gobell said. "He made me an offer that I thought was fair and responsible. One thing about him - he's fair and honest."

Gobell also represented kids who appeared before Martin when he presided over truancy cases. He said Martin has "a real empathy" for kids who are "struggling with issues of learning disabilities."

"He had to be tough on kids when he had to," he said. "But that's part of being a bench officer."

Susan K. Sutton, another Salinas attorney who represented juveniles in truancy proceedings before Martin, remembered one case in which she represented three children who were living in a car and being raised by their adult sibling. Their mom had died and their father was in prison.

"He encouraged the older brother and the students to work with me and for us to be able to communicate with the DA's office and locate some social-services avenues that maybe the family had not been able to connect with yet," she said.

The family now has housing, and all three children have good attendance at school, she said.

"We have an overall goal, and I think he sees that," she said. "The overall goal is to keep the kids in school. It just isn't that easy. If you take a strict, hard-line attitude, you're not addressing the underlying issues. You have to bridge those gaps, and he tried to do that."

For his part, Martin said the truancy assignment was one of the most rewarding he's had, although it was also the most difficult.

"To have one or two [kids] come in even with a GED or say they're going to junior college, to me that was just thrilling," he said.

## TOMAR MASON

08-31-2010

### **Q. What do you enjoy most about being a judge?**

A. I'm liking two things a whole lot right now. I love the attorneys who appear in front of me. Such great attorneys are in cases in this courthouse, and I'm just wowed. I really enjoy the intellectual challenge of thinking through their positions and the implications in a case. I find that to be really interesting. And the other thing that I'm liking very much is that, like many judges, I have an extern program, and so I bring in two to three law students, usually, although because of the economy some of them have been law graduates. I bring in two to three a term and try to mentor them and give them the experience of being in court.

### **Q. What are you not enjoying about being a judge?**

A. Well, the budget crisis. It's been just flabbergasting in the last couple of years how the courts have suffered. And it's really been very hard on staff. We judges are not in administration, so we look to our management and to our managing judges, the presiding judge and the executive committee, to deal with a lot of these problems. But you see it on a day-to-day basis, and I worry about the declination of services if we can't somehow get an overall handle on funding of the trial courts. That's really important.

### **Q. What advice do you have to offer to new attorneys?**

A. Make sure that, however you are developing your practice, you associate yourself in some fashion with attorneys whom you respect and who really know the areas of law in which you are going to be practicing. ... You really need some guidance. You have to develop on your own, but model yourself always after the attorneys that you think are doing the best work.

### **Q. What are some common mistakes that you see even experienced attorneys making?**

A. Fighting or bickering over very trivial matters. Really experienced counsel usually reserve major arguments or vigorous rhetoric for things that really matter to their case. I think distinguishing between the wheat and the chaff is really pretty important. And it informs the court of your integrity. So that's a mistake, but it's easy to happen because, in the heat of battle, everything's important.

**Q. To make case management conferences run more smoothly, what should attorneys have prepared and what kinds of issues should they be thinking about before they come in?**

A. I think it's really helpful if they have already developed a road map of how they think pretrial matters are going to go and how the trial will go if it still proceeds to trial. They should have an idea of what types of issues need to be fleshed out in advance of the trial, and what types of issues, if handled in a motion proceeding or some hearing, will actually pare down the issues. I think that's helpful. And they should have an idea of how much more discovery is needed and whether there are expected discovery disputes. On single assignments, I like to discuss discovery issues and try to quell the dispute before it really needs litigation. A lot of times, if you actually discuss what the problems are, you can come up with an agreement on it. So I try to shoot for that.

**Q. How do you deal with situations where an attorney doesn't provide courtesy copies to the court, or fails to provide a complete set?**

A. This happens occasionally, but I have a very good team in my department. My clerk and I alert counsel that we want hard copies, and I give a briefing schedule. If I don't have them, we will give them a thoughtful reminder. If I don't have them when I'm doing the hearing, we'll stop all the proceedings and they can e-mail it if they have to. I try to take action. I try never to set a matter over because I don't have papers. I try to solve the problem. And I don't get too exercised about this because do you think for one minute that counsel don't want you to have their papers? It's always a mistake. It's not that they're trying to deprive you of the papers.

**Q. Do you tend to decide motions solely on the briefs, or do you prefer to hear argument?**

A. I try to have tentatives on as many motions as I can, but oral advocacy is really important in my department. I try to announce a tentative and then allow argument, and oral advocacy can change my tentatives. I may have missed something, so it makes a difference. I don't decide anything exclusively on the briefs, but I do study them in advance.

**Q. What advice do you have for someone who is preparing to argue a motion in front of you?**

A. I think one thing that is quite helpful is to be able to cite to the pages of exhibits that you're relying on. I have very complicated matters now, and I try always when I hear argument, if they're citing to their brief or if they're citing to exhibits, I try to pull it up so I can follow along. It just makes it that much more firm, my understanding. So it's really helpful to have prepared in advance so that you know the pages. So if I were making notes, I would have, "Your honor, that's cited to in our brief at such and such page," or "It's cited to in our exhibit," or "It's in the other side's exhibit at such and such page, line such and such," and then I can take a minute and get to that, and that's helpful.

**Q. How do you handle an attorney who becomes hostile or overly confrontational during an argument?**

A. That has happened, and I try to calm everyone down. I try to instruct counsel that *ad hominem* attacks are not countenanced in my department. I call for the bailiff. The mere appearance of a bailiff is often a device that helps us. ... My staff is my eyes and ears in the courtroom, so don't think that anything that happens in the courtroom is not happening in front of the judge, because it gets reported. If there's misbehavior out there, it's reported quickly.

**Q. What are you looking for when you review a brief?**

A. Correct citation of the facts and clear points of law. It's common practice, but the headers that explain the particular point you're making, followed by an opening that articulates what the point is and the significance of the point that counsel is making, and then the argument and citation to law, and then a concluding paragraph that perhaps re-articulates, maybe in a slightly different way, what was said.

**Q. In your experience, how can attorneys help the court promote settlement of a dispute?**

A. I think there are two things that lawyers could do. One is, if you're trying to settle a case, try not to fight with the other lawyer. Remember that to settle a case you have to find the areas of agreement. And you have to look to the other side and figure out what it is that they want that we don't mind giving. So you really have to kind of put yourself in the shoes of the other litigant. And then of course you have to be persuasive with your client so that your client understands that there's virtue in not going for everything that the client hopes to achieve. And, honestly, sometimes the client's hopes have gotten inflated with conversations with counsel. I'm not saying that counsel mislead, but of course you're always trying to develop the strength of the case and develop the evidence, and as you do that, it's a natural process to think you've got a really good cause.

**Q. What kind of impact have you seen technology have on litigation, and on jury trials in particular?**

A. A lot more lawyers are using PowerPoint in their openings, closings and even in evidence. [ELMOs](#) are still being used, but PowerPoints are very typical. ... Of course, in court we have LiveNote now. I've got LiveNote, and actually, I'm able to mark text. I make tabs, and I actually tab the testimony in terms of whether it's evidence from the plaintiff or the defendant, whether it's the court's inquiry or remarks, and I have numerous subsets. So that's certainly a big change. Another thing we've got is [Courtroom Connect](#), which permits counsel to use our wireless capacity in this building to get a live feed of transcripts and stuff, which is quite amazing. So you've got lawyers in New York City, Chicago and Milwaukee listening to your case. Or other cities, that's not the exhaustive list.

## KEVIN M. McCARTHY

**Judge Kevin McCarthy is best known for settling a fight over Barry Bond's home run baseball. But he's also made tough calls in criminal cases.**

By Laura Ernde  
Daily Journal Staff Writer

SAN FRANCISCO - No matter what he does for the rest of his career, Kevin M. McCarthy will always be known as the judge who settled the fight over Barry Bonds' 73rd home run baseball in 2001.

Sports buffs will recall the fan fracas that ensued when Bonds broke the record for number of home runs in a season. One man emerged from the fray holding the ball, but not before another man had already gloved it.

McCarthy, handling a civil trial assignment at San Francisco Superior Court, had to declare an owner.

In a Solomonic decision that's still discussed in property law textbooks, McCarthy ordered the men to sell the ball and split the proceeds.

McCarthy heard debate from property law professors at his alma mater, UC Hastings College of the Law, and ruled that there is such a thing as pre-possession interest in a piece of property in certain circumstances.

"It implicated the basic issue of what it means to possess something," McCarthy said in his chambers, leaning back with his feet comfortably crossed on his desk.

Of course, many things have changed since then, including the value of the ball, which he said has plummeted from the \$450,000 the two men sold it for after allegations of steroid use tainted Bonds' feat.

McCarthy has left the civil assignment, presiding over criminal trials at the Hall of Justice since 2008.

In one sense, it's been a return to a familiar place and familiar people because he spent 11 years as a deputy public defender in San Francisco after law school.

But even though he enjoys the assignment, McCarthy said he would rather avoid getting pegged as a criminal law judge. Previously, he handled civil trials, including complex litigation and asbestos cases.

After all, the reason he decided to run for a seat on the bench was because the public defender job took a toll on him.



"I was at the point where I didn't want to see another autopsy photo," he said, recalling the last picture he saw of a deceased 22-year-old.

McCarthy recently wrapped up a five-month murder trial with three defendants. Emotions ran high, with family members of the victims and the defendants in the courtroom every day, the defense lawyers said.

"He was a very calming influence," said San Francisco defense attorney Stephen S. Olmo. "Under the circumstances he did an outstanding job."

The defense lawyers had reason to be happy with the outcome - the jury acquitted all three defendants after just one hour of deliberation.

But Olmo and San Francisco sole practitioner Tony Tamburello insisted that the judge's rulings were balanced, with neither side being completely happy. The prosecutor's office declined to comment on that case or on McCarthy in general.

In addition to handling trials, McCarthy is one of four San Francisco Superior Court judges on a panel that hears misdemeanor appeals. The amount of money being wasted on appeals with no merit recently irked him, and he briefly refused to sign off on a transcript order just to make a point.

"No one's doing anything wrong. People are fulfilling their obligations as lawyers," he said. "It's very important for everybody in a position to use public resources to be very aware - money is a very scarce resource."

McCarthy enjoys teaching. He instructs UC Hastings students on trial advocacy once a week and teaches ethics to new judges at the California Center for Judicial Education and Research. He also serves on the ethics committee of the California Judges Association and the criminal law advisory committee of the Judicial Council.

The law wasn't McCarthy's first career choice. After graduating from UC Santa Barbara in 1980, he worked as a copy editor at the Daily Breeze in his hometown of Torrance.

He soon discovered that journalism didn't offer the kind of independence he was looking for.

For example, when McCarthy chose to run a provocative photo of a dead body on the front page, his bosses were not pleased. McCarthy thought the Miami Beach scene, with a retiree walking his poodle in the background, perfectly illustrated the plight of Cuban refugees who were dying on their voyage to the United States.

Also, to prove that no one read the daily weather box with its list of cities in tiny agate type, McCarthy inserted the fictional Shangri-la. It was months before anyone noticed.

After two short years, McCarthy packed up and moved north to go to UC Hastings, the only state school that admitted him. He's been in San Francisco ever since.

McCarthy's personal life is a lot busier since becoming a father six years ago. McCarthy and his husband, Dr. David P. Bui, adopted their son through an agency in Los Angeles that was one of the first to work with gay men.

They named him Gavin Bui as a nod to their blended Vietnamese and Irish Catholic backgrounds.

They were leaning toward the name Aiden, but changed their minds a month before he was born when San Francisco Mayor Gavin Newsom threw open the doors of City Hall to gay and lesbian couples.

McCarthy and Bui were among the 18,000 couples married after the state Supreme Court struck down the ban on gay marriage in 2008, but before the voters reinstated the ban with Proposition 8 in 2009.

McCarthy's favorite hobby is bicycle riding. He participates in the annual AIDS/Lifecycle seven-day ride from San Francisco to Los Angeles in June.

## **KRISTINE McCARTHY**

**A former dependency court commissioner, Kristine McCarthy puts her listening skills to work with lawyerless defendants in traffic court.**

By Craig Anderson

SANTA CLARA - Kristine McCarthy had spent most of her professional career working with children and families in dependency court.

The calendar was an emotional one, in which the longtime Santa Clara County commissioner dealt with attorneys and parents accused of abusing or neglecting their children. She won high praise for her handling of it.

Two years ago, all of that changed because of a shift in California policy that mandated superior court judges to handle dependency cases instead of commissioners.

And so McCarthy's assignment changed, and the commissioner now handles misdemeanor arraignments early in the week, and spends the remainder in traffic court.

McCarthy, 61, said she enjoys both assignments, in part because they involve a lot of dealings with regular people, not lawyers.

"I enjoy the opportunity to interact with the defendants," McCarthy said. "Some of them are very funny. Some of them are very emotional. Some of the fines are very high."

There are not many lawyers in McCarthy's courtrooms anymore. Prosecutors hardly ever show up for a misdemeanor arraignment calendar or for traffic court, and defendants usually represent themselves.

'She has just the right demeanor as far as handling defendants, and it is a fine line to be helpful and not cross the line of her job.'

Kevin Hoeke  
Los Gatos Attorney

That's a big change from dependency court, where there are attorneys to represent the parents, the children and the county.

"It's very hard work," McCarthy said of dependency court. "It's only when I got away from it that I realized how emotionally difficult it really was."

The commissioner's challenges are different now. She has to worry about getting through 70 cases in an hour and a half on the arraignment calendar.

In traffic court, which she hears during the evenings as well as the workday, McCarthy is keenly aware of her role as an ambassador for the judicial system.

"This is still the place where most people interact with the judiciary," McCarthy said. "I strive for a level of excellence even though people might say, 'You're just a traffic court judge.'"

To the defendants who contest their traffic tickets, the cases are not trivial, because of the money involved and because they insist they are right and the police officer is wrong.

Millbrae attorney Majeed Samara, who specializes in defending traffic court cases, said he has been impressed with McCarthy's handling of them.

"She's very patient, very respectful and treats people with common decency," Samara said. "What impresses me the most about her is that she's fair to people without lawyers."

"I hear her listening to immigrants who do not speak very good English and she's very patient and courteous to them," Samara added.

Los Gatos attorney Kevin Hoeke, who also represents defendants in traffic cases and has appeared before her extensively, agreed that McCarthy does an excellent job.

"She has just the right demeanor as far as handling defendants," he said, "and it is a fine line to be helpful and not cross the line of her job."

McCarthy said she is very aware of the difficulties facing a defendant, who is often nervous about testifying in court and is usually representing himself or herself against a seasoned police officer who is very accustomed to being in traffic court.

"When they testify about what happened, I repeat it back to them so they are satisfied I have heard what they want me to hear," the commissioner said. "That's how I make sure they understand I am listening."

Traffic court defendants "want to feel they are getting a fair shake" even if they do not win their case, McCarthy said.

A Los Angeles native, McCarthy grew up in Washington, D.C., and attended Loretto Heights College in Colorado. She also went to Mexico to do community service work.

"I was of that era of kids who thought we could change the world by doing things like that," McCarthy said. She recalls wearing long dresses and floppy hats in the late 1960s. "My kids tease me that I was a hippie."

After graduating from college, she returned to the D.C. area and took a job as a social worker in what was then the small town of Frederick, Md. That experience convinced her that she wanted to become an attorney.

"My perception was that they had all the power and had more ability to change people's lives," she said.

In 1972, she came West to go the Santa Clara University School of Law on a full scholarship. It did not hurt that her uncle was a Jesuit priest there.

When she finished law school, McCarthy got married and went to work for the American Justice Institute, a research group that evaluated juvenile justice standards that formed the basis for changes in juvenile law.

In 1983, she became a Santa Clara County juvenile court referee.

But she never worked as an attorney. "I had a lot of experience and knowledge about juvenile court, but I did not have the trial experience I would have wanted," McCarthy said. "In fact, I had almost none. I ended up being in the right place at the right time."

After three years as a referee, she went to work for the Santa Clara County counsel's office for a year until a new position as a Santa Clara County commissioner opened up. She applied and got the job.

"My extensive knowledge of juvenile law got me the job," McCarthy said. "Then I had to learn how to do trials. None of it was easy. My experience is that you learn things by doing them."

McCarthy became a dependency court commissioner as Santa Clara County Superior Court Judge Leonard Edwards was implementing a variety of reforms in the dependency court process.

Aaron West, a Santa Clara County prosecutor who represented children in McCarthy's court for years, described her as "one of the most dedicated bench officers I've had the privilege of working under. She knew the issues and was extremely dedicated to the kids that were on her watch."

"I think it's a huge loss to the dependency bench that she's not there," the attorney added.

McCarthy - who is now divorced, with two adult children - spends many of her Saturday mornings checking the facts of the disputed traffic cases that go to trial. "I put intersections on my GPS and drive there," she said.

Such fact checking is done with the permission of the defendant and the officer, and helps McCarthy determine whether the traffic cop has proven his or her case beyond a reasonable doubt.

McCarthy is already looking forward to a second career as a hospice worker, having had firsthand experience caring for her father. She takes classes two nights a week to get a master's degree in holistic health education.

But she wants to spend another five years on the bench.

"I'm eligible for retirement now, but I'm just not ready," McCarthy said.

## STEVEN L. MONETTE

**Commissioner Steven Monette of Pasadena keeps a calm atmosphere in his courtroom by focusing on things that lawyers can control.**

By Pat Alston  
Daily Journal Staff Writer

PASADENA - Superior Court Commissioner Steven Monette spent a week at home earlier this month, but it was no vacation.

While other bench officers slept, Monette fielded calls from law-enforcement officers seeking emergency protective orders for victims of domestic violence. It kept him up most of the night.

"You don't get a lot of sleep," he said.

After nearly a dozen years on the bench, Monette has resigned himself to the annual task that commissioners throughout the county share on a rotating basis. They call it "EPO duty," although they also take bail-deviation calls.

The rest of the year, Monette presides over a misdemeanor calendar at the Pasadena Courthouse, handling cases from arraignment through trial. To work off any tensions of the day, the father of two heads for the tennis court, softball field or golf course.

"I still play a lot of sports," said Monette, 50, who lettered in football and baseball in high school.

He also coaches 12-year-old son Brandon's Little League team.

Attorneys describe Monette as even-handed, a firm yet soft-spoken bench officer who treats lawyers and defendants with respect.

"He's calm, cool and collected," said veteran criminal defense attorney Richard A. Hutton of Pasadena's Hutton & Wilson, "and lets both sides have their say."

Although Monette expects lawyers to be prepared and ready to go, he is very accommodating, within reason, according to Calabasas attorney Bernal P. Ojeda, who recently spent several afternoons in trial in the commissioner's courtroom.

"Sometimes we had to call witnesses out of order," Ojeda said.

It didn't faze Monette, who is more concerned with the things lawyers can control - such as showing courtesy to one another and to the court - than things they cannot.

"I expect professionalism of attorneys at all times," the commissioner said. "That's a big issue for me - their demeanor in court."

Ojeda said he appreciated the comfortable atmosphere in Monette's courtroom.

"It's just a pleasant experience when you can go into a courtroom and not feel stress in the air," he said.

James P. Lindeman, a veteran of the criminal bar, has known Monette since he was a Burbank deputy city attorney.

"Some guys change dramatically when they come to wear those robes," Lindeman said. "He hasn't."

Lindeman, who has been in practice for almost 50 years, described Monette as a "decent [and] non-emotional" bench officer.

Monette, the son of a supermarket butcher and a church secretary, was born and raised in Burbank. He has a younger sister.

A 1978 graduate of Burbank High School, Monette attended Loyola Marymount University.

"I was the first one in my immediate family to go to college," he said.

Monette participated in the university's Educational Participation in Communities project. One semester, he worked for state Assemblyman Pat Nolan, R-Glendale, accompanying the legislator on speaking engagements and fielding calls from constituents. Monette later took a semester off to work for U.S. Sen. Alan Cranston, D-Calif., helping the staff sift through applications for appointments to military academies.

Meanwhile, he worked as a box boy at the Safeway supermarket in North Hollywood, where his dad plied his trade.

After his graduation in 1983, Monette enrolled at Loyola Law School.

"I had always thought about law school," he said, recalling the eighth-grade government teacher who took the class on field trips to the Burbank Courthouse.

"I found it fascinating," he said of those excursions.

Between his second and third years, he worked as a certified law clerk for the Burbank city attorney's office.

When he graduated, he interned with the state attorney general's office before returning to the Burbank city attorney's office, where he prosecuted misdemeanor Penal Code violations, DUIs and domestic violence complaints.

"He was a good, fair prosecutor," Hutton said. "He would listen to the facts and make appropriate offers based upon the value of the case."

Monette later handled civil litigation for the city.

The judges of Citrus Municipal Court (now the West Covina Courthouse) elected Monette a commissioner in 1999.

Despite the challenges of a new career, life could not have been better for Monette and his wife, Clara Monette, a former registered nurse. They had two sons: Brandon, a toddler, and newborn Ryan. Less than two years later, life turned upside down for the couple when doctors discovered a tumor on 19-month-old Ryan's brain. More frightening than the tumor, itself, was the location of the mass: where the brain stem meets the spinal cord.

"My life was falling apart," Monette said.

Court administrators could not have been more accommodating, Monette said. They transferred him to the civil courthouse in downtown Los Angeles that was closer to Children's Hospital, where Ryan was being treated. A few months later, the commissioner moved to the Glendale Courthouse, where he handled mainly traffic cases and small claims. He also filled in on both felony and misdemeanor arraignments, pre-trials and motions.

Since that time, Ryan, who is 10, has had several recurrences. The worst came three years ago, when he spent two months in the hospital while doctors attacked the tumor with surgery, chemotherapy and radiation. He had to learn to walk again as a result.

"It's been difficult dealing with that on the bench," Monette said.

His son's life-threatening medical condition has had an impact on Monette, "both difficult and beneficial," he said.

On the positive side, he said, "[it] has made me more patient."

His wife has filled his chambers with posters, photographs and figurines of dolphins.

"They're so serene," Monette said of the graceful mammals. "On a rough day, I can... cool down thinking of the dolphins."



## JOHN MUNTER

07-27-2010

### **Q. What advice do you have to offer new attorneys?**

A. I would say to new attorneys that the only real asset that you have in court is your reputation, so it's very important to conduct yourself at the highest level of professionalism. And it's extremely important to be candid, not to overstate matters. When you don't know the answer to something, tell the judge that you don't know the answer rather than to guess at it. You will get respect from judges if they know that they can trust what you say because you are accurate.

### **Q. What are the most common mistakes that you see from experienced attorneys?**

A. Sometimes you see attorneys talking past the bell. By which I mean that I think it's a very important skill for an attorney to recognize when not to speak as well as when to speak. So on occasion, I think attorneys might become a little overexuberant and feel the need to go beyond where they ought to be going in light of the fact that they're ahead. I think it's important to be able to sense the situation. Experienced lawyers do not tend to overstate, and they tend to be very candid.

### **Q. How has the move to a complex litigation department affected your perspective from the bench?**

A. I think the different perspective that I have is that it's an opportunity to take a proactive involvement, to work with the lawyers in a collegial way, to do smart things, and to move cases forward. As an example, it is an opportunity, with the agreement of the lawyers, to break down complex cases into simpler parts and to have them resolved so that cases can move forward. So I will frequently say to lawyers the first time that I meet them in a case, "What questions can I answer for you, or have a jury answer for you, in a way that helps you to move the case forward," and have them identify for me what are the issues that they want to have answered. And then to respond to that by working out the procedures so they can get those answers. And we do not necessarily have to wait until things can otherwise be decided according to the rules. Because by the agreement of the sophisticated lawyers, they can bring, within the law, the opportunity to have matters decided that otherwise cannot be decided, for example by summary judgment or summary adjudication.

### **Q. At what point in a case would you like to see attorneys making the determination whether to apply for complex designation?**

A. As early as possible in the case. Generally, the process is that when applications are made, Judge Kramer and I go over the applications and determine whether they qualify for complex designation. If they do, we would designate the case as complex and assign it to one of ourselves. But I think one of the important management tools that we have as a complex judge is our involvement in the discovery process because through that we are able to work with the lawyers to shape the case, to move the case forward on an issues-related basis.

**Q. Is there anything in particular that attorneys should make their clients aware of before applying for complex designation?**

A. I think the attorneys should make their clients aware of the fact that you'll be having a judge in the case from start to finish. You'll have a particular judge in the case. But that judge will over time become familiar with the case and really invested in the case. And you as a client will become invested in the judge because you will basically be educating the judge from the start of that particular case. So I think what the lawyer would hopefully tell the client is that this is an opportunity to connect us with a judge that is going to be giving us a lot of tender loving care and a lot of attention, and working with us in a collegial way throughout the course of the case.

**Q. What is your approach to discovery disputes?**

A. My approach to discovery disputes is that the lawyers need to get together as an initial matter and discuss the dispute, hopefully in an effort to narrow or resolve the dispute. I tell the lawyers that you're in the best position to do that because you know the needs of your clients, you know the expenses and the burdens involved, you're able to make tradeoffs, and so forth. After you have exhausted your efforts to work together to narrow or eliminate your disputes, if there still remain disputes, you need to come in to court and to gab with me in an informal way, preceded by a short explanation in writing as to what the legal issues are. We will get together and we will chat about these things in an informal way. ... In my department, you can appear by Court Call as opposed to appearing in person for anything that we do other than a discovery conference because I do want the lawyers there so that we can have the informal give and take of a discovery conference. And counsel are not prejudiced by this process because we all agree that the time requirements for filing discovery motions under the Code of Civil Procedure will be lifted so that we can make every effort to resolve these disputes short of the necessity of a motion being made.

**Q. Would you talk a little bit about your rules for filings?**

A. In my department, I believe that one size does not fit all — meaning that cases require individual attention to the point where it's not particularly useful to have a lot of iron-clad rules that govern how the parties or the lawyers conduct themselves in my department. So I do not pass out any written rules. And I don't even have any written rules. I have very, very few rules, and the few rules that I have are all designed to my being able to get the information that the lawyers want me to have in the most user-friendly way because the amount of paperwork in the complex departments is mind-boggling. And so I need to be able to get to what the lawyers want me to read without search or delay. I read everything myself personally that the lawyers want me to read. I also have two attorneys who work with me, so I ask the lawyers to please give me two courtesy copies of all of the papers that they want me to read, so that I will have one myself and that one of my lawyers, who will be working with me on a given case, will have an opportunity to read those papers. ...

The other requirement that I have that may be a little different from other departments is that I require a hard copy of all of the law that the lawyers cite to me. And I ask them to present it to me in a user-friendly way in binders with tabs and an index of authorities. And I ask the lawyers

to highlight or bracket or underline the particular language that they believe is of importance to them and that they want me to focus on. I only require one hard copy of the law, as opposed to two hard copies of everything else. The purpose of that requirement about the law is so that I can take home motion papers as a self-contained unit and then have the law at hand at the same time as I have the briefs at hand. And I have not found any resistance by counsel to that kind of requirement because I think most counsel are delighted that they have a conscientious judge that wants to read everything that are submitting.

**Q. How do you feel about the use of motions for summary judgment or motions for summary adjudication in the context of a complex case department?**

A. In the context of a complex department, motions for summary judgment and summary adjudication frequently turn out to be not particularly useful in the end because it is not usually extremely difficult in a complex case to find a disputed issue of material fact, and we are mandated as trial judges to look very hard to find those things. And generally speaking, you don't need to have a Phi Beta Kappa key or to be Order of the Coif to identify those kinds of issues. So while I obviously remain open for business to be as conscientious and diligent about those kind of motions if they're made, I always talk to people at the initial case management conference about our getting together and seeing if there isn't a better way to get answers to questions that the lawyers want to have answered than to go through that process where if the result is a "Denied," it has not moved the case forward at all. ...

I always tell counsel that we can break these cases down to have mini jury trials or mini court trials. My experience has been, in three years in doing complex, I actually have not had a jury trial on any issue at all. The counsel have generally speaking selected the option of having a court determination on these kind of issues. So I always say to the lawyers, when we figure out what is the next thing that we ought to do, let's keep our eye on the future. And once we do that, where do we go from there so that we are sure that we are moving in a forward direction and not sideways or backwards.

## HENRY NEEDHAM JR.

Mike McKee  
The Recorder  
May 05, 2009

There he was. Henry Needham Jr., a successful life insurance salesman sandwiched between two law firms in Oakland's historic Ordway Building about 35 years ago.

Needham liked what he was doing and was making a good living. But there was something about those lawyers — one of them a well-known solo practitioner, [the late Donald McCullum](#) — that intrigued him.

"I thought it was very professional," Needham recalled last week, "and it looked like they were doing good."

Mind you, this wasn't some kid just starting out, but a man of about 30, with a wife and child. Nonetheless, Needham made the jump into a new profession and, needless to say, it's worked out.

Needham, 65, is now a justice on San Francisco's First District Court of Appeal, having been appointed to that post in late 2006 after serving about 10 years on the Alameda County Superior Court. He's one of only two black justices on the First District.

Needham got his J.D. from San Francisco Law School in 1979, then worked five years as a deputy district attorney in Alameda County. He followed that up by opening his own private practice, handling criminal defense and personal injury cases for three years. His last job as a lawyer was with Walnut Creek's Anderson, Galloway & Lucchese, where he defended doctors, nurses and hospitals in medical malpractice cases.

Needham said all that experience prepped him for the bench.

"It made me somewhat ready to try criminal cases [and] civil cases," he said in his San Francisco chambers last week. "And the background of a solo [helped me] appreciate what attorneys go through."

Needham was born in rural Hickory, Miss. But at about age 1, his family moved to Vallejo and then on to Berkeley. His dad worked his way up to becoming the supervisor for public works at the naval air station on Treasure Island, and his mom held a job as a contract negotiator for the Department of Energy.

After working for eight successful years as an insurance salesman, Needham rose to the new challenge as a lawyer, as longtime Alameda County District Attorney Thomas Orloff attests.

"I have a tremendous amount of respect for Henry," Orloff said. "Not only is he a good lawyer and a good analyst, he's also an extremely hard worker. When he was here, his car was the first in the parking lot in the morning and the last out at night."

At his First District confirmation hearing in 2007, it was noted that the Commission on Judicial Nominees Evaluation had given Needham a rare rating of "exceptionally well-qualified."

Alameda County Deputy DA Jennifer Madden, current president of the California Association of Black Lawyers, recalled that she tried her first felony trial in front of Needham about seven years ago. She said she was nervous, but that Needham's mild-mannered approach calmed her down.

"His patience really kind of stuck out in my mind," she said. "It was obvious that there were things I wasn't as well versed about as my opponents."

The biggest case Needham presided over in Alameda County was a suit against gun-maker Beretta U.S.A. Corp. by the family of a 15-year-old Berkeley boy who was accidentally, and fatally, shot by his best friend in 1994. The jury ruled in favor of Beretta.

Needham appears to have adjusted to the appellate bench quite well, although he finds the place a "little quieter" and more isolating.

"You don't see lawyers every day, and I like lawyers," he said.

"You don't shake hands [with attorneys] and you don't bring them into chambers," he added. "So you don't get to know them as well as you do trial lawyers."

But he does get to grill them during oral arguments. And he's an active questioner.

In a session last week, Needham often pinned down attorneys for specifics, while fixing an intense squint on them. He was fairly animated, alternately resting his head on his hands or nodding in agreement or disagreement to answers.

And though the cases involved a wide range of issues, Needham seemed up to speed on everything, even prompting fellow First District Justice Mark Simons to note the "brilliance" of one of his questions.

Simons said Monday that his division was lucky to get Needham. "You combine somebody who's smart and hard working and has the breadth of his background, and it's unbeatable," he said.

Needham has authored 13 published rulings since joining the appellate court, including *In re J.P.*, A118858, and [Security National Guaranty Inc. v. California Coastal Commission](#), 159 Cal.App.4th 402. Among them are decisions regarding the California Coastal Commission, contractual arbitration, expert witness fees, the Indian Child Welfare Act, parole, sexual offender registration and the Americans with Disabilities Act.

Needham said he publishes rulings only if they add new or novel issues to the law, and he appreciates the opportunity to shape case law. He also has a word of advice for attorneys appearing before him.

"It's OK to concede something," he said. "If there are several issues and one is not in your favor, it's best to concede on that and focus on your strong points."

Orloff said attorneys in Alameda remember one other thing about Needham. And he laughed just recounting it.

"He was the only guy who ever went for the second time to get the scrambled eggs in the basement cafeteria of the police department," Orloff said. "They were terrible, but Henry ate them on a regular basis. He worked so hard he was pretty hungry, I guess."

Maren E. Nelson

After a career as a civil litigator, Maren Nelson took a family law calendar on the Superior Court. This year, she successfully beat back a challenge to her seat.

## MAREN E. NELSON

By Pat Alston

LOS ANGELES - Judge Maren Nelson is not the type to seek attention. So it was with great discomfort, lawyers say, that she found herself defending her seat on the Superior Court.

"She's not a political-type person," said Century City attorney Dennis M. Wasser of Wasser, Cooperman & Carter, who worked on Nelson's re-election campaign earlier this year when Jim Baklyan, a virtual unknown, challenged her for the seat she was appointed to last year.

As it turned out, Baklyan's anemic bid for the office did not come close to unseating the family-law judge. Nelson, who this year was rated by the Los Angeles County Bar Association as exceptionally well qualified, won re-election by 84 percent of the vote in the June primary. Baklyan, who was traveling last week, was unavailable for comment about his motivation for challenging her.

Winning isn't something Nelson - or any bench officer facing a challenge - can take for granted. As a result, she reluctantly sought donations from colleagues and members of the bar, who were all willing to support her.

"[We] were shocked that one of the very best bench officers would draw an opponent," said family-law attorney Don Mike Anthony of Hahn & Hahn, past president of the county bar.

Nelson's campaign raised \$60,000. She appeared at several fundraising events and spoke at three forums, one sponsored by the League of Women Voters.

The soft-spoken judge said she saw some benefits from the experience.

"It causes you to think, 'Gee, could we be doing things differently?' You're always asking yourself that anyway," she said.

Family law was new to the securities class-action litigator when, in 2004, Nelson traded her position as head of Morrison & Foerster's litigation department for a seat as a Superior Court commissioner. She offered to work in whatever area the court needed her, and that turned out to be in family law.

Nelson sits in the civil courthouse in downtown Los Angeles, where, among many other cases, she presided over the child-custody battle between actors Kim Basinger and Alec Baldwin.

She says she finds satisfaction in her role as a bench officer.

"In some ways, your life as a judge is much more structured," said Nelson, a wife and mother. "Very seldom do you have to tell your family on a Monday that you're leaving on Tuesday and you don't know when you'll be back. Very seldom do you wake up in a hotel and not know what city you're in."

She enjoyed her practice as a litigator, she said, but wanted to do something different. She said she finds interesting both family law itself and "the dynamics of the people" who come before her.

Beverly Hills family-law attorney Alexandra Leichter calls Nelson a "brilliant" bench officer and an extremely effective speaker.

"[She] has lectured on the most complicated, intricate areas of family law," Leichter said, "and her grasp of the law is incomparable. She bowls us over."

Leichter described Nelson as adept at quickly getting to the heart of a matter and coming up with unique solutions.

"Her deep analysis of cases and statutes is unbelievable," the lawyer said, adding that Nelson has no problem making hard decisions.

Because the judge has a business litigation background, Anthony said, she is extremely effective in handling the business issues that come up in dissolutions.

"She understands numbers," he said.

A good listener and note-taker, Nelson remembers the parties who have appeared before her, according to Amir Aharonov of Tinero & Rauch in Encino.

"She knows how [they] behave, and will behave, and is able to make orders that will take into consideration [their] characteristics," Aharonov said, adding that Nelson reads everything in advance, and is very settlement oriented.

"I ... usually have some tentative view on a case before it begins, but not always - because you don't always have all the information," Nelson said.

"She's a no-nonsense judge, but she does it ... in a way that makes everybody respect her and her rules," Wasser said. "I have not run into anybody - anybody - who does not rave about her."

Born in Columbus, Ohio, Nelson and her three younger siblings moved around the Midwest while their father pursued a career as an engineer. When she learned the family was about to move again just before she entered the ninth grade, she convinced her parents to let her try for a full-tuition scholarship at a Wisconsin boarding school.

She succeeded, spending the next four years in Kenosha, on the shore of Lake Michigan.

"I loved it," she said.

When she graduated in 1974, she moved to Los Angeles to attend Occidental College, where she majored in political science. A constitutional law class piqued her interest in the law, and she graduated from USC Gould School of Law.



Nelson spent her first six years in practice as an associate with Overton, Lyman & Prince, representing securities brokers and dealers. She also handled consumer litigation, plus employment litigations that gave her ample experience in arbitration. She moved to Morrison & Foerster in 1987, making partner within three years.

Off the bench, Nelson slips comfortably into home life. She and her husband, William R. Hollingsworth III, the son of retired Superior Court Judge William R. Hollingsworth Jr., have a daughter and son, both young adults.

"I do a little cooking - I don't like to serve prepared food - and a little gardening," Nelson said.

At the end of an unusually challenging year, she said she looks forward to winding down with her family on a Thanksgiving trip to a "secret, undisclosed location."

## **RANDALL F. PACHECO**

**Judge Randall Pacheco has a knack for seeing through the complications that permeate the family law cases he hears, attorneys say.**

By Pat Alston  
Daily Journal Staff Writer

LOS ANGELES - Judge Randall Pacheco is so amiable and easy-going some family-law litigants might think they can pull the wool over his eyes.

That would be a mistake, some attorneys say.

"He is one of the... most clear-thinking judges I've ever appeared before," said Long Beach attorney Warren A. Harms.

Pacheco's strength is analyzing evidence, Harms said. "He's good at getting to the bottom of things."

It's not always easy, Pacheco admits.

Every once in a while, however, "we get someone who's flat-out caught in a lie," he said.

There was the woman who claimed her former husband had not seen the children in four years. At the next hearing, the man brought a photograph taken at Disneyland the year before. Not only were his children in the picture with him but also his ex-wife.

A trucking company owner claiming financial hardship said his company had not had any work in months. His adult daughter, who had access to his office, produced copies of invoices showing he had \$100,000 worth of business that year.

Then there was the man who tried to get his ex-wife in trouble with authorities from her native Philippines by producing a "wanted" poster of her, purportedly proving that African authorities had issued a warrant for her arrest. Indeed, it was the woman's face, Pacheco said. Missing, however, was the lower half of the photo, showing the woman in a negligee. The man had used part of the old picture to create the phony poster.

"They may fool me," Pacheco said, "but the family knows."

Pacheco, who sits in the civil courthouse in downtown Los Angeles, hears 10 to 15 family-law cases a day. That's light compared to the 20 to 30 cases he routinely juggled as a family-law commissioner at the Compton Courthouse. Gov. Arnold Schwarzenegger appointed him a judge July 16, 2009.

There are other key differences between the family-law cases at the two courthouses. Those originating out of Compton, the hub of the county court's South Central district, revolve mostly

around custody matters and support issues. In Los Angeles, the cases tend to be more property-driven and often more complicated, he said.

"Even if they're not, they're more thoroughly developed by counsel - for better or worse," Pacheco said with a grin.

Attorney styles in the two districts also differ, the judge has found. Lawyers in Compton like to get right to the heart of a matter, Pacheco said. Attorneys at the civil courthouse, where the financial stakes often are greater, leave no stone unturned.

"It's more time-consuming," he said of the downtown sessions.

There is little difference in the nature of the cases, however, especially when children are in the picture.

"Often," he said, "it's pretty grim."

"I don't think these parents realize this constant fighting and squabbling is death on the kids," said Pacheco, the father of two.

It takes real people skills to get through to parents - skills the former deputy public defender and child advocate has in abundance, attorneys say.

"He's a very sensitive, caring guy, especially about children," said West Los Angeles attorney Patrick DeCarolis Jr. of Trope & DeCarolis, who has appeared before Pacheco in custody matters.

"He wants parents to try to get along... so they can do a better job of parenting their children after they're divorced," DeCarolis said.

"Mostly, I listen to the people," the judge said. "I ask them questions and try to figure out what's going on."

Pacheco, 61, grew up in Pico Rivera, the oldest of three. His mother was a registered nurse; his father, who died in August at the age of 93, was a manufacturing engineer.

A 1967 graduate of El Rancho High School, Pacheco majored in math at UC Riverside.

"I got tired of essay tests," he said. "I wanted something with real answers."

Four years later, he went to work as a statistician and computer programmer for two medical research projects. To make medical research his career, however, he knew he would need a doctorate. As long as was going to grad school, he reasoned, it might as well be law school.

"I like to argue," he said.

When he graduated from Hastings College of the Law in 1978, he went to work for Newman, Chrisman & Faith in West Covina, a general-practice firm that gave him experience in both civil and criminal law. He also handled a couple of divorces.

"It was a divorce case that was instrumental in me joining the public defender's office," he said.

"I had worked very hard for this guy," he said, "and he stiffed me [for] my fees."

In 1980, Pacheco, a Westminster resident, joined the Orange County public defender's office, where, he said, "I didn't have to worry about fees."

After 10 years with the office, the last 18 months as head of the dependency unit, he left in 1991 to help launch Dependency Court Legal Services, a conglomerate of three firms that contracted with the county to provide legal representation to parents and children in dependency cases. Pacheco was supervising attorney.

By 1996 or 1997, the agency - now called Children's Law Center - was representing children only.

"By the time I left, I was attorney of record for 10,000 kids," Pacheco said.

The judges of Los Angeles County Superior Court elected Pacheco a commissioner in 2001. He spent the first two years at the now-shuttered Culver City Courthouse, where he handled traffic matters, unlawful detainers, limited civil cases and defaults. He then settled into Compton. He moved in November to downtown Los Angeles.

Pacheco and his wife of 29 years have a daughter, 26, and a son, 24.

To unwind, Pacheco said, "I clown around in the garden."

He also likes to cook Italian and Middle-Eastern fare. Braised lamb shanks are one of his favorite dishes.

# STUART POLLAK

## No conspiracy theory lurks behind praise for Pollak

Mike McKee  
The Recorder  
December 02, 2003

On the day President Kennedy was assassinated 40 years ago, a young prosecutor in the Justice Department in Washington, D.C., was sent to the law library to see if there was a way the agency could claim federal jurisdiction over the investigation.

That prosecutor, a year out of Harvard Law School, was Stuart Pollak, who's now a justice on San Francisco's First District Court of Appeal. And it was Pollak who discovered that as of Nov. 22, 1963, it was not a federal crime to shoot the president.

Although that later changed, Pollak says the feds moved in anyway that fateful day, taking Kennedy's body and transporting it to Maryland for an autopsy. Local authorities were shoved aside.

Those were heady times for Pollak, who went on to serve on the staff of the Warren Commission, the group that investigated Kennedy's assassination and concluded that Lee Harvey Oswald acted alone -- a decision Pollak says to this day was correct.

"There was no larger conspiracy," he says. "There was never any reliable evidence or indication that there was anybody but that one person."

Today, Pollak, 66, is far from the hubbub of the political world, relishing the relative calm of appellate court life.

"My colleagues all told me it's the greatest job in the world," he says, "and I find it hard to disagree with them."

Being on the appellate bench, Pollak says, gives him the opportunity to do the things he's always loved best about the law -- delving deeply into cases and giving much thought before writing a well-researched ruling.

"Important decisions," he wrote in 1999 in his application for the bench, "call for explanation -- to ensure intellectual honesty, to permit feedback, to assure the parties that there is a reasoned basis for the decision, as well as to facilitate review by a higher court."

Friends say he's followed up on those convictions since joining the First District almost two years ago.

"He's an extraordinarily thoughtful, analytical person," says Jerome Falk Jr., a partner at Howard, Rice, Nemerovski, Canady, Falk & Rabkin, where Pollak once practiced as a name partner.

"You can't get anything by him," Falk says. "He sees the whole picture, the big picture, the little picture, the details. He really is a meticulous judge."

J. Thomas Rosch, a partner in the San Francisco office of Los Angeles' Latham & Watkins, calls Pollak a "completely straight-up, call-it-like-it-is judge" who also happens to be extremely bright and have a "truly fine judicial temperament."

Pollak comes from humble beginnings. He was born in San Pedro, near the Los Angeles Harbor. When Pollak was two, his father, the circulation manager of the *San Pedro News-Pilot*, moved the family to San Francisco to take over the circulation department of the *San Francisco Chronicle*.

His dad later founded a business called Pollaks, which was involved in sales promotions for newspapers.

"My father was hopeful I'd go into the business," Pollak says, "and it was a real wrenching decision to go into the law."

Pollak says high school debating piqued his interest in a legal career, and in 1962 he became the family's first lawyer.

After clerking for U.S. Supreme Court Chief Justice Earl Warren for a year, Pollak joined the Justice Department, where he worked for three years, and served his stint on the Warren Commission. He then headed home to San Francisco where he joined Howard, Rice to handle commercial litigation. He left in 1982 when then-Gov. Jerry Brown appointed him to the San Francisco Superior Court.

About the only criticism of Pollak during his time on the trial court was that he tended to over-deliberate, to hang onto decisions too long. Pollak says that's a false impression.

"My feeling on the trial court was that it was helpful to me and the process and the parties to lay out what I was thinking and let them respond or critique," he says. "Some of my friends said I shouldn't think out loud on the bench, that it appeared indecisive, but I strongly disagree with that."

During a recent oral argument in the First District, Pollak listened intently as a lawyer argued that a judge's decision not to drop one of a defendant's prior burglary strikes and to sentence him to 35 years to life for robbing a jewelry store was arbitrary and irrational. Pollak wasn't buying that.

"Here's a person with a long history of offenses," he said. "This offense was not a minimal thing. It was obviously planned," he continued, and the situation "falls squarely" within the Three Strikes law. (The court, in a ruling written by fellow Justice Carol Corrigan, affirmed the sentence on Nov. 25.)

Another lawyer ran into skeptical questions when she argued that the trial judge was right to admit into evidence a fraud victim's videotaped interview even though the 93-year-old man's memory about events was extremely fuzzy.

"You're saying there is some built-in assurance that everything he's saying is accurate?" Pollak asked. "Where's the assurance that what he's remembering is right?"

While not referring to the lawyers in these two cases, Pollak says he prefers that attorneys in oral arguments answer the court's questions directly and candidly. Those who "rattle on" without realizing they might have problems with their argument, he says, "are missing an opportunity."

"They are not dealing honestly with the difficulties that might exist with a position," he says.

Not that he's against playing games. Justice Corrigan says that at one function at Pollak's home, he and his wife, Lee, held a sort of Trivial Pursuit contest on California legal history, with questions such as who appointed Seranus Hastings to the state Supreme Court.

"He has a way of bringing his scholarship into everyday life," Corrigan says, "and making it fun."

## **Gloria F. Rhynes**

Whether hearing criminal matters or parent truancy cases, Judge Gloria F. Rhynes prides herself on weighing the human element.

Gloria F. Rhynes  
Superior Court Judge  
Alameda County (Oakland)

Career highlights: Elevated by unification to Alameda County Superior Court, 1998; appointed by Gov. Pete Wilson to Oakland-Piedmont-Emeryville Municipal Court, 1996; partner, Hanna, Brophy, MacLean, McAleer & Jensen, LLP, 1990-96; corporate legal counsel, Pacific Bell, 1988-89; associate, Hanna, Brophy, MacLean, McAleer & Jensen, LLP, 1985-87; deputy district attorney, Alameda County, 1980-85

Law school: UC Hastings College of the Law, 1980

Age: 57  
By Emily Green

OAKLAND - Judge Gloria F. Rhynes may be one of the few judges in the state to utter the word "coo-ol" in an official court setting. Or call defendants "sweetheart" in the same breath that she admonishes them.

She is almost surely the only judge who, when a class of sixth graders arrives in her courtroom to do a mock trial, directs one bailiff to pretend to arrest a second bailiff and act out what happens during intake - including having the bailiff-turned-prisoner bend over and cough to see if he's hiding anything in any body cavities - to scare the kids away from a life of crime.

As that particular presentation progressed, the once-fidgety students stared at the bailiffs, enraptured.

An Alameda County Superior Court judge, Rhynes is essentially a full-time mediator, mother, cheerleader and mentor. During court hearings to check on parents prosecuted because their children have missed too much school, Rhynes cajoles, orders and offers support for the string of parents who appear before her.

"Mama, you got to get counseling with your baby," Rhynes recently told a mother whose elementary-school daughter weighed 280 pounds and often stayed at home because of knee problems. "That's just got to happen."

Rhynes ordered another mother to attend class with her son, telling her, "You're putting actions where the values are."

Alameda County Deputy District Attorney Teresa Drenick, who appears in Rhynes' courtroom every Friday for parent truancy court, said Rhynes has taken that issue "under wing and heart."



Rhynes cajoles, orders and offers support for the string of parents who have appeared before her in truancy cases.

She's "very, very invested in this topic," Drenick said. "She pulls a lot of her own life experience in when she talks to the parents, and I think that she's a really good role model."

Rhynes herself is effusive, dynamic and warm. She's quick to give a hug instead of a handshake and verges on crying when talking about how her extended family prayed every Friday for the healthy birth of her 8-year-old twins. She talks about these things and others in the cadenced rhythm of a preacher.

Rhynes hears truancy cases every week on top of her criminal court calendar. She prides herself on her "human touch" - being able, she said, to "recognize the human aspect and component of each case."

To that end, Rhynes talks directly to defendants more than most judges, said Alameda County prosecutor Joseph M. Goethals.

"[Whether] they are the defendants facing serious charges or the parent of a truant child, she is going to tell you how it is, and she is probably going to sympathize with your current situation," Goethals said.

A Bay Area native, Rhynes grew up with the maxim, "You're not better than anybody, but you're just as good as anybody." Her father was a manager at Ford Motor Co. and her mother worked for the federal government as, among other positions, a consultant with the U.S. Department of Energy.

Rhynes said she and her older sister were the first black students to integrate their elementary school in El Cerrito, an experience notable, in part, for its lack of discrimination.

She attended Fresno State University, majoring in criminology. As a college freshman, Rhynes was inspired to become a lawyer after attending the graduation of her first cousin (one of more than 100 cousins) from UC Hastings law school. The cousin, Ancer L. Haggerty, is now a federal district judge in Oregon.

Rhynes earned her own law degree from UC Hastings in 1980 and quickly landed a job with the Alameda County District Attorney's Office. After five years, she left to join the workers' compensation defense firm Hanna, Brophy, MacLean, McAleer & Jensen, LLP in San Francisco. With the exception of a two-year stint as an in-house lawyer with telephone company Pacific Bell (now AT&T), Rhynes worked at Hanna Brophy for the next decade.

"I like people, and I could make lots of rain," Rhynes said, but "I can't truthfully and honestly say I was passionate about doing the work at the phone company or even Hanna Brophy."

But Rhynes said she has found her "calling" as a judge.

She said she's invested in making sure defendants receive an "appropriate" sentence.

Goethals, the Alameda County prosecutor, said Rhynes often makes a hard sell for cases to settle.

"Maybe when I didn't want to resolve a case, she convinced me it was the right thing to do," Goethals said. "I may have felt that the case was [worth] more than I resolved it for at the time, but afterwards I was able to put it in perspective and see she was right."

Whether or not cases go to trial, many defendants will go to prison, that's a given, Rhynes said. But she said how they emerge from that experience is their choice.

So she recommends books and movies as guideposts. Among them: "The Autobiography of Malcolm X," in which the civil rights leader educates himself while in prison; "A Piece of Cake: A Memoir," by Cupcake Brown, about one woman's journey to overcome drug addiction and gang life to become a successful attorney; and the film "The Great Debaters," about the success of a 1930s debate team from her parents' alma mater.

"You just try to be a positive force where you can," Rhynes said. "And if it sticks to anyone, then job well done."

Rhynes lives in Oakland with her husband, Darrell Jenkins, an umpire with the NFL, and their twins, Harrison and Morgan.

## MARIA RIVERA

Maria P. Rivera

Appellate Justice Maria P. Rivera has won a reputation for running high-caliber oral arguments, one reason her name has been mentioned for the state Supreme Court.

Maria P. Rivera

Court of Appeal justice

1st District Court of Appeal (San Francisco)

Career highlights: Appointed by Gov. Gray Davis to the 1st District Court of Appeal, 2002; elected to Contra Costa County Superior Court, 1996; partner-counsel, McCutchen, Doyle, Brown & Enersen, 1985-96; associate-partner, Van Voorhis & Skaggs, 1981-85; assistant U.S. attorney, San Francisco, 1979-81; deputy district attorney, San Francisco, 1978-79; associate, Morrison & Foerster, 1974-78

Law school: University of San Francisco School of Law, 1974

Age: 61

By Laura Ernde

SAN FRANCISCO - When 1st District Court of Appeal Justice Maria Rivera was a young girl growing up in the Central Valley city of Visalia, she'd sneak under the covers with a flashlight and read Nancy Drew books when she was supposed to be sleeping.

"It was my escape," she said.

Decades later, Rivera's job entails a steady diet of legal briefs and trial records. But don't try to tell her that's not as exciting as following the adventures of a fictional amateur sleuth.

"I can literally sit and read seven volumes of a reporter's transcript as if it were a novel," she said. "My mind conjures up the days when I was in the trial court. You really understand why, in the heat of the moment and the pressure cooker which is a trial court, you get less than perfect questions and answers."

Rivera expresses genuine enthusiasm for tasks some might consider boring, such as finely parsing the legislative history to interpret a statute or analyzing claims in a construction contract.

Appellate specialists said Rivera's intellect and passion for the job come through at oral argument, and that's why many weren't surprised when her name was mentioned for the state Supreme Court vacancy created by the retirement of Carlos Moreno in February.

Rivera, 61, demurred at the compliment, saying that she has no reason to think she's on Gov. Jerry Brown's radar.

'Arguing before her felt like arguing in the California Supreme Court.'

- Jon B. Eisenberg

But if Brown wants to replace Moreno with another Hispanic who also has experience on the appellate courts, Rivera is the most likely candidate, since most in that category are Republicans. She's a former Democrat who is registered without party affiliation.

"She's a marvelous person, and I have every reason to believe she would be a superb California Supreme Court justice," said Kevin M. Fong, appellate specialist at Pillsbury Winthrop Shaw Pittman LLP who served with Rivera on the American Bar Association's Commission on Racial and Ethnic Diversity.

Jon B. Eisenberg of Eisenberg and Hancock LLP said that when he argued a case with Rivera, she was engaged without being combative.

"We chatted the case," he said. "It wasn't just a matter of standing up there and talking at a bunch of judges. Arguing before her felt like arguing in the California Supreme Court."

Since Rivera was appointed to the Court of Appeal by Gov. Gray Davis in 2002, she has drawn attention mainly for her dissents.

In 2007, her colleagues dismissed a privacy lawsuit over pat-down searches performed at San Francisco 49ers football games, reasoning that fans have a choice of whether or not to attend the games.

But Rivera said the claims deserved a closer look, and the California Supreme Court agreed, sending the case back to the trial court to balance individual privacy rights against the team's need to maintain safety. *Sheehan v. San Francisco 49ers*, (2009) 45 Cal. 4th 992.

The high court also sided with Rivera's dissent in a criminal case involving jurors who reportedly conducted mock re-enactments of a murder to test the prosecution's theory. Rivera found, and the Supreme Court agreed, that defendants have a right to be present at juror crime scene visits. Former Chief Justice Ronald M. George called out Rivera by name in the third paragraph of his opinion ordering a new trial for Roy Lopez Garcia. *People v. Garcia*, (2005) 36 Cal. 4th 777.

Garcia was acquitted at the second trial.

"When something like that happens, you feel like you're really working the law well," she said.

Rivera said she knew early in her legal career that she wanted to be a judge because she's always preferred problem solving to working in an adversarial position. But she didn't know quite how to get there since there were few role models in the legal profession for an Hispanic woman in the 1970s.

In fact, even her decision to become a lawyer came somewhat by accident. Rivera was working at the Social Security office in San Francisco after college when she applied for and received a minority scholarship to the University of San Francisco School of Law.

She got a taste of appellate work when she did an externship with California Supreme Court Justice Raymond Sullivan.

Finally, after more than 20 years as a lawyer, including 15 years in private practice specializing in land use, Rivera ran for a seat on the Contra Costa County Superior Court.

She won a contentious election, defeating prosecutor John R. Quatman, and then was thrust into one of the hardest jobs she's ever had - being a family law judge.

"You're making some of the most important decisions in people's lives," she said. "People are angry and upset and don't know how to navigate the legal system. You really have a recipe for a very difficult calendar."

Although family law exposed Rivera to the plight of self-represented litigants, she has long been interested in access to justice.

She's an advisory member of the State Bar's Legal Services Trust Fund Commission. Her interest in giving back probably stems, she said, from her upbringing as the daughter of an Episcopal priest. Her sister followed in their father's footsteps, and both have risen to the level of bishop. Her other sister is a psychotherapist, prompting Rivera to joke that she has all her spiritual needs covered within her own family.

Rivera is married to James J. Garrett, a retired partner at Morrison & Foerster LLP who still does pro bono work. She has two sons and three stepsons, none of whom chose law careers. Her office is decorated with artwork her sons made in grammar school, before their learning became focused on what she considers left-brain activities. When Rivera needs to take a break from her left-brain job, she turns to fly-fishing.

"It crowds out all your concerns about the case you're working on," she said. "I lose track of time and completely immerse myself in the rhythm of the casting."

The judge remains committed to diversity in the legal profession, recently supporting Michael Nava, a Hispanic and openly gay Supreme Court staff attorney, in his bid for a seat on the San Francisco County Superior Court. However, when Nava decided to run against a sitting judge, she drew the line.

Rivera said it's OK to challenge judges on their ability to do the job, but not for their politics. Nava targeted Richard B. Ulmer Jr. as a white appointee of Republican Gov. Arnold Schwarzenegger.

Along with access to justice, another one of her passions is mentoring young people who have an interest in the law. She talks about the impact of a thank-you note from a girl named Rosario who toured Rivera's courtroom when Rivera was a trial judge. The girl wrote that she was proud to see "a Hispanic woman so high and powerful."

"That really was a watershed event for me," she said. "Just being there can make a difference."

## OLIVIA ROSALES

**Watching her Mexican parents start life in a new country has made Los Angeles County Judge Olivia Rosales pragmatic but determined.**

By Pat Alston  
Daily Journal Staff Writer

WHITTIER - The alternative high school teacher was very attentive to his new student - too attentive, the 16-year-old girl confided in her school counselor.

In her first week at school, he repeatedly told her how pretty she was, touched her hair and massaged her back. And then, he kissed her feet.

"It creeped her out," said Judge Olivia Rosales, who presided over the man's criminal trial earlier this year. The married man and father of three testified that his actions were innocent displays of affection. The jury found him guilty of misdemeanor child annoying. *People v. Rodriguez*, 9DY06520 (L.A. Super. Ct., filed Oct. 28, 2009).

The conviction - one step below sexual battery - requires he register as a sex offender. It cost him his job.

That was punishment enough, Rosales concluded. She sentenced him to three years' summary probation with no jail time.

"I took into account the collateral consequences," Rosales said. "To fall from grace is devastating."

The judge's decision would not surprise the young prosecutors she supervised as deputy in charge of the district attorney's Whittier office prior to her appointment last year to the bench.

"She was able to see which cases... deserved pleading out [and] which should go to trial," said Deputy District Attorney Bobby S. Zoumberakis.

Rosales carefully listened to what the young lawyers had to say, "and then would always end up with a recommendation that... was the right thing to do," he said.

Although they did not always see it that way at first, he added, "looking back, we'd know she was right."

Some of Rosales' former supervisors hold in high regard her strong work ethic, decision-making abilities and common sense.

"She had a good handle on the law, outstanding judgment, and was very easy to work with," said David R. Traum, head deputy of the Norwalk branch of the District Attorney's Office.

"She's smart, she worked hard and she got good results in trial," said Gary F. Hearnberger, her former supervisor in the hard-core gang unit and now head deputy of the Pomona branch office.

There's another side to Rosales, according to former colleagues and friends.

"She has this great, outgoing personality," said Maria E. Hernandez, head deputy of the auto insurance fraud division and a close friend of the judge.

Rosales, 44, was born in Monterrey, Mexico. She was 2 when her U.S.-born maternal grandmother sponsored the family's immigration to the United States.

"They really struggled to get here and stay here," Rosales said of her parents.

She often wonders what life would have been like had the family remained in Mexico. Once considered one of the safest cities in North America, Monterrey is one of many cities in Mexico that have been plagued recently by escalating violence at the hands of competing drug cartels. Her cousins, she said, are afraid to leave their homes or businesses - night or day.

"I went there last October and could sense how [fearful] everyone was," she said.

In Los Angeles, her father held various blue-collar jobs and her mother worked in food service at County USC Medical Center, not far from their home, where Rosales shared one large bedroom with her four brothers and sister.

"It was almost like a dorm," Rosales said with a laugh. "We had stacks of bunk beds."

She attended Catholic elementary school and South Gate High School, where she was a cheerleader and member of the drill team. "I just loved to dance."

Despite her straight A's, she had to fight to convince her counselor that she should take more than the minimum two years of math. She was going to college, she told the woman. She needed trigonometry.

"I always knew I wanted to be a lawyer," Rosales said.

She applied for scholarships, Cal grants and work-study programs to get into UCLA, where she majored in English literature and took every dance class available.

She paid her way by working in the finance office at UCLA Medical Center and, later, at Miller & Holguin, a Century City law firm.

Her LSAT scores got her into the university's law school. Her parents were dumbfounded, she said.

"Getting into law school was beyond the scope of their dreams," she said.

The summer between her second and third years, she stayed with a friend in New York during an externship with the district attorney's office. She second-chaired a robbery trial.

"It was electrifying to be in court," she said.

She graduated in 1991 and passed the Bar Exam the next year, but the openings at the Los Angeles County district attorney's office were already filled by their summer law clerks. She took a position in the criminal appeals section of the state attorney general's office instead and wrote writs and argued cases.

After a couple of years, she reapplied to the district attorney's office and started there in 1995. She was domestic-violence coordinator for the central district in 2000 when she was assigned to a new special prosecutions unit created in response to allegations of corruption in the Los Angeles Police Department's Rampart Division. The scandal led to the reopening of numerous cases, most of them, she said, low-level drug offenses in which the defendants sought to have their convictions reversed.

A year later, Rosales was recruited to a new hate-crimes unit.

Among Rosales' cases was the prosecution of a man who robbed and murdered a gay man. The victim was stabbed 138 times. *People v. Verdugo*, BA203510 (L.A. Super. Co., filed 2000).

"She was always cool under pressure," said Sally Thomas, her then-supervisor.

Rosales spent three years in the hardcore gang division before becoming deputy in charge of the Whittier office in 2007. Gov. Arnold Schwarzenegger appointed her to Los Angeles County Superior Court on July 16, 2009.

Rosales used to run to "clear her head." When her knees balked, she took up walking. In addition to crime novels and international spy fare, she loves to travel, although she spends most of her waking hours with the love of her life: 5-year-old daughter, Kate.



## MICHELLE ROSENBLATT

**Michelle Rosenblatt requested a civil docket after a career as a criminal law judge. She says she needed a challenge. Civil lawyers say she has worked hard to stay up to speed on their cases.**

By Gabe Friedman  
Daily Journal Staff Writer

LOS ANGELES - Superior Court Judge Michelle Rosenblatt was beginning her transition to a civil-law calendar when a complicated attorney-malpractice case landed on her docket, testing her abilities.

A client had accused his lawyer, who by that time was deceased, of fraud and breach of fiduciary duty for advising him to give up his severance package - worth hundreds of thousands of dollars. A thorny issue for any judge, the case was a particular challenge because Rosenblatt had spent 25 years steeped in criminal law, first as a county prosecutor and then as a judge.

"She was confronted with a complicated case," said P. Christopher Ardalan of Ardalan & Associates in Woodland Hills. "But she was dead-on, perfect in her rulings, never off the cuff. She always made very conscientious rulings."

Ardalan won a \$270,000 verdict for his client, plus costs. But even attorneys who lost cases in front of Rosenblatt have positive things to say about the 57-year-old jurist.

"I never felt like this is a criminal judge who's fresh off the boat," said Martin I. Aarons of the Aarons Law Firm, who appeared in Rosenblatt's courtroom in a recent wrongful termination trial. "She just hit the ground running."

Stephen A. Bost of Ives, Kirwan & Dibble, who tried a breach-of-contract case, said Rosenblatt was "better than pretty good," even though his client was found liable for not paying invoices to a Taiwanese company manufacturing electronics for sale to Wal-Mart.

"We bombarded her with ... any number of motions in limine," Bost said. "And it was always clear to me that she had read, and re-read, [the] briefs and the supporting law."

Bost and his opposing counsel, Skip Miller of Miller Barondess in Century City, praised the judge for keeping a tight leash on each others' conduct in the courtroom.

"She can be damn tough when she wants to be," Bost said.

What makes someone, who was always drawn to criminal law from the moment her career started, suddenly seek out a position in civil law, as Rosenblatt did? Intellectual curiosity, Rosenblatt said.

After so many years in criminal law, she wanted to try something new.

In January 2007, she switched assignments to a general civil calendar in Burbank. She moved in November to the civil courthouse in downtown Los Angeles.

Some attorneys suggest criminal lawyers share a collegiality that is often lacking among civil lawyers, because they have less frequent run-ins with opposing counsel. Rosenblatt said the lawyers who appear in front of her always behave professionally. That could be because of her attitude toward running her courtroom, which many describe as relatively gentle and less combative than other courts.

"I expect more from myself than I do from the attorneys," Rosenblatt said. "But I do expect them to be prepared and to have tried to resolve their issues among themselves - to have meaningfully met and conferred."

At trial, the judge has a reputation for staying alert and keeping close track of her evidentiary rulings.

"She gave the plaintiffs a lot of latitude" to try to introduce evidence at trial, said Ann M. Maurer, a senior assistant city attorney in Glendale, who defended the Glendale Police Department against a civil-rights lawsuit. "She let a lot of evidence come in, but in the end she ruled fairly on all the objections. ... If it got far afield, she would rein them in."

After graduating from UCLA in 1974, Rosenblatt stayed in Los Angeles to attend law school rather than return to San Francisco, where she grew up. In 1977, she graduated from Southwestern University School of Law, where she worked as a notes-and-comments editor on Law Review. She passed the State Bar Exam that same year.

The summer after her first year of law school, Rosenblatt clerked for a sole civil practitioner in Century City. By chance, a lawyer working in the same suite asked her to write an appellate brief in a criminal case. She liked the work so much she found a clerkship in criminal law the next year and became a Los Angeles County prosecutor in 1980.

"I was smitten with criminal law," the judge said. "I joined the district attorney's office because I wanted to be in court. I wanted the trial experience."

Her first few years were spent prosecuting general crimes until she landed in the career-criminal unit, where she prosecuted serious crimes throughout the San Fernando Valley, including crimes committed by recidivists.

She next spent three years in Sylmar as the deputy-in-charge of the juvenile division. Finally, Rosenblatt asked to move to the organized-crime division, which focused on violent crimes, extortion, hate crimes and prison gangs. Rosenblatt said her time as a prosecutor was rewarding, as she saw a positive impact on society flow from her work.

After Gil Garcetti became district attorney in January 1993, he asked her join his administrative ranks as a special assistant to the director of special operations, which included the gang, narcotics and juvenile divisions. Five days later, Gov. Pete Wilson appointed her to Los Angeles County Municipal Court. He elevated her to the Superior Court in 1997.

Rosenblatt's calm and patient demeanor has endeared her to the lawyers who appear in front of her.

"She's not the kind of person who will start screaming and yelling at you in the courtroom," said Koorosh Shahrokh, a sole practitioner in Encino. "Even the few times she got mad at me, it was quite civil, and, quite frankly, justified."

## **JEFFREY S. ROSS**

**Years spent settling cases as a private attorney has helped Judge Jeffrey S. Ross excel at mediating for the San Francisco Superior Court.**

Wednesday, December 29, 2010

By Laura Ernde

SAN FRANCISCO - For years, three sisters were locked in a bitter legal battle over their grandmother's estate. But after San Francisco County Superior Court Judge Jeffrey S. Ross delivered his decision following a bench trial, the oldest sister walked across the courtroom and embraced her youngest sibling.

"It was wonderful," Ross said, about reaching a result that seemed fair to all the sparring sisters. "Of course, I wished it could have happened three years ago."

Settling civil disputes outside of court is even better, and is a route that's become something of a mission for one of the San Francisco court's newest jurists.

The way Ross sees it, more than 90 percent of cases ultimately settle anyway, and the sooner it happens, the less money wasted in legal fees and court time.

"We can't afford to be sending cases to trial," he said.

It's something Ross was interested in before Gov. Arnold Schwarzenegger appointed him to the bench in September 2009. Now, he's one of 14 volunteers who work as mediators in their down time to find a resolution everyone can agree on. San Francisco Superior Courts offer the free program, with talks that take place in person, by phone or e-mail.

"We roll up our sleeves and start trying to resolve it," Ross said. "It's been so satisfying to be a neutral."

Ross brings humor to the job, in the framed label by the door to his chambers that reads, 'Judge Ross: Low in Price, but High in Quality.'

Attorney John D. O'Connor witnessed Ross' skills in a complex multigenerational family partnership dispute last year.

Emotions ran high and the lawyers hadn't been able to settle on their own, but over nearly four months Ross held 10 to 12 lengthy mediation sessions and was able to head off a trial.

"I've never seen anything like it," said O'Connor, of O'Connor & Associates in San Francisco, who represented the defendants. "'I was happy to see we were able to get his services for free. It was quite a bargain for the clients."

In January, Ross is serving as a panelist for a San Francisco Bar Association roundtable about how the court can more effectively encourage settlements.

Ross said he's been successful in part because he learned to practice law at a time when attorneys more frequently negotiated their own settlements, before private judging came into vogue.

After graduating from Stanford Law School in 1975, Ross joined a boutique firm in San Francisco that handled everything from complex civil litigation to family law and criminal defense.

He became a shareholder in the firm, then known as Friedman, Sloan & Ross, and served as its president from 1995 to 1999.

In 1999, the firm now known as Pillsbury Winthrop Shaw Pittman recruited him to represent corporate officers and directors facing investigations.

Ross, 59, said he has no designs on working as a paid neutral, a lucrative path taken by many former judges.

"I love working as a public official," he said.

His interest in the civil rights movement drew him to a career in law.

"I was presumptuous in my youth to think I could do something in that regard," he said.

During his career as a lawyer, Ross worked on several noteworthy cases.

He defended the Holy Spirit Association for the Unification of World Christianity, also known as the Moonies, against a lawsuit by former members alleging brainwashing.

Despite arguments about religious freedom, the court resurrected claims of fraud, intentional infliction of emotional abuse and restitution. The case later settled. *Molko v. Holy Spirit Assn.* (1988) 46 C3d 1092.

Ross also represented local school districts caught in the middle of a dispute between the American Civil Liberties Union and state officials over equal access to education.

The state tried to shift blame to local school districts for the inequities, but Schwarzenegger recognized that the case wasn't worth litigating, and the parties devised a resolution that set standards and a system of monitoring school accountability.

One of the lawyers who represented the plaintiffs in that case, John T. Affeldt of the nonprofit Public Advocates Inc., recently came before Judge Ross in an unrelated dispute. Ross ruled against Affeldt, who is challenging promotions made by the San Francisco Police Department. Now Affeldt is asking the 1st District Court of Appeal for a reversal.

Even though he disagreed with the ruling, Affeldt had positive things to say about Ross.

"He's clearly very smart, and I think he's got to be one of the most polite judges that you could find," Affeldt said.

Ross said he tries to bring a little humor to the job. Next to the door from his chambers to the courtroom is a framed cigar label given to him as a gift. It reads, "Judge Ross: Low in Price but High in Quality."

He served as president of the San Francisco Bar Association in 1997, and helped launch the bar's Law Academy, which pairs San Francisco High School students with lawyer mentors.

Ross is married to Jan Platt, a speech pathologist for South San Francisco schools. They have two children. Jonah Platt-Ross is a teacher, and Aaron Platt Ross is studying Talmudic law in Israel.

## STEPHANIE SAUTNER

**Los Angeles County Superior Court Judge Stephanie Sautner leverages street smarts earned as a New York police detective to manage the courthouse near LAX.**

By Emma Gallegos  
Daily Journal Staff Writer

It's been decades since Superior Court Judge Stephanie Sautner investigated cases as a police detective in New York, but that hasn't taken the edge off of her demeanor in court.

Sautner continues to maintain her reputation as a judge who suffers no fools - whether it's a defendant who forges signatures from Alcoholics Anonymous meetings or a prosecutor who files paperwork late.

"Her bark is worse than her bite," said Nan Whitfield, a Los Angeles County deputy public defender. "But it puts the fear of God into the defendants."

As site judge at the Airport Courthouse near LAX, Sautner still hears felony and misdemeanor cases, but only when the parties have waived the right to a jury trial, because she said it's too tricky juggling administrative affairs and juries.

Sautner's starting to make plans to ease into retirement in less than two years, and go on an early "When-I'm-64" tour to the Beatles' hometown of Liverpool. But she plans to continue hearing cases part time as needed.

When Sautner was elected to Los Angeles County Municipal Court in 1993, defense attorneys initially worried about an ex-cop and former city attorney taking the bench.

"As a public defender, we're used to judges being partial toward prosecution and police officers," Whitfield said. "But I think because of her experience, she holds them to a high standard."

If anything, Sautner says she's more popular with defense attorneys - in 2006, the Criminal Courts Bar Association awarded her its judicial excellence award.

"That, to me, was a great honor," Sautner said, "because it was the Criminal Courts Bar, and they're the crÃªme de la crÃªme of the defense bar."

Christopher Chaney, a defense attorney in Pasadena who supported Sautner's initial run, said he has enjoyed seeing Sautner's career unfold. He said she was one of the first judges after California's three strikes law passed who would remove a strike in certain situations, offering a lighter sentence to someone who could use a second chance.

When defendants come back and tell Sautner they made it through a drug program, she said it is one of the rare moments as a judge that she feels a tangible accomplishment.

"It's not like you have these great accomplishments as a judge," Sautner said. "You go to work every day, you try to do justice the best you can and hope that you've done a good job."

For example, Sautner took a chance on a security guard with a clean record who beat up an abusive boss. The deputy district attorney wanted to send him to prison, but Sautner instead went for probation. When the man graduated from UCLA with a degree in history, he sent her a copy of his diploma, and later he let her know he had been accepted into a fellowship at USC.

For the past five years, Sautner has spent less time hearing cases and more time sweating administrative details, such as how many jurors the Airport Courthouse can afford to bring in on a given day.

Sautner runs the felony master calendar at the Airport Courthouse from an office window where she can see the Palos Verdes Peninsula and Catalina Island on a clear day.

"She runs the courthouse with a fine-toothed comb," said Deputy District Attorney Danette Meyers, Sautner's calendar deputy.

Sautner turned down the position five times before she relented. Now it's her job to run a court with too little parking, too few judges and too many cases.

But she said she likes the promotion, in part because she likes working with - and mentoring - the newer judges in her building.

"This is a very unique building," Sautner said. "All the judges seem to get along."

The calendar she still presides over includes burglary, rape and murder cases. Recently, she heard a 20-year-old case of a bar owner in Santa Monica charged with killing a rowdy patron who pulled a gun on him after being thrown out. The defendant, Antonio Pedroza, might not have been prosecuted, but because he fled and was picked up on a drug charge 20 years later, he found himself in Sautner's courtroom.

Sautner also has had the chance to preside over weddings - including several same-sex marriages during the brief window in 2008 that gay marriage was legal in California.

Sautner herself did not marry her partner of 13 years, Beverly Miller, during that window, and said she doesn't plan to get married until gay marriage finds firmer legal footing.

For now, she and Miller have plans to return to the city where she cut her teeth and gained the street credibility that has served her so well in the courtroom. But she's hoping to stay part of the year in California and continue hearing cases periodically.

"For a long time, I felt like I worked in California and lived in New York. I would go home all the time," Sautner said. "I almost didn't admit that I really lived here. I would just say, 'I have this job here.' When I became a judge, I had to admit I lived here."



## **BRADLEY O. SNELL**

**Although Commissioner Bradley Snell has been known to haul into court DUI defendants who repeatedly fail to appear on their own, lawyers say he makes it easy to talk to him.**

By Jason W. Armstrong  
Daily Journal Staff Writer

Murrieta - Dozens of drunken-driving defendants file into Commissioner Bradley Snell's Murrieta courtroom daily. Some of them don't have lawyers, and they want to plead guilty to get their fines or jail sentences and quickly dispose of their cases.

Not so fast, Snell tells them. The Riverside County commissioner, who presides over more than 100 misdemeanor arraignments and sentencings daily, often will urge defendants to consult lawyers and contest their DUI charges, especially if reports show their blood-alcohol level was hovering on the edge of the legal standard for intoxication.

"I'll say, 'I can't argue the facts, and I'll let you plead guilty if you want to, but it may be in your best interests to talk to an attorney,'" Snell, a former prosecutor, said recently in his chambers at Southwest Justice Center. "I've had several defendants who have taken that advice and come back and, instead of pleading to a DUI, they get a 'wet reckless,' which is a reduction."

Snell is known for taking extra time to talk to defendants and often gives them fatherly advice from the bench.

"A lot of the people I see are 18 and 19 and 20 years old," Snell said. "I try to take time at the conclusion of their cases to ask them if they learned their lesson, and encourage them and let them know that I don't want to see them back here."

Deputy District Attorney Arlinda Witko said Snell strikes a good balance between maintaining courtroom formality and making attorneys and defendants feel like they can talk to him.

"He's not the kind of bench officer who will fly off the handle and yell at someone," Witko said.

"[Snell is] incredibly kind," said Deputy District Attorney Karl Fuller.

"I've appeared in courtrooms where you blow your nose the wrong way and the judge will take you out," Fuller said.

That doesn't happen in Snell's courtroom, he said.

"Even people who finally show up to court four years later on a warrant, pleading with him, he doesn't make them feel horrible," Fuller said. "He's not like, 'I'm God and this is my pronouncement.'"

Fuller said he respects Snell's rulings.

"Whether it goes our way or not, you don't feel like you were robbed," he said.

Sheila A. Quinlan, a deputy public defender who appears before Snell daily, agreed.

"He's not on a power trip," Quinlan said. "I don't think of him as someone who favors one side or the other, even though he has a background as a prosecutor."

A Utah native, Snell, 49, grew up with three brothers and four sisters. His father was a respected family doctor and his mother was a homemaker.

Snell initially considered a career in broadcast journalism and earned a communications degree at Brigham Young University.

But after a few reporting gigs, he realized the field wasn't a good fit for him. He then considered pursuing a medical degree to follow in his father's footsteps.

"Since my father is probably the most influential man in my life, and I totally admire how he lives his life, I thought maybe I'd follow him into medicine," Snell said. "But a communications degree doesn't prepare you for medical school."

He ultimately decided on a law career because "it would open up a variety of things to do."

After graduating in 1991 from University of Arizona College of Law, Snell returned to the Riverside County district attorney's office, where he had clerked in law school. He spent several years prosecuting juvenile crime and was part of an unusual program called the Youth Accountability Team. The team - police, probation officers and prosecutors - intervene in troubled youths' lives by taking them on jail tours, monitoring their school activities and drug testing and counseling them, among other things.

Over the years, Snell took more than 50 cases to trial, prosecuting everything from car thefts to sex crimes and murders. He also made a name for himself in drug cases, training deputy district attorneys nationally in the community-based narcotics prosecutions.

Riverside's judges selected Snell as a commissioner in December 2007. He handled a juvenile dependency calendar before getting his misdemeanor assignment earlier this year.

Although Snell tries to be personable to defendants, he said, he takes a hard line with those who consistently fail to appear to address their charges.

"I'll contact the local agency through e-mail and say, 'This person has promised to come to court five times, and he's got a five-year-old DUI case that he's never come in to plead guilty or not-guilty to,'" Snell said. "I'll say, 'I need you to pay him a visit and not site-release him, and bring him directly here.'"

"That's something different that I do that I haven't seen other judges do in this kind of a court setting," he said.

Snell enjoys working out, playing basketball, participating in church activities and spending time with family. He and his wife have five daughters, ages 14 to 22, and one granddaughter.

He is applying to become a judge.

## THOMAS R. SOKOLOV

**For years, Judge Thomas Sokolov has taken a first crack at settling felony cases before trial in Torrance.**

By Brandon Ortiz  
Daily Journal Staff Writer

TORRANCE - If you appear before Los Angeles Superior Court Judge Thomas Sokolov, you'd best mind your manners.

"I believe in civility," Sokolov said. "It is a very high-volume court, and acrimony does not come across well."

Sokolov oversees a busy felony calendar of cases at an early stage in litigation in early-disposition court, where he spends most of his day on the bench, sometimes conducting as many as 50 arraignments a day.

He acknowledges he's a stickler for manners - he doesn't appreciate attorneys who act rudely to one another.

"He's not going to tolerate either side disrespecting the other side," retired Deputy District Attorney Paulette Paccione said. "If you walk over the line, you're going to know about it."

Defense attorneys and prosecutors alike speak highly of Sokolov, and that is perhaps why he is perennially given the difficult and thankless job of fast-tracking felony cases for plea deals.

George Bird, a defense lawyer, said Sokolov has one of the toughest jobs in the court system because he has to nudge both sides to accept less than they want before they've seen all of the evidence. He manages to do so without being heavy handed or treating cases "like widgets on an assembly line," Bird said.

"There is an effort to be efficient today with criminal cases, and it is an inhumane way to administer justice," Bird said. "Judge Sokolov is not like that. That is why I say he is a throwback to an era when judges truly judged without the pressures and restraints of artificial time deadlines."

Sokolov, 67 and a judge since 1989, has had an early-disposition calendar for 14 years.

The Los Angeles native's father practiced entertainment law, which laid the seeds for his legal career: While an undergraduate at USC, Sokolov would sit in court in Santa Monica and Beverly Hills to watch trials.

"I thought it was fascinating," he said.

After graduating from Loyola Law School, Sokolov entered criminal law because he liked the excitement of the courtroom. He went to work as a deputy district attorney in Los Angeles in 1969, planning to stay there only a few years before going into private practice.

"I liked it so much, I ended up staying for 20 years," he said.

Sokolov, who is single, lives in the South Bay, and enjoys taking walks on the beach. He's an avid sports fan, frequenting the Hollywood Park horse track.

He said he's blessed to have worked with several great judges, such as Burch Donahue, who taught him the importance of civility.

"He taught me to treat everyone with dignity and respect," Sokolov said of Donahue, "and follow the law, and do what you think is right."

"I'm just going to do the right thing" is a common refrain by Sokolov from the bench, lawyers say. He doesn't allow even the slightest ex-parte communication, and he does not conduct settlement negotiations in chambers.

"I like to do everything in front of the public," he said. "I want the public to know everything that is happening."

Paccione called Sokolov "a very considerate man."

"There is never anything underhanded," she said. "No extra conversations going on."

This past spring, Paccione had a case with seven defendants involved in a documents fraud ring. The attorneys thought there was a chance at striking a deal; Sokolov granted continuances to allow it to happen.

Paccione said most judges would have moved the case along.

"He trusted us because all of us had been in his courtroom," she said. "A lot of judges would not have wanted to deal with seven defendants and seven attorneys."

Sokolov plays an active role in negotiating plea deals. Leaning on his 20 years experience as a prosecutor, he frankly details the weaknesses of both cases to lawyers.

"He is a very honest judge," said defense lawyer Jeffrey Gray, who tried cases against Sokolov when he was a prosecutor. "He is only loyal to the law."

In contrast to many former prosecutors, Sokolov, Bird said, is not what defense lawyers deridingly refer to as a "deputy district attorney, grade six" - facetious bureaucrat-speak for a head deputy district attorney who's merely been promoted to a judgeship.

"If you ask people walking out of the courtroom if he was formerly a prosecutor or a defense attorney," Bird said, "you'd probably find people split 50-50."

## ARIADNE (ARI) SYMONS

**Judge Ari Symons built a reputation on both coasts as a hard-charging prosecutor. She says the goal was justice, not winning.**

By Rebecca Beyer  
Daily Journal Staff Writer

SANTA CRUZ - Ariadne "Ari" Symons knows there's nothing wrong with a not guilty verdict. It just so happens she can count on one hand the number of times she prosecuted a case that resulted in one.

A former federal and state prosecutor, Symons was known for her aggressive advocacy. She once used red-dyed water to recreate a crime scene in prosecuting a murder and rape case that sent a man to death row in North Carolina. In another case, she fell to the floor and made a stabbing motion repeatedly to rebut a defendant's claim that his crime, stabbing someone 17 times, was not premeditated.

Most of the cases Symons presides over as a Santa Cruz County Superior Court judge are far less violent. The majority of her misdemeanor calendar is spent handling cases in which people are accused of driving without a license - a charge she thinks the Legislature should reclassify as an infraction to save the expense of having those people represented by public defenders.

As a prosecutor, Symons never handled misdemeanors. She skirted around them in her career, working first as an assistant U.S. attorney in the District of Columbia and then as a local prosecutor. She prosecuted more than 75 homicide cases and never lost a murder trial.

"It's all right to have a not guilty verdict," she said. "That's not the point."

The point is she was "convinced they were guilty" or she never would have brought the case to begin with, she said while relaxing in her Santa Cruz chambers.

As a judge, the 53-year-old Symons has had to take a step back from all that. The people who appear before her on misdemeanors are not "heinous criminals," she said. Most of them either won't be in court again or will be because they have chronic problems.

"I often advocated for life in prison," she said. "Now that I'm a judge, things are not as obvious and clear. I find it hard to put people in jail. I think it's a good thing to be careful and concerned about power over people's liberty."

Symons said she tries to be creative in her sentences. She once sentenced a young man who stole his grandmother's car to wash his grandmother's windows throughout his probation.

Practitioners and colleagues say Symons was a hard-working, ethical and smart prosecutor and that she remains all those things on the bench. Symons was elected judge in November 2008 after unsuccessfully applying to Gov. Arnold Schwarzenegger for an appointment.

Stephen G. Wright, a Santa Cruz defense attorney, ran against Symons. He also handled cases against her when she was a prosecutor and has since appeared in her court.

"She was an outstanding trial attorney prosecutor," he said.

As a judge, Wright said, Symons has "been very good at finding ways to try to reach people that help them realize that they're mistaken and to make amends," he said.

Wright said he could have avoided Symons' courtroom because they ran against each other but that he had "never felt the need."

Symons, who grew up in Ontario, Canada, always wanted to be a lawyer.

"I saw lawyers could do things that other people couldn't do," she said.

She recalled an attorney getting permission for her to take an extra academic class in high school without having to take an extra physical education class. Symons was already athletic - she swam, danced, played softball and soccer - and didn't feel she needed the extra gym period. A letter from an attorney who was a family friend took care of the issue.

Education was the priority in Symons family. She and her older brother and sister had library cards, not televisions. Symons went on to Queen's University in Kingston, Ontario, paying her way through school by dancing with the Canadian Follies and waitressing while she earned a degree in history.

Symons attended McGeorge School of Law, where she was first in her first-year class. The next year she transferred to UC Berkeley School of Law, and then clerked for Vermont District Judge Albert W. Coffrin after graduating in 1982. Coffrin presided over Symons' naturalization ceremony in 1983.

From Vermont, Symons went on to become an assistant U.S. attorney in Washington, D.C. In 1987, she spent a year in Los Angeles working as a special trial attorney for the Justice Department's Organized Crime and Racketeering Strike Force. She worked on a grand jury investigation into the mafia, handling motions and listening to wiretap surveillance. Often, she would hear the people under surveillance talking about her. She said she used to hesitate before turning the key in her car when she left work, afraid that someone might retaliate against her. She ultimately decided the defendants weren't worth that stress and applied for a job as a local prosecutor, first in Orange County, where she handled child sexual abuse cases.

"There isn't anything harder than that assignment on your heart strings," she said. "It's difficult to deal with a family that's lost a loved one, but a child-molest case kills you in a different way."

In 1991, Symons joined the district attorney's office in Rowan County, North Carolina, where she was the first woman to try a murder case in that county. There, she often co-tried cases with elected District Attorney William D. Kenerly, who retired as the county's district attorney at the end of May.



"Her presentation and closing arguments were kind of the talk of the town," Kenerly said.

Kenerly remembered a stabbing murder case in which Symons fell down to the floor and stabbed into the carpet to show the jury what had happened.

"She taught me a lot about making sure the jury understood what had happened," he said.

In 1995, Symons moved back to California to be closer to her parents, who had moved there earlier. She chose Santa Cruz for its proximity to the ocean and its foundry - sculpting is a major hobby of hers.

In the Santa Cruz County district attorney's office, she served as a chief deputy, running the homicide unit. One of her most significant cases came post-conviction, however. On multiple occasions, Symons tried Donald Schmidt under section 1800 of the state's Welfare and Institutions Code, which allows youthful offenders to be kept in custody if they are deemed a danger to society. Schmidt's was an unusual case. He was 16 in 1988 when he sodomized and drowned a 3-year-old girl in her bathtub. He was tried as a juvenile and sent to a youthful offender treatment center where he became eligible for parole at age 25. Under section 1800, the district attorney's office can petition every two years to keep someone in custody beyond that age, which is what Symons did.

In her first trial against Schmidt in 1999, Symons dug deep into the record of the treatment center's psychologist who had recommended Schmidt's release. She found that he was unlicensed, that his degrees were from correspondence schools and that he had been forced to leave a previous job for inappropriately approaching juveniles under his care. Symons brought all that information out in front of the jury, leading the judge to find him incompetent and in contempt of court.

"That's one of the things I like best - I love putting a case together," Symons said. "I really enjoy cross-examining defense experts."

In 2005, Symons wrote to the youth parole board, which had recommended Schmidt's release. The board reversed its decision. Last year, after two mistrials, Schmidt won his release, which could come later this year. He is the oldest "ward" in California.

"The better the prosecutor, the better the justice system," said Bob Lee, the district attorney for Santa Cruz County and Symons' former colleague and boss. "You have to be able to look at inferences and evidence and uncover things. Ari was a master of that. When you investigate a case fully, the odds of learning what the actual truth is are much greater - that sometimes works to the defendant's demise ... [and] sometimes that works for the defendant's benefit."

Lee said Symons is able to "argue inferences better than Sherlock Holmes."

Deputy public defender William R. Weigel represented Schmidt in one of the trials against Symons.

"She was definitely committed to keeping Mr. Schmidt in at all costs. ... She's very thorough, and I don't mean just in the courtroom," he said, pointing to Symons' letter to the parole board. "She was also working the other ends of this, and that resulted in him being kept in."

Public Defender Lawrence P. Biggam, whose firm operates the office under a contract with the county, said Symons has shown "a strong and independent nature" on the bench.

"She's been especially understanding towards veterans who end up facing criminal charges in her courtroom," he said, explaining that she often fashions more therapeutic sentences for such offenders.

Still, Biggam said concerns that Symons will bring a "prosecutor's bent" to the bench still remain "to some extent."

"She was a strong leader in the prosecutor's office," he said. "Eventually her actions will speak louder than those concerns."

Symons said she tries to give veterans "respect and dignity" in her courtroom and sometimes reduces fines where she thinks it's appropriate.

The judge said she has a sense of perspective when dealing with the people before her, having worked for so long as a prosecutor.

"I'm totally in favor of accountability," she said, "but I don't want to squash [people]."

## NORMAN P. TARLE

By Pat Alston

SANTA MONICA - Judge Norman Tarle was chatting with a contractor he hired to install hardwood floors in his home when the man glanced at a magnet stuck on the refrigerator door. It was a small photograph of Tarle on the bench when he was a commissioner.

The judge and his wife, Marci, a pediatric nurse, usually sweep the house clean of any identifying memorabilia when tradespeople are going to be there. This time, however, they overlooked the magnet.

The man squinted at the picture, then looked up at Tarle and said, "I know who you are. You're the guy who sentenced me to a year in jail."

Tarle and his wife held their breath.

"Time stood still," he said.

Then the man told him what a life-changing event that experience had been for him. After serving his sentence, he returned to college, earned a graduate degree and opened a rehabilitation facility for people struggling with substance abuse - people like he used to be. Meanwhile, he installed hardwood floors from time to time, because he loved it so much, he told Tarle.

"He was clean, he was successful, he had a family," Tarle said.

"I think I did the most good in misdemeanors because you can change people's lives," Tarle said of his early days on the bench as a Los Angeles Municipal and Superior Court commissioner.

By the time someone commits a felony, he said, it's usually too late.

Tarle was happy in his various criminal assignments, which took him from West Los Angeles to Norwalk, until 2001, when Gov. Gray Davis appointed him a judge. With the new title came an assignment that left the warm-hearted bench officer cold. He was transferred to the Criminal Justice Center in downtown Los Angeles, where many of the county's most heinous cases are tried. Instead of giving illiterate defendants the choice between hefty fines and literacy classes, Tarle was sending killers and rapists to prison for the rest of their lives.

After his blood pressure spiked so high one day in 2004 that he had to be taken to the emergency room, his supervising judge asked him, "Where do you want to go?"

He chose the Westside. Tarle, 60, has presided over civil cases ever since.

For Tarle, civil is "not as emotionally consuming as criminal."

"If you make a mistake in criminal, someone's on death row or in custody, and [they] can't get that time back," he said. "In civil, it's correctable ... recoverable."

After making the rounds of West District courthouses, including Beverly Hills, Tarle settled into a general unlimited courtroom in Santa Monica 2½ years ago.

"In civil, there's always something new," he said.

A tug-of-war between neighboring homeowners associations landed in his courtroom two years ago when an exclusive Westside community began restricting access to a road that visitors had used as a shortcut for years. *South Beverly Park Homeowners Association v. North Beverly Park Homeowners Association*, SC094242 (L.A. Super. Ct., filed June 14, 2007).

Although the affluent residents of North Beverly Park allowed their equally well-heeled neighbors to continue using the north gate on Mulholland Drive to get home, they prohibited other people, such as nannies, gardeners and contractors, to pass through. Instead, those invited guests to South Beverly Park had to take long detours to get to their destinations.

After a seven-day bench trial, Tarle ruled that people invited to South Beverly Park homes could use the north gate. The defendants, who lost their appeal this year, are seeking review by the state Supreme Court, according to their Century City attorney, Jeffrey G. Huron.

Despite the loss at trial, Huron said he would not hesitate to go before Tarle again.

"It was a very tough case," Huron said, "and I think, on balance, he gave it 150 percent of his time."

Huron added it is "very easy" to appear before Tarle.

"He's very relaxed and always prepared," he said.

Steven M. Goldberg, the plaintiffs' attorney in the case, agreed, saying Tarle reads and researches everything.

"He's very careful and thoughtful," Goldberg said. "He does not make his rulings too fast."

Attorneys describe Tarle as no-nonsense but respectful and open-minded.

"He listens to both sides," said plaintiffs' lawyer Browne Greene of Greene Broillet & Wheeler. "He's very concerned about doing the right thing."

Greene recently lost a case he filed on behalf of an 86-year-old woman who broke her back when she fell inside a Santa Monica Big Blue Bus. *Kaufman v. City of Santa Monica*, SC103030 (L.A. Super. Ct., filed May 8, 2009).

"Although I didn't win," Greene said, "[Tarle] gave us a very fair trial."

Tarle, the older of two sons of Jewish immigrants from Poland, was born in Sioux City, Iowa, but grew up in New York. He graduated from Stuyvesant High School in New York City in 1967 and, in 1972, from City College of New York with a degree in political science.

He spent the next four years working on a joint masters degree in business administration and law at UCLA.

When he graduated in 1976, he went to work in the Planning and Research Unit of Los Angeles County Municipal Court. He left in 1979 to join the Los Angeles city attorney's office, where he worked in the housing enforcement division. In 1985, the judges of Los Angeles County Municipal Court elected him a commissioner. In 1994, the Superior Court judges did the same. Then came his appointment as a judge.

Spinning at the gym relaxes him when the day is done. He also loves his Kindle, the electronic device that allows him to download books as fast as he can consume them.

"I'm omnivorous," he said. "I'll read almost anything that has nothing to do with the business we're in."

He also enjoys bicycling and backpacking. He has an old 15-speed road bike that he bought years ago, and frequently rides from his Westside home to court.

He and his two sons plan to backpack across Haleakala Crater on Maui next summer.

## KENNETH H. TAYLOR

**Commissioner Kenneth H. Taylor of Los Angeles takes the time to make reasoned decisions in his cases - no matter how small the matter, say lawyers who have appeared before him, one of them as a defendant.**

By Pat Alston  
Daily Journal Staff Writer

LOS ANGELES - On the surface, it was just another jaywalking case in Commissioner Kenneth H. Taylor's courtroom.

A Los Angeles police officer had ticketed two transgender individuals for illegally crossing a street in the downtown garment district. It wasn't the tickets that upset the defendants, according to their attorney, Damian Leone.

"They felt an LAPD officer had repeatedly made fun of their gender identity," Leone said. "They wanted their day in court."

The case made its way to Taylor's courtroom, near downtown Los Angeles, when he was presiding over traffic trials earlier this year. *People v. Scarpa*, 0618792 (L.A. Superior Court, filed 2009).

Taylor found the pair guilty of jaywalking. But he did two things that Leone found impressive. First, he listened to their story.

"Some judges might have brushed it off," Leone said. "He actually treated both sides with a lot of respect."

Taylor also suspended the hefty jaywalking fines.

"He handled it in such a way that I believe everyone felt it was a fair judgment," the attorney said.

Taylor, a former deputy public defender, has gained a reputation as an even-handed bench officer in the 18 months since the judges of Los Angeles County Superior Court elected him a commissioner.

"He's very fair; he shows no bias toward any side," said Michael H. Klijian of Edward J. Chong & Associates.

"He's compassionate, but he can be tough if he has to be," said Deputy Public Defender Paul D. Golub.

"He uses a lot of common sense in his rulings," said Deputy City Attorney Patrick K. Shibuya.

Taylor, 44, presides over 200 arraignments a day that are split between morning and afternoon sessions. His calendar on a recent Wednesday morning was lighter than usual, he said - he had 90 cases.

Lawyers describe the commissioner as efficient and organized.

"He moves things along quickly," Klijian said.

At the same time, the attorney added, "he's very thorough."

"I think he does a good job of handling the folks that come into his courtroom," Shibuya said.

"He gives a good listen to what they have to say," the prosecutor said.

"He doesn't let his ego get in the way," Golub said.

Attorney Thomas J. Gray found himself in Taylor's courtroom two months ago - as the defendant.

Gray was on his way to the civil courthouse in downtown Los Angeles last year when police officers pulled him - and the driver next to him - over for alleged failure to yield to a person in a crosswalk. The drivers had been snagged in a major "pedestrian sting," the lawyer said. *People v. Gray*, 0892804 (L.A. Super. Ct., filed 2009)

Armed with numerous photographs, Gray presented compelling evidence, he said, to contradict the officer's claims.

"I was acquitted," Gray said.

He praised the commissioner for his thoughtful consideration of the evidence.

"There are a lot of judges and commissioners and pro tems who just find everybody guilty," Gray said. "Many judges lose sight of what the standard is, meaning reasonable doubt. Taylor did not."

Shibuya recalled another matter in Taylor's courtroom where the commissioner also found reasonable doubt. The defendant was not completely off the hook, however. Because he failed to show up in court the first time around, the commissioner found him guilty of a failure to appear.

"I thought that was a fair ruling," Shibuya said.

A Washington, D.C., prep school grad, Taylor attended the University of Pennsylvania College of Arts and Sciences, transferring to the University of Pennsylvania's Wharton School midway through his third year. He graduated in 1988 with a degree in economics and went to work as an auditor for a public accounting firm in Washington. He stayed two years.

"It wasn't for me," Taylor said.

Memories of undergraduate classes that delved into the law and a visit to a friend at UCLA led Taylor to enroll in the law school, which offered a strong clinical program.

During one semester his second year, he externed for U.S. District Judge Terry J. Hatter Jr. of the Central District, who encouraged students to watch a trial.

"I felt at home in the courtroom," Taylor said.

It was the spring of 1992, and things were happening in the city that made the law come alive for him, Taylor said. The most dramatic event was the rioting that erupted after the acquittal of Los Angeles police officers in the videotaped beating of motorist Rodney G. King.

Even after he passed the State Bar Exam, he was not convinced he would stay in California. He put the decision-making on hold, however, while he backpacked his way through Europe. When he returned two months later, he went to work for Seyfarth, Shaw, Fairweather & Geraldson, the Los Angeles firm where he clerked the summer between his second and third years at UCLA.

A few months later, he took time off to take the Maryland State Bar Exam, thinking he would like to be closer to his mother and younger sister. His admission to that state's bar would allow him to practice in Washington, D.C.

An offer from the Riverside County public defender's office kept him on the West Coast. A few months later, he joined the Los Angeles County public defender's office.

Taylor handled numerous serious felonies during his 15 years as a defender. In 2001, he represented a Los Angeles man charged with murder in the shooting death of a woman inside his apartment in an industrial area of town. *People v. Murphy*, BA200942 (L.A. Super. Ct., filed 2000).

The killing came to light when the man, faced with eviction for failure to pay his rent, called a friend.

"Don't worry," the friend told him. "You can stay with me for a while."

The man mumbled something to the effect that moving out of his apartment was not an option "because they'll find the body."

"The friend had no idea what he was talking about," Taylor said, "but told [another] friend, who was a cop."

Officers from the Los Angeles Police Department descended on the property with cadaver dogs. When they dug up the concrete floor in the living room, they discovered a remarkably preserved skeleton. The remains, buried five years earlier, had been preserved by the cold concrete slab expertly poured on top of her shallow grave.



"He was a plumber," Taylor said of his client, "and a good plumber."

The jury found the plumber guilty of voluntary manslaughter.

Off the bench, Taylor's favorite pastime is playing with his three girls: 4-year-old Kendall, his daughter from his first marriage, and Olive, 2, and Biancamarie, 4 months, the children from his marriage to Deputy Public Defender Delia M. Metoyer.

When he's not with his children, the commissioner enjoys shooting hoops and watching college basketball on TV.

## KATHRYN MICKLE WERDEGAR

*It's been 10 years since Ronald George became chief justice of the California Supreme Court. The Recorder reflects on his legacy with a series profiling five of the seven justices who have been on the court the longest.*

Mike McKee  
The Recorder  
May 09, 2006

After nearly a dozen years on the California Supreme Court, it's apparent to those in the know that Justice Kathryn Mickle Werdegard has what the Scarecrow and the Tin Man lacked in "The Wizard of Oz" — both a brain and a heart.

And they believe she's used both — along with the courage of her convictions — to go down in history as a progressive moderate who's crafted the law with no particular political bent and with a profound understanding that her rulings affect the daily lives of millions of Californians.

"She's successful in being quite moderate and quite thoughtful without any agenda," says Dennis Maio, an of counsel in Reed Smith's San Francisco office who has known Werdegard for years. "I don't think she has a hostile bone in her body."

Oakland attorney Jon Eisenberg, an of counsel for Encino's Horvitz & Levy who's also acquainted with the justice, says the constant theme of Werdegard's rulings has been "personal issues in everyday life."

"She [has authored opinions in] cases involving reproductive rights, child rearing, employment, freedom of expression, end-of-life decision-making and health care," he notes. "As a whole, I look at her list and I think family — the various aspects of family life."

That would likely please Werdegard, who says she tries to be "mindful" of the impact of her rulings on the state and individuals alike.

"My hope," she says, "would be that I would be perceived to be fair and objective and restrained, yet always sensitive to the human and practical consequences of the decision."

Werdegard says her years on the court have given her "a wide perspective on the issues that are of concern to the citizens of California and a real sense of responsibility to bring to the issues my best judgment."

Werdegard, 70, hasn't expressed any thoughts about retiring anytime soon. And with 12 years on

the high court as of June 3, several attorneys and law professors say she has come into her own as a balancer of the bench.

"Werdegar's legacy," says Stephen Barnett, an emeritus professor at Boalt Hall School of Law, "may well be a court with a strong center, leaning to the left in civil cases, though still to the right in criminal ones."

Although attorneys and law professors believe Werdegar's heart has emerged through her rulings on the bench, her intellect has never been in doubt. She finished first in her class while attending Boalt Hall School of Law from 1959-61, and graduated first in her class with highest distinction from George Washington University Law School in 1962.

Most of her career has been in the cerebral world as a professor, consultant or research attorney. And she has the distinction of joining the high court by replacing Justice Edward Panelli, whom she served as a senior staff attorney for six years.

All that insider knowledge has served her well, most say.

"She really does take cases as they come," says Maio, himself a research lawyer on the court for about 20 years, "and it may be because she was there as an attorney and had a sense of dynamics and a sense of how things work."

Boalt Hall professor Herma Kay says it's apparent Werdegar does much of the opinion writing herself — rather than relying on staff — and even compares the native San Franciscan to Roger Traynor, chief justice from 1964-70 and considered one of the great intellects of the bench.

Kay was Traynor's law clerk for a year before he became chief justice and says Werdegar writes in the same tradition.

Specifically, she says, Werdegar has a lucid writing style, is clear on issues and precedents, respects legislative intent, proceeds cautiously on constitutional questions, considers other states' rulings and explains how the trial courts should apply her holdings.

"Traynor's opinions appeared in case books all across the country in a variety of fields," Kay says. "And I'm sure Werdegar's would as well."

She points to rulings such as 2004's *Catholic Charities of Sacramento Inc. v. Superior Court (Department of Managed Health Care)*, 32 Cal.4th 527, which upheld a statute requiring religion-affiliated social service agencies to provide contraceptive coverage to employees.

"She shows great sensitivity to religious freedom guarantees," Kay says, "but makes quite clear that Catholic Charities is not a religious employer."

She also admires *Evans v. City of Berkeley*, 38 Cal.4th 1, a ruling issued in March that said Berkeley hadn't violated any constitutional rights by denying the Sea Scouts — an affiliate of the Boy Scouts of America — free marina berths as long as the group refused to abide by the city's anti-discrimination policies.

Kay also speaks highly of Werdegar's dissent in 2004's *Lockyer v. City and County of San Francisco*, 33 Cal.4th 1055, in which the justice argued it wasn't necessary for the high court to void nearly 4,000 same-sex marriages performed illegally by San Francisco authorities.

Kay points out that the case dealt with Proposition 22, which only prohibited the state from recognizing same-sex marriages licensed in other states. "So the question of whether those marriages were void was not before the court."

Jon Davidson, legal director of New York's Lambda Legal Defense and Education Fund, said *Lockyer* and *Evans* aren't the only cases that prove Werdegar — whose husband was the director of the San Francisco Department of Public Health during the height of the AIDS epidemic — is gay-friendly.

He also cites *Catholic Charities*, 1996's *Smith v. Fair Employment and Housing Commission*, 12 Cal.4th 1143, which ruled against a landlord who tried to use religious beliefs to refuse to rent to unmarried couples; 2000's *Galanty v. Paul Revere Life Insurance*, 23 Cal.4th 368, which cracked down on insurers trying to deny claims by AIDS patients; and 2003's *Sharon S. v. Superior Court (Annette F.)*, 31 Cal.4th 417, which legalized second-parent adoptions.

"I don't think anyone could say she's got a political leaning one way or the other," Davidson says. "But I think she seems to understand the issues presented."

"The one thing that one comes away with in reading her opinions is that she's smart, she thinks and writes very clearly, and she seems very principled."

San Francisco attorney Jill Hersh, who handles many cases involving gay families, called the *Sharon S.* opinion a "seismic shift" for gays and lesbians.

"What the court was doing was valuing these families," she says, "giving them legitimacy, giving children the protection of the right to have both parents."

As important as that ruling was, several court watchers — including Eisenberg, Kay and Gerald

Uelmen, a professor at Santa Clara University School of Law — believe Werdegar's most historic ruling was 2001's *Conservatorship of Wendland*, 26 Cal.4th 519.

In that landmark decision — reviled by many on the left — Werdegar declared that people wishing to remove life support from semi-comatose patients must prove by clear and convincing evidence that's what the bedridden person would have wanted.

"That opinion, which also was a unanimous opinion, is just so sensitive and so appreciative of individual autonomy," Kay says. "It's really quite remarkable."

Some say that heart, however, compliments a person whom Uelmen calls "the smartest judge on the court." And a justice that Barnett says could have several good years ahead of her.

"She's just starting to come into her own now," he says. "Her legacy could be a good deal broader than it now is."