

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Judicial Profile: Carlos Bea

COURT: Ninth Circuit U.S. Court of Appeals

APPOINTED: 2003, by President George W. Bush

BORN: April 18, 1934

LAW SCHOOL: Stanford Law School

PREVIOUS EXPERIENCE: San Francisco Superior Court Bench, 1990-2003

After long wait, Bea ascends federal bench

Jason Hoppin
The Recorder
November 18, 2003

Carlos Bea can breathe a little bit easier now.

Not only are his chambers in the Ninth Circuit U.S. Court of Appeals much larger than his old haunt at the San Francisco Superior Court, but he no longer has to wonder what kind of federal judge he'd have made. He's about to find out.

The longtime litigator and dedicated Republican had been on the superior court a little more than a year when the first President Bush tapped him for the Northern District federal bench. His nomination died without a hearing, however, and Bea waited a decade before being offered his current post.

The former Olympian is still fit at 69 years old. The white hair, dark complexion and crisp shirts project the dignity of an ambassador. Bea seems to fit right in at the beaux-arts Ninth Circuit headquarters on Seventh and Mission streets. His enormous office is decorated with paintings from his personal collection -- portraits and scenes painted in a classical style. Weathered antiques have been imported in a feeble attempt to fill the cavernous space.

On the superior court, Bea required decorum in the courtroom. Some lawyers say he can come across as imperious. Maybe, but most agree he also features a sense of humor that he's not afraid to show.

His reputation on the superior court bench was generally good. He handled complex litigation, including two closely watched cases over the use of the gasoline additive MTBE. After months at trial, one of the cases settled for nearly \$70 million.

In perhaps his most famous order, he issued an injunction prohibiting an employee of Avis Rent-a-Car from making derogatory remarks to or about Latino co-workers. A bitterly divided California Supreme Court upheld the decision over objections that the ruling improperly enjoined speech.

Bea faced resistance the first time he was nominated, in part over a series of newspaper articles detailing how he benefited from a minority-owned business enterprise (Bea's parents are Cuban). But his nomination sailed through this time without so much as a Congressional peep, despite partisan rancor over some of President Bush's judicial choices. Not one senator voted against him.

"I got a hearing this time," Bea says. "In 1992, I went 14, 15 months without a hearing."

Bea was sworn in recently during a quiet ceremony (a larger investiture will come later) and has been assigned some cases. He'll likely hear his first arguments in January.

"I think he'll do fine because he's a real intellect," said Sedgwick, Detert, Moran & Arnold partner Stephen Jones, who has litigated before Bea. "I think it's a new challenge for him."

Bea will have to change more than just his stationery. As an appellate judge, he'll be on the bench a lot less.

"I undoubtedly will miss trials," Bea said. "But I think about the excitement in the kind of cases that are heard here."

What he'll bring to his new colleagues is recent trial court experience. Bea sees that as valuable, recognizing that appeal court judges rely on the record developed below.

Bea was born in San Sebastian, Spain, a coastal city in the northern Basque country. His parents moved to Cuba when he was young, and then to the United States. He attended Stanford University (for both his bachelor's and law school degrees). In 1952, he played for the Cuban Olympic basketball team.

He spent more than 30 years as a litigator in San Francisco, mostly at his own firm, before he was tapped for the superior court in 1990.

Though he is considered conservative (especially by San Francisco standards), rulings like the Avis Rent-A-Car injunction mark him as one of President Bush's more moderate picks.

Bea's nomination had the support of La Raza Lawyers and the Mexican-American Legal Defense and Education Fund. He was opposed by the National Organization of Women, and other groups said he leaned too far toward business.

But those criticisms didn't take hold. The only Senate Judiciary Committee member to show up for his hearing was the chairman, Orrin Hatch, R-Utah. Making Bea's formal introduction to the committee was Sen. Barbara Boxer, D-Calif. His nomination was quickly sent to the Senate floor, where he was unanimously confirmed.

Bea says he's looking forward to hearing his first argument as a federal judge.

"I think oral argument is very important because it gives the attorney an opportunity to have in insight into what the judges think is important," Bea said.

"I've never been bored practicing law -- not for one day," he said. "I've been tired, I've been angry, but I've never been bored."

Judicial Profile: Marsha Berzon

Court: Ninth Circuit U.S. Court of Appeals

APPOINTED: By President Clinton, Confirmed March 9, 2001

DATE OF BIRTH: April 17, 1945

LAW SCHOOL: Boalt Hall, 1973

PREVIOUS JUDICIAL EXPERIENCE: None

Jason Hoppin
The Recorder
January 25, 2005

Marsha Berzon's ascension to the Ninth Circuit was overshadowed by the longer and more rancorous battle over her colleague, Judge Richard Paez.

Both were finally confirmed after lengthy confirmation processes that descended into partisan politics. Both were attacked as liberal, but after a lengthy floor hearing in the Senate, Berzon was confirmed by a 64-34 vote.

Sen. Barbara Boxer, D-Calif., later presented her with the official Senate tally sheet as a gift.

While her confirmation slipped about as far under the radar as possible for someone who waited two years for the event, her work since then has set her head and shoulders above any other Clinton nominee confirmed late in the former president's tenure.

It took Berzon less than sixth months to get her first published opinion out the door, a key decision on Indian gaming which came out on Aug. 23, 2000. Paez, who had unfinished business on the Los Angeles federal bench to take care of, didn't publish his first opinion until earlier this year.

Berzon has authored 23 opinions, which places her among the court's most prodigious scribes.

It is a remarkable record for a first-year judge. Paez has inked 13 decisions since he received his commission. Judge Richard Tallman, who came on the bench two months after Berzon, has written 11. Judge Johnnie Rawlinson, who came to the court two months after that, has written five.

Furthermore, Berzon has written four dissents, which some consider a measure of a judge's acclimation to the court. Recently, she dissented from a decision holding that the ability to use a computer is not a substantial life activity under the Americans With Disabilities Act.

Some would argue that decision supports her "liberal" label. Whether that's accurate or not can be debated, but it's almost certain Berzon will never be confused with a conservative.

During her confirmation process, Berzon was attacked from the right by those who objected to

her ties to organized labor (she was a longtime assistant general counsel to the AFL-CIO) and her association with "radical" women's causes (she argued several women's rights cases before the U.S. Supreme Court).

But, like it is for most judges who survive confirmation battles, the criticism is a distant echo.

"I really have not followed, in any systematic way, Judge Berzon's decisions while on the bench," said Tom Jipping of the Free Congress Foundation, once one of her harshest critics.

Perhaps because of her experience arguing cases in the federal courts, Berzon questions lawyers with the confidence and vigor of a veteran. During a recent hearing over the constitutionality of IOLTA funding, Berzon appeared to show her hand by vigorously probing the defendant's case.

However, she was just as Socratic in questioning the plaintiff.

"She came to the court very familiar with many of the issues we deal with," said Ninth Circuit Judge Stephen Reinhardt, another prolific author. "There's no question that she's extremely well-qualified for this job."

The two teamed up in a recent suit outlining protected speech to police officers. A defendant had uttered either "fuck you" or "that's fucked" to a park ranger during an arrest of another person, and was arrested for disorderly conduct. In throwing out the conviction, Reinhardt wrote that the case wasn't even close. Berzon joined him to form a 2-1 majority.

Berzon was out of the country and could not be reached for comment for this article.

Reinhardt offers nothing but praise for Berzon: "In a month or so, she was like a fully experienced judge," he said.

He added that Berzon is active in communicating her position to other judges in conference. Her effectiveness in doing so is, perhaps, exhibited by the high number of opinions she has authored.

But this much is clear: Lawyers who ignore Berzon as "the new judge" do so at their peril.

Judicial Profile: Jay Bybee

COURT: Ninth Circuit U.S. Court of Appeals

APPOINTED: March 21, 2003

DATE OF BIRTH: Oct. 27, 1953

LAW SCHOOL: J. Reuben Clark Law School at Brigham Young University

PREVIOUS JUDICIAL EXPERIENCE: None

Controversial past doesn't follow Bybee into courtroom

Jeff Chorney
The Recorder
May 17, 2005

Ninth Circuit U.S. Court of Appeals Judge Jay Bybee had a smooth, bipartisan confirmation only two years ago.

But then scandal erupted last summer in the form of a memo signed while he was assistant attorney general for the Office of Legal Counsel. Detractors slammed Bybee for the document on forceful interrogation, saying it justified torture in President Bush's war against al-Qaida.

A year later, Bybee is anything but controversial.

While remaining true to his conservative roots, Bybee has emerged as a jurist with a knack for creating coalitions and tamping dissent.

And he seems to have good instincts for the jurisprudence of the current U.S. Supreme Court. At least three times, Bybee has lobbied the Ninth Circuit to take cases *en banc*. Although his was the minority view, the Supreme Court eventually overturned the rulings, vindicating his position.

"It tells you that he seems to be in tune with the Supreme Court in a way that other judges are not," said University of Pittsburgh School of Law professor Arthur Hellman. "In these cases, he shares the Supreme Court's view both of the merits and the importance."

In another sign of synergy, Bybee has already sent a clerk to the high court. Martha Pacold, who also worked at the Office of Legal Counsel, is clerking for Justice Clarence Thomas.

So far, Bybee hasn't issued any blockbuster opinions or gotten into any footnote tiffs with his colleagues. Of the 16 opinions he has authored since taking the bench, only three had dissents, and, so far, none has been taken up *en banc* or overturned by the Supreme Court.

Although he said that's a small sample of cases to analyze, Bybee noted that judges agree far more often than people think.

"The common ground among members of the court is much broader than the disagreement," Bybee said. "[But] people aren't interested in the hundreds of thousands of cases each year where

there's no disagreement."

Bybee came to the bench after spending most of his life in government and academia. A member of the Church of Jesus Christ of Latter-day Saints, he completed a mission in Chile and attended Brigham Young University for his undergraduate and law degrees.

Eventually he landed in the Justice Department's civil division, arguing appeals. After serving as associate counsel to the first President Bush, Bybee became a law professor in Louisiana, then helped found the William S. Boyd School of Law at the University of Nevada, the first law school in the state.

Like many judges, Bybee works long days to keep up with the Ninth Circuit's "breathtaking" caseload. But he tries to get home in time for dinner with his wife and four children. And he'll do a Saturday, but always takes Sunday off.

Bybee can be active at oral arguments. Unlike some judges, who admit they question the side they're about to rule against to give them one last chance, Bybee said he hopes to be an equal-opportunity questioner.

He doesn't like it when lawyers don't know their cases, saying it's embarrassing for everyone "when we ask them about case cites and they left them at home and don't remember." Even more irritating is when lawyers come in and "over-argue," he said, either by pushing the facts beyond the record or pushing the law.

"Lawyers who do that will lose credibility," he said. "I will listen more carefully to a lawyer who will recognize the weaknesses in his or her own case."

After the Office of Legal Counsel memo was made public, academics and lawyers criticized Bybee for pushing the limits of the law. But others say it's not fair to bash him because of his resume.

"The work you've done as a practicing lawyer -- in and out of government -- really doesn't have a lot to do with being a judge," said David Rivkin, a partner at Baker & Hostetler in Washington, D.C., who worked with Bybee under the first President Bush. "You can have a very zealous advocate who becomes a strict constructionist on the bench."

The memo flap certainly doesn't seem to have had any effect on his relationship with colleagues. Judge Stephen Reinhardt, who is one of the bench's most liberal members, said that when people become judges it's "as though they're starting all over again."

Judge Alex Kozinski agreed.

"It's certainly had no effect on my relationship with [Bybee]," Kozinski said. "I haven't really given it much thought, if at all."

But not everyone is ready to forget.

Cynthia Hahn, an assistant federal public defender in Reno who has had three cases in front of Bybee, said she worries what the judge would make of a Fourth Amendment claim, for example.

"I wasn't sure I could reach him regarding a client's constitutional violations because of his previous writings," Hahn said. "He seems to not be very concerned about people's constitutional rights."

Rivkin called Hahn's comments an "argument unworthy of a lawyer" because the memo, he said, says nothing about balancing individual rights with the rights of the state.

"I bet you she hasn't read the memo," Rivkin said.

Hahn said she had, indeed, read it.

Bybee declined to discuss the memo.

Judicial Profile: Consuelo Callahan

COURT: Ninth Circuit U.S. Court of Appeals

APPOINTED: May 28, 2003, by President Bush

DATE OF BIRTH: June 9, 1950

LAW SCHOOL: McGeorge School of Law at University of the Pacific, 1975

PREVIOUS JUDICIAL EXPERIENCE: San Joaquin County commissioner, San Joaquin County Superior Court, Third District Court of Appeal

For defendants, new Ninth Circuit judge not an easy sell

Jeff Chorney
The Recorder
January 18, 2005

A word of advice to those appearing before Ninth Circuit U.S. Court of Appeals Judge Consuelo Callahan: Watch out if she asks a lot of questions.

It could mean you're going down.

"I'm probably more focused on the party I want to rule against because I want to test my conclusion and give an opportunity for them to talk me out of it," she said.

There are exceptions. Although she admits to making up her mind on the briefs, she believes in the power of oral argument. That means there's a chance you can persuade her, even if you are on the receiving end of questioning, which she likes to be more conversation than interrogation.

Callahan, who skated through her U.S. Senate confirmation with bipartisan support, gets mostly good reviews from lawyers who have appeared in front of her, even those she's ruled against. While they know she is conservative, especially in criminal issues, attorneys say she's well-prepared and open-minded.

Anthony Gallagher, federal public defender in the District of Montana, argued in front of Callahan in August. Gallagher said the judge seemed more interested in his argument than the other panelists, Cynthia Holcomb Hall and Andrew Kleinfeld.

The direct appeal case, *U.S. v. You*, 04 C.D.O.S. 8020, dealt with whether consenting to a mistrial foreclosed a double jeopardy claim. Callahan eventually wrote the unanimous opinion that shut down Gallagher's appeal.

Even so, "she asked very good questions," Gallagher said. "She found at least our arguments have some validity."

Although she has limited federal experience, Callahan has logged plenty of time on the bench. Prior to her appointment, she served on the Third District Court of Appeal for six years. Before

that, she was a San Joaquin County judge.

She said it was while she was still a lawyer -- she spent a decade as a deputy district attorney -- that she learned how to talk to people. She also spent time at the Sacramento County public defender's office during law school. That experience, she said, helped give her good rapport with defendants when she became a trial court judge.

"I know that [litigants] are real people. I understand the impact" of decisions, Callahan said. "I've had real experiences, taken witnesses to court, really talked to victims. I don't want to ever be accused of being in an ivory tower."

One way she avoids that criticism is by remaining active in the communities around Stockton, where she lives, and Sacramento, where her chambers are located.

She's involved in numerous community groups, focusing on legal education and social work, such as child abuse prevention, which she sees as a way to keep people from entering the court system later in life.

She's also active in legal groups, including the Anthony M. Kennedy American Inn of Court. Colleagues say she brings energy and creativity to the group.

"She's got a tremendous work ethic," said Third District Presiding Justice Arthur Scotland.

Callahan also has a fun side. During one Inn of Court presentation, she doffed a trench coat to reveal a sequined costume and tap shoes -- her way of making a point about judges who "tap dance" around an issue. She then jumped up on a table and did a quick dance.

"It was an image and a lesson that none of us have ever forgotten," said James Mize, a Sacramento County Superior Court judge and current president of the California Judges Association.

So what about her rulings?

Although Callahan has been on the Ninth Circuit bench for less than eight months, a couple of trends are emerging.

One is that it's not easy to convince her to take the side of a criminal defendant. Of the 11 published opinions Callahan has authored, five deal with criminal cases. In all of those, she decided in favor of the government. Notably, all were also unanimous.

She also has written six published dissents. Two of those came in *en banc* requests, *Belmontes v. Woodford*, 04 C.D.O.S. 1732, and *Ileto v. Glock*, 04 C.D.O.S. 4631.

In both, Callahan led dissents in favor of accepting *en banc* review of panel rulings. In the *Belmontes* dissent, Callahan took sides in the ongoing controversy over the Ninth Circuit's role in reviewing state criminal cases.

"The panel ζ dissects a 21-year-old record to second-guess the jury's decision. In doing so, it finds a 'reasonable likelihood' of error where a state supreme court and a United States district court found none," she wrote.

Callahan said judges should take a stand and cast a vote in *en banc* requests because not voting is the same as a "no."

Discussing the *en banc* process, which is unique to the Ninth among the federal circuits, leads her into the ongoing debate over whether the circuit is too big. Members of Congress who want to split the circuit have been accused by others of being ideologically motivated, rather than concerned with the administration of justice.

Callahan has not taken a position on the split, but said:

"In a vacuum, ideology should not be a factor; administration of justice should be. I ultimately hope that whatever decision is made is based on serving the people best."

Judicial Profile: Richard Clifton

Court: Ninth U.S. Circuit Court of Appeals
Appointed: 2002, by President George W. Bush
Date of Birth: Nov. 13, 1950
Law School: Yale University Law School
Previous Judicial Experience: None

Bush pick provides no fodder for political foes

Jason Hoppin
The Recorder
September 24, 2002

That Richard Clifton is even on the bench says something about the type of judge he'll be.

So far, the 51-year-old Clifton is the only one of President Bush's three nominations to the 9th Circuit U.S. Court of Appeals to have been approved. The Honolulu lawyer glided through a thorny nomination process in the Senate that has so far ensnared other Bush picks to federal circuit courts.

The longtime business litigator and Republican Party leader from Hawaii was approved 98-0 in July. The approval was due, in part, to the fact that there was nothing for potential opponents to grab on to -- he never helped organize farm worker unions, never wrote briefs arguing against *Roe v. Wade*, never did anything but be a lawyer's lawyer while managing to pull off the not-easy feat of becoming a well-liked Republican in Democrat-dominated Hawaii.

Even though he says he is "close to what there is of an organized Republican Party in Hawaii," he professes to have "no strongly pronounced political philosophy."

His first panel came somewhat unexpectedly. Clifton was shadowing the judges to get himself up to speed on how the court operates. When one recused at the last minute, Clifton was asked to step in.

Having read the briefs but still not sure how well he knew the cases, Clifton proceeded to question the lawyers anyway. Not bad for a pinch-hitter.

"I would expect to participate actively in any oral arguments," Clifton said.

And it might be refreshing for advocates at the 9th Circuit to hear that Clifton, no doubt owing to his years as a litigator, believes that oral arguments are not only important to the outcome of a case, but a way for judges to show attorneys what they're thinking.

"I think oral arguments can be very valuable in focusing attention on what it is that's on the judge's mind," Clifton said.

Although every state in the circuit is supposed to have at least one judge on the court, Hawaii hasn't had one since Judge Herbert Choy took senior status in 1984. That Clifton will be the second 9th Circuit judge from Hawaii is poetic justice -- Clifton clerked for Choy in the early '70s.

Clifton comes across as talkative, thoughtful and inherently decent, if not humble -- the Department of Justice biography that accompanies his nomination notes that he was an assistant coach for a youth soccer league.

Some of those qualities may as well have been adopted from Choy, whom Clifton calls one of the kindest people he's ever known. "What I have really come to appreciate is the personal openness and willingness to help," Clifton said of his mentor.

Although his roots are in the Midwest, Clifton never left Hawaii after clerking for Choy. He worked at the same firm -- Cades Schutte Fleming & Wright -- for 25 years.

He was a business litigator in a variety of areas, from antitrust to appellate work. He also taught for a number of years at the University of Hawaii's Richardson School of Law, where he taught appellate advocacy.

Though Republicans are about as easy to find in Hawaii as snowflakes, Clifton won the endorsement of the local press and, eventually, Hawaii's two Democratic senators.

Their support may explain why Clifton is on the bench while Bush's two other nominees to the 9th Circuit have languished. Los Angeles Superior Court Judge Carolyn Kuhl's nomination has not been put before the Senate Judiciary Committee, and Sen. Barbara Boxer has expressed concerns about Kuhl's record. Assistant Attorney General Jay Bybee was nominated to the 9th Circuit in May.

Clifton is a member of the Hawaii State Bar Association, the Hawaii Women's Legal Foundation and for years was chairman of Hawaii Public Radio, where he remains a member of the executive committee. He was also a director of the 9th Judicial Circuit Historical Society.

Clifton will have one of the longest commutes of any circuit judge in the country -- though Andrew Kleinfeld, who sits in Fairbanks, Alaska, might have something to say about that. He'll be flying to the mainland about once a month, Clifton said.

"I should have a lot of frequent flier miles."

Judicial Profile: Raymond Fisher

COURT: Ninth Circuit U.S. Court of Appeals
APPOINTED: 1999, by President Bill Clinton
LAW SCHOOL: Stanford Law School, 1965

Circuit Judge Raymond Fisher serves as an example of how the 9th U.S. Circuit Court of Appeals has shifted in recent years.

By John Roemer

Daily Journal Staff Writer

Circuit Judge Raymond Corley Fisher of the 9th U.S. Circuit Court of Appeals calls former Secretary of State Warren M. Christopher "my mentor and friend."

Fisher's career en route to the federal appellate bench has been entwined with Christopher's ever since Christopher cold-called Fisher in 1963 and persuaded him to enroll at Stanford Law School, part of an effort by the school to enlist distinguished graduates to recruit promising students.

Fisher, now 71, went on to edit the Stanford Law Review, as did Christopher and other prominent Stanford alumni such as former Supreme Court Justices Sandra Day O'Connor and William H. Rehnquist.

Rory E. Little, a professor at San Francisco's UC Hastings College of the Law, who was an associate deputy attorney general in the Clinton administration, had judges like Fisher in mind when he said the 9th Circuit has gained new respect nationally in recent years.

"It has become a much more solid and mainstream court," he said. "It appears less driven by radical civil liberties cases. Now its representative docket is filled with big commercial and economic matters."

Little said Fisher is a model of the new 9th Circuit judge. Fisher, of Pasadena, is a 1999 Clinton appointee who once clerked for William J. Brennan Jr., the late liberal U.S. Supreme Court justice, and went on to acquire much commercial expertise as a business litigator before assuming the bench.

Fisher issued an opinion last year in a complex business matter, *Xilinx Inc. v. Commissioner of Internal Revenue*, 567 F.3rd 482 (May 27, 2009) in which the panel reversed a tax-court decision and ruled against a Silicon Valley tech company in an opinion that changed the way stock options expenses were taxed.

"That was a huge tax case involving billions of dollars for the world of commerce," Little said. "That's what the 9th Circuit is doing these days."

Fisher's flexibility showed when he changed his mind in March of this year and re-voted so that the same panel turned the outcome in favor of Xilinx in a new opinion. Fisher acted after reading the IRS' opposition to Xilinx's petition for rehearing and learning that the IRS' lawyers liked the original outcome, but disagreed with Fisher's logic.

"The government failed to support [the first opinion] with enough enthusiasm, put it that way," he said. "We don't change our opinions often, but the function of petitions for rehearing is to give the parties a chance to point out mistakes of facts or law. Rarely do they go much beyond rearguing their case.

"I expected to find that our reasoning was solid and the government would support it. But I took it they were not persuaded we were right. It was an enormously complicated question, and I don't feel embarrassed to confess I couldn't be certain of my interpretation."

Before he reached the 9th Circuit, Fisher crossed paths again with Christopher. Fisher was in private practice in Los Angeles at the now-defunct Heller Ehrman White & McAuliffe, and he served as deputy general counsel for the Christopher Commission as it sought to reform the Los Angeles police department following the 1991 Rodney King beating. Christopher, who served as President Bill Clinton's first secretary of state, likely had a hand in promoting Fisher for a robe, though Christopher declined to discuss the nomination process. Clinton chose Fisher for the 9th Circuit in 1999 as Fisher was serving in the Department of Justice's No. 3 slot, as associate attorney general, a job he said he loved.

"I was enchanted and thrilled by the AG job," Fisher said. "I enjoyed it immensely." Among his duties in the post was helping to vet Clinton's nominees for federal appellate judgeships.

"When President Clinton offered me the opportunity to be a judge, I actually thought it over for a couple of days. I felt a lot of loyalty to Janet Reno," Fisher said of Clinton's attorney general. "She was good enough to encourage me to seize the moment. These are the best two jobs I've ever had."

Christopher, now a senior partner at O'Melveny & Myers in Century City, remains a fan.

"In his opinions, Judge Fisher melds a lifelong commitment to fairness and freedom for all with a healthy respect for precedent," Christopher wrote in an e-mail.

The two men were on opposing sides on June 24, 1981, when Fisher appeared at the U.S. Supreme Court as chief editor of the briefs for a Los Angeles engineering company contesting President Ronald Reagan's executive order terminating all legal proceedings against Iran in exchange for the release of 52 U.S. hostages. At stake for the company was an outstanding \$3 million judgment against Iran, and Reagan's order left it unable to collect. *Dames and Moore v. Regan*, 453 U.S. 654 (1981).

The named defendant was Treasury Secretary Donald Regan.

Christopher, who had recently left office as President Jimmy Carter's deputy secretary of state after having hammered out the hostage deal with Iran, was in the courtroom too, as a notable onlooker.

"He was front and center, and the justices couldn't help but notice," Fisher said. "We were definitely on opposite sides that day."

Recalled Christopher, "The solicitor general asked me to sit with him in the Supreme Court when he argued the case, which involved the hostage settlement agreement that I helped negotiate."

Nor did it help Fisher's cause that the associate justice for whom he'd clerked a dozen years earlier, Brennan, was also sitting a few feet away on the bench.

The court - including Brennan - decided the test of executive power in the president's favor, issuing its ruling affirming broad executive authority a speedy eight days after oral argument.

"It was fascinating to sit there" as a colleague argued the case, Fisher said. "But we lost."

These days, the high court judges Fisher's work not as a litigator but as a left-of-center appellate jurist. He's lost a few in that role too.

A chief example is a major school desegregation case in which Fisher wrote for the majority of an en banc panel affirming Seattle school administrators' integration plan that considered race in assigning students to high schools.

"We conclude that the District has a compelling interest in securing the educational and social benefits of racial (and ethnic) diversity, and in ameliorating racial isolation or concentration in its high schools by ensuring that its assignments do not simply replicate Seattle's segregated housing patterns," Fisher wrote for the 7-4 majority. *Parents Involved in Community Schools v. Seattle School District No. 1*, 426 F.3rd 1162 (2005).

The Supreme Court reversed him 5-4 in 2007. "I consider it an honorable reversal of a principled decision on our part," Fisher said. "I'd been heavily involved in school desegregation cases as a litigator and a parent."

Fisher has thought about how the makeup of the court affected the decision. O'Connor had been replaced by Samuel A. Alito Jr. just a few months beforehand.

"When I wrote [*Parents Involved*], Justice O'Connor was the swing justice, but when the case got to the court, the situation had changed," he said. Associate Justice Anthony M. Kennedy swung to the majority's side even as he complained that the others were too dismissive of the real problems of racial segregation.

More recently, Fisher wrote an opinion reversing a trial judge and reinstating felony charges against a leading Los Angeles trial lawyer, Pierce O'Donnell, for election law violations. *U.S. v. O'Donnell*, 2010 U.S.App. Lexis 12056 (June 14, 2010). Fisher's opinion in that case and in the

criminal law arena generally drew praise from Assistant U.S. Attorney Michael J. Raphael, the chief of the criminal appeals section of the U.S. attorney's office in Los Angeles.

"Judge Fisher typically shows a deep interest in, and excellent understanding of, criminal law and procedure," Raphael said. "He has written detailed opinions in both prominent cases and technical areas, and he has authored important opinions in favor of both sides.

"For instance, his recent opinion in *O'Donnell* provided an unusually thorough analysis of a criminal statute, and his opinion in *U.S. v. Mendoza-Zaragoza* [567 F.3d 431 (2009)] clarified the elements that must be charged in illegal reentry cases, one of the most frequently charged crimes in the circuit."

Fisher said he doesn't have much spare time, but he and his wife, Nancy Fisher, a retired high school English teacher, keep up with their two married children and four grandchildren. At an oral argument session in San Francisco in June, he won the agreement of colleagues on his panel to double the number of cases they'd hear one day so he could get back to Los Angeles for a grandchild's high school graduation.

After hearing argument in a dozen cases, Fisher conceded it was a lot. "Your mind has to appear to be agile," he said. "Construction law, Social Security, the environment, you name it. Now I'll go through this stack," he said, pointing to a pile of briefs on his desk, "to refresh my memory for tomorrow's cases."

Here are some of Judge Fisher's recent cases and the names of some of the lawyers involved:

U.S. v. O'Donnell, 2010 U.S. App. Lexis 12056 (2010) - election law violations

For the prosecution: Erik M. Silber, U.S. attorney's office, Los Angeles

For the defense: George J. Terwilliger III, White & Case, Washington, D.C.

In the Matter of: Southern California Sunbelt Developers Inc. 2010 U.S. App. Lexis 11701 (2010) - bankruptcy attorney fees

For the appellants: Thomas W. Dressler, the Dressler Law Group, Los Angeles

For the appellees: Todd Carl Ringstad, Ringstad & Sanders, Irvine

Xilinx Inc. v. Commissioner of Internal Revenue, 598 F.3d 1191 (2010) - taxation

For the plaintiff: Kenneth B. Clark, Fenwick & West, Mountain View

For the defendant: Arthur T. Catterall, Tax Division, Department of Justice, Washington, D.C.

Gebhart v. Securities and Exchange Commission, 595 F.3d 1034 (2009) - securities fraud

For the plaintiffs: Charles F. Gorla, Gorla, Weber & Jarvis, San Diego

For the defendants: Randall W. Quinn and William K. Shirey, Securities and Exchange Commission, Washington, D.C.

Perry v. Schwarzenegger, 2009 U.S. App. Lexis 27064 (2009) - interlocutory discovery

For the plaintiffs: Theodore J. Boutros Jr., Gibson, Dunn & Crutcher, Los Angeles

For the defendants: Charles J. Cooper, Cooper and Kirk, Washington, D.C.

Alfred Theodore Goodwin
Senior circuit judge, 9th U.S. Circuit Court of Appeals

Career highlights: Elevated to senior circuit judge, 1991; nominated to circuit judge by President Richard Nixon and confirmed by the U.S. Senate, 1971; nominated to district judge by President Nixon and confirmed by the U.S. Senate, 1969; appointed to the Oregon Supreme Court by Gov. Mark Hatfield, 1960; appointed to the Oregon Circuit Court of Appeal by Gov. Paul L. Patterson, 1955; private practice, Darling Vonderheit & Goodwin, 1951-1955.

Law school: University of Oregon Law School, 1951.

Age: 88

By John Roemer

Senior Circuit Judge Alfred Theodore Goodwin, looking back at age 88 on a long, sometimes contentious career on the 9th U.S. Circuit Court of Appeals, doesn't take himself very seriously.

"Now I'm a certified geezer," said the 1971 President Richard Nixon circuit court nominee who is best known for having concluded in 2002 that the phrase "under God" in the Pledge of Allegiance is an unconstitutional official endorsement of religion.

"Also, I'm an old buckaroo," he said, describing a recent spring day in his beloved Oregon ranch country, where he owns a tree farm. Goodwin said he spent six hours in the saddle helping a neighbor gather cows and calves for branding. "I think it's why I'm still here, though my pin bones kind of hurt after."

These days, after four years in private practice and 56 years on state and federal appellate courts in Oregon and California, including a stint as the 9th Circuit's chief judge from 1988 to 1991, Goodwin spends much of the year at his farm. "I spent 60 years scheming and conniving to get back there," he said.

Goodwin has words both loyal and critical for Nixon, the president brought low by scandal who resigned when faced with impeachment proceedings. "In spite of all his faults, and I wouldn't buy a used car from him, he did sign the Clean Air Act and the Endangered Species Act," Goodwin said.

"Watergate, of course, was the worm in my apple. Here's his signature on my commission, and that ex-con John Mitchell," the former attorney general convicted of conspiracy and perjury, he added, shaking his head sorrowfully, "is the other signature."

'Watergate, of course, was the worm in my apple.'
- Judge Alfred T. Goodwin

Goodwin, a former Oregon Supreme Court justice, is from the distant era when political parties could act in bipartisan fashion. A pact between the moderate Republican senator from Oregon,

Mark Hatfield, and the conservative Democrat James Eastland of Mississippi, the chairman of the Senate Judiciary Committee, smoothed Goodwin's path to confirmation, he said.

Politics is a minefield for judges, and Goodwin is wary of airing his views on how partisanship has replaced comity in Washington, D.C. But he said, "The quickest way to become a Third-World nation is to have a parliament that can't function because of partisan warfare. I guess you'd say I'm a fallen-away Republican. I haven't been enthusiastic about party politics recently."

Inevitably, however, a loud political outcry greeted Goodwin's 2002 opinion reversing a district judge and holding that the words "under God" in the Pledge of Allegiance and a school district's policy of teacher-led recitation of the pledge were unconstitutional violations of the Establishment Clause. *Newdow v. U.S. Congress*, 292 F.3rd 597.

"Thus began my fortnight in purgatory," Goodwin said, while insisting his opinion was solidly backed by U.S. Supreme Court precedent. He was safely off in Oregon when the opinion was published on June 26, 2002, but an angry crowd gathered at his Pasadena condo, and U.S. marshals were dispatched to safeguard the residence.

The U.S. Senate voted 99-0 to condemn the ruling, making him the "first person since Hitler to be denounced by 100 percent of the Senate," he said. The late Sen. Robert C. Byrd, the West Virginia Democrat, "thought I ought to be impeached, if not summarily executed," he said. "The court's mailbags were full of letters accusing me of all sorts of treachery to the American way of life."

Goodwin pulled from a file cabinet a souvenir of the case, an eight-pound tome of an amicus brief, 6 inches thick, filed in support of "under God" in the pledge and consisting of about four pages of argument and thousands of pages of names of people who signed a petition urging the court to retain the reference to the deity.

"Thickest brief I've seen," he said. "If you measure it the way you do a horse, it's about a hand high."

The storm blew over. The U.S. Supreme Court reversed his decision on the technicality that the plaintiff lacked standing because he wasn't the custodial parent of the child required to recite the pledge. In a later case over the same issue, a different panel affirmed schools' use of "under God" in the pledge.

David H. Kaye, a former Goodwin clerk who now teaches at The Dickinson School of Law at Pennsylvania State University, credited Goodwin with courage and common sense.

"I have long regarded him as level-headed but willing to stick his neck out when the case law points to a controversial result," Kaye wrote in an email. "I suspect he saw [the pledge opinion] as the most coherent construction of the Supreme Court's cases and went there. Arguably, the Supreme Court was more concerned about politics when it reversed."

Kaye recalled that as an Oregon Supreme Court justice in 1969 Goodwin wrote an unpopular opinion deeming a cross in a public park in Eugene, Ore., to be an unconstitutional establishment of religion.

"I survived," Goodwin said dryly of the pledge imbroglio. Now the case may be back on his radar after a literary agent recently urged him to write about what the agent called "your experience as the antichrist" and what Goodwin described as "the strum und drang [storm and stress] of being an object of obloquy."

Goodwin said he might indeed pen such an article. He took heart from some religious believers who wrote to say he was right to affirm a sharp separation between church and state. "These were folks who knew about Robert Williams and James Madison," he said, referring to the theologian and statesman, respectively, who ensured the Constitution was free from religious compulsion.

"Now we seem to be edging back toward a vertical integration of church and state," he said. "We have candidates who say that very thing."

In another area of the law -environmental - Goodwin caused a stir in 1989 when he reversed a trial judge and ruled in favor of the spotted owl in a dispute with timber logging interests. *Portland Audubon Society v. Hodel*, 866 F.2nd 302.

Goodwin, who has a bachelor's degree in journalism and who worked for a year as a newspaper reporter in Oregon, takes a keen interest in the history of his own cases and of the court in general. He's promoted research into the 9th Circuit by opening his older case files to researcher Stephen L. Wasby, an emeritus professor of political science in New York who has known Goodwin for years.

Wasby in March published a 30,000-word law review article about how judges interact during the en banc process at the 9th Circuit based on his research in Goodwin's archives.

Not everyone at the 9th Circuit was thrilled that Goodwin had opened his files to public view. "There were a few I think well-intended cautions from a handful of judges about making available to scholars any internal memos circulated among judges," Goodwin said.

"I took the view that it was harmless error on my part. There was nothing really harmful or embarrassing. The fact that [former circuit judges Shirley M.] Hufstedler and [the late Walter R.] Ely disagreed about a border search 40 years ago is not world-shaking news.

Wasby, who is affiliated with the State University of New York at Albany, takes an historian's long view of Goodwin. "He's believed to be the only jurist to have served at the state and federal trial and appellate levels, a career pattern of rising from trial to appellate courts we see more often these days as with Judge [Mary H.] Murguia and with the nominee Judge [Jacqueline H.] Nguyen," he said. "It used to be that judges went on a court to retire from legal practice, particularly at the state court level. Now they are apt to make a career of judging."

It's to Goodwin's credit that he opened his files, Wasby said. "There's no question he's taken some flak from some of his colleagues for it. But in a democracy, we ought to know what's going on with our institutions."

Goodwin noted, "Thurgood Marshall, bless his heart, gave all his papers to the Library of Congress, and the republic hasn't fallen - at least not over that."

Here are five of Judge Goodwin's recent cases and the names of some of the lawyers involved:

Lyon v. Chase Bank U.S., 656 F.3rd 877 (2011) - Fair Credit Billing Act

For the plaintiffs: Anna K. Sortun, Tonkon Torp LLP, Portland, Ore.

For the defense: John L. Langslet, Martin Bischoff Templeton Langslet & Hoffman LLP, Portland, Ore.

Mejia-Hernandez v. Holder, 633 F.3 rd 818 (2011) - immigration

For the petitioner, Andrew Knapp, Cifuentes Knapp & Associates, Los Angeles

For the respondent: Glen T. Jager, U.S. Department of Justice, Washington, D.C.

A.M. v. Monrovia Unified School Dist., 627 F.3rd 773 (2010) - disability access

For the plaintiffs: N. Jane DuBovy, A2Z Educational Advocates, Pacific Palisades

For the defense: Jonathan J. Mott, Parker & Covert, Tustin

In re Schwarzkopf, 626 F.3 rd 1032 (2010) - bankruptcy

For the plaintiff: Gary A. Pemberton, Shulman Hodges & Bastian, Foothill Ranch

For the defense: Martha A. Warriner, Reid & Hellyer, Riverside

U.S. v. Leal-Felix, 625 F.3rd 1148 (2010) - criminal sentencing

For the prosecution: Bryan F. Boutwell, special assistant U.S. attorney, Riverside

For the defense: Michael Tanaka, deputy federal public defender, Los Angeles

Judicial Profile: Susan Pia Graber

COURT: Ninth Circuit U.S. Court of Appeals

APPOINTED: 1998, by President Bill Clinton

LAW SCHOOL: Yale Law School, 1972

CAREER HIGHLIGHTS: Appointed by President Bill Clinton to the 9th U.S. Circuit Court of Appeals, 1998; justice, Oregon Supreme Court, 1990-98; justice, Oregon Court of Appeals, 1988-90; judge, U.S. District Court, District of Oregon, Portland, 1983-88; associate and partner, Stoel Reves, Portland, Ore., 1978-83; associate, Taft, Stettinius & Hollister, Cincinnati, Ohio, 1975-78; private practice, Santa Fe, N.M., 1975; assistant attorney general, New Mexico Bureau of Revenue, 1972-74

Age: 61

Circuit Judge Susan Graber compares her job to the brainteasers she enjoys solving in her spare time.

Circuit Judge Susan Pia Graber of Portland, Ore., loves mystery novels, Scrabble, Sudoku and other puzzles.

Solving brainteasers when she's away from her 9th U.S. Circuit Court of Appeals duties involves the kind of thinking that goes into deciding cases, Graber said.

"My favorite kind of case is one that raises questions of statutory interpretation, that asks, 'What does the law mean?'" she said. "I enjoy the process of figuring out lots of pieces of information and coming to a conclusion about what the picture is - it reminds me of doing a puzzle."

Graber, 61, ended up on the West Coast by spreading out a map of America to plan a summer vacation as she studied at Yale Law School.

"The Pacific Northwest sounded romantic and beautiful," said Graber, who was born in Oklahoma. "I was looking at Seattle, but a classmate told me Portland was much nicer. So that's where I went."

She spent a summer clerking for the U.S. attorney in Portland, then returned to Yale for her 1972 graduation. She was only 22.

Though legal jobs in New Mexico and Ohio would intervene, Graber never forgot that Portland summer. In 1978, when an opening arose at Oregon's largest firm, now known as Stoel Rives, Graber jumped.

By 1981 she'd made partner, practicing business litigation and labor law. Two years later, she was appointed a state court judge. In 1988, Oregon's governor placed her on the state appellate bench and, two years after that, moved her to the Oregon Supreme Court.

Meanwhile, Yale classmates and friends Hillary Rodham and Bill Clinton had married and attained the White House. Graber was there for the inauguration, was invited for a holiday celebration at the executive mansion and was among Clinton's appellate nominations.

Local newspapers described her career as "meteoric" when the Senate confirmed her 98-0 in 1998.

Since then, Graber has had plenty of chances to fit together the pieces that go into federal appellate jigsaws.

She was handed a political hot potato right at the start when she was assigned to decide a controversy in Orange County. A firefighters' union that supported the mayor's opponent in an election alleged that members were the victims of revenge firings. Graber's opinion established that city officials can be liable for retaliatory discharges. *Gilbrook v. City of Westminster*, 177 F.3rd 839 (1999).

"Everybody gets his or her fair share [of cases] right from the first day," Graber said of 9th Circuit duty. "I'd been a judge for a number of years, so I was ready."

Her aptitude for the federal bench showed as she authored seven en banc opinions during her first seven years at the 9th Circuit, an unusually high number given that the circuit issues only a handful of en banc opinions annually and has 27 active judges available to write them. Graber's high output identified her as a centrist able to attract a majority to her viewpoint.

A series of cases involving schools and education has been a signature of Graber's work on the court.

In *Association of Mexican-American Educators v. California*, 231 F.3rd 572 (2000), she held that a disputed teacher-skills examination called CBEST was a valid screening test for public school teachers.

In *Lassonde v. Pleasanton Unified School District*, 320 F.3rd 979 (2003), she ruled that high school officials are within their rights in banning a student's proselytizing graduation speech.

In an Oregon case, Graber held that disabled students can get reimbursed under the federal Individuals with Disabilities Education Act for tuition at private schools. *Forest Grove School District v. T.A.*, 523 F.3rd 1078 (2008).

Graber's *Forest Grove* opinion was the only 9th Circuit decision that the U.S. Supreme Court agreed with in full in 2009.

A highly charged challenge of a prestigious private Hawaiian school's policy of excluding non-native applicants led Graber to dissent when two others on a three-judge panel held the school's affirmative action plan was unlawful racial discrimination.

Her dissent attracted enough votes by other circuit judges to compel the court to rehear the matter en banc, and she wrote for a slim 8-7 majority that reversed the panel decision and let the school's policy stand.

"Because the Schools are a wholly private K-12 educational establishment, whose preferential admissions policy is designed to counteract the significant current educational deficits of native Hawaiian children in Hawaii," Graber wrote, and because Congress has passed legislation providing specially for the education of native Hawaiians, "we must conclude that the admissions policy is valid." *Doe v. Kamehameha Schools*, 470 F.3rd 827 (2006).

The decision provoked an outcry from conservative ranks, including from former President Ronald Reagan official Bruce Fein, who wrote that the court had "ratified racism ... with tortured reasoning reminiscent of Jim Crow."

Graber declined to discuss the merits of the cases she's decided. But she did say, "I do find cases from our Hawaiian district court very interesting, with unique and different issues because of the history of Hawaii."

Her *Kamehameha* opinion discussed the mainlanders' economic domination of the islands, the resulting marginalization of native Hawaiians and the importance of nurturing, through the Kamehameha Schools, native traditions.

"King Kamehameha I, on his death bed [in 1819], is reported to have said, 'Tell my people I have planted in the soil of our land the roots of a plan for their happiness,'" Graber wrote. "His great granddaughter, Princess Bernice Pauahi Bishop, echoed that sentiment when she established, through her will [in 1888], the Kamehameha Schools."

Beyond education cases, Graber this year was part of a shift in votes in an important Fourth Amendment matter dealing with computer searches. Earlier, she'd voted with the majority in an opinion that threw out a high-profile prosecution of major league baseball players over steroid use.

Government officials had engaged in misconduct in searching the computers of a drug testing lab, invalidating their case, an eight-judge en banc majority had held in an opinion that established strict rules for how computer searches are to be conducted in the future.

Prosecutors complained that the rules were overly onerous and petitioned for a rehearing. The en banc court agreed to reconsider the matter, and Graber and two others switched their votes so that a majority no longer backed the search rules, making them advisory instead of mandatory. *U.S. v. Comprehensive Drug Testing Inc.*, 2010 U.S. App. Lexis 19070 (Sept. 21, 2010).

Graber is married to a retired vice president of a local electric utility, Bill June. They have a daughter, Rachel, who is a college sophomore.

"It's extremely important to have a life outside the law, both for one's work and one's human existence," she said. "If you're too isolated from people and their concerns, you don't do your job as effectively and compassionately."

Away from the bench, Graber is active on the board of trustees of Portland's Congregation Beth Israel synagogue, where she sings alto in the choir and works on adult education programs.

What does she sing? "We do some Tom Lehrer," she said, referring to the songwriter and satirist. "We sing, 'I'm spending Hanukkah in Santa Monica.'"

Here are some of Graber's recent cases and some of the lawyers involved:

U.S. v. Lazarenko, 2010 U.S. App. Lexis 22908 (2010) - restitution order

For the prosecution: Peter B. Axelrod, U.S. attorney's office, San Francisco

For the defense, Dennis P. Riordan, Riordan & Horgan, San Francisco

Association of American Railroads v. South Coast Air Quality Management District, 2010 U.S. App. Lexis 19237 (2010) - federal preemption

For the plaintiffs: Kevin M. Fong, Pillsbury Winthrop Shaw Pittman, San Francisco

For the defense: Elena K. Saxonhouse and Gabriel M.B. Ross, Shute, Mihaly & Weinberger, San Francisco

Camacho-Cruz v. Holder, 2010 U.S. App. Lexis 18338 (2010) - immigration

For the petitioner: Xavier Gonzales, Las Vegas, Nev.

For the respondent: Charles E. Canter, U.S. Department of Justice, Office of Immigration Litigation, Washington, D.C.

Cox v. Ayers, 613 F.3d 883 (2010) - habeas

For the petitioner: Jeannie R. Sternberg, Habeas Corpus Resource Center, San Francisco

For the respondent: Jamie L. Fuster, attorney general's office, Los Angeles

Hyundai Motor Am. v. National Union Fire Insurance Co., 600 F.3d 1092 (2010) - duty to defend

For the plaintiff: Gene C. Schaerr, Winston & Strawn, Washington, D.C.

Judicial Profile: Michael Daly Hawkins

COURT: Ninth Circuit U.S. Court of Appeals

APPOINTED: 1994, by President Bill Clinton

LAW SCHOOL: LL.M., University of Virginia Law School, 1998; J.D. Arizona State University College of Law, 1970.

CAREER HIGHLIGHTS: Assumed senior status, 2010; Appointed by President Bill Clinton, 1994; Volunteer judge pro tem, Arizona Court of Appeals, 1989-1994; name partner, Daughton Hawkins Brockelman & Guinan LLP, 1980-1994; U.S. attorney, District of Arizona, 1977-1980; associate, Hoffman & Salcito LLP, 1976-1977; associate, Daughton Feinstein & Wilson LLP, 1973-1975; U.S. Marine Corps Judge Advocate, 1970-1973

Age: 66

By John Roemer

SAN FRANCISCO - Senior Circuit Judge Michael Daly Hawkins of the 9th U.S. Circuit Court of Appeals is so enamored with history and politics that he's been known to assume the roles of Ulysses S. Grant and James Madison's lawyer for appreciative audiences at judicial conferences.

But his present-day reality has him potentially making history instead of portraying it by serving on the circuit panel hearing the appeals over the Proposition 8 same-sex marriage ban. *Perry v. Brown*, 10-16696.

The case is a combustible mix of gay rights and politics. California voters agreed to pass the measure in 2008; Chief U.S. District Judge Vaughn R. Walker of the Northern District found it unconstitutional on equal rights and due process grounds in 2010.

Prop. 8 proponents appealed, leading to complex standing questions and infighting over issues related to Walker. Oral argument over whether to release to the public the trial video, and whether Walker's ruling should be vacated due to his status as a gay man, is set for Dec. 8 in San Francisco. Hawkins and his colleagues have already heard argument on the main issue - whether to affirm Walker's ruling on its merits.

Hawkins' own history on the court holds clues for his potential pivotal vote in the Prop. 8 showdown. As President Bill Clinton's first appointee to the federal appellate bench in 1994, Hawkins is liberal but less doctrinaire than fellow panelist Stephen R. Reinhardt, who is expected to agree with Walker. N. Randy Smith, a President George W. Bush appointee, is considered more likely to take the Republican view of marriage and affirm the ban. Hawkins' view of the case could supply the decisive swing vote.

Hawkins, who sits in Phoenix, has been involved in previous same-sex decisions. In 2006, after the Archdiocese of San Francisco concluded that same-sex marriage and adoption were immoral and ordered Catholic social agencies not to place children for adoption in gay or lesbian households, the San Francisco board of supervisors adopted a resolution denouncing the order as

"hateful," "insulting" and "callous." The archdiocese sued, asserting the board's resolution violated the Constitution's ban on official endorsement or disapproval of religion.

Hawkins voted with an en banc majority last year to reject the plaintiffs' suit on standing grounds because they alleged only to have been offended instead of claiming an actual injury. *Catholic League for Religious & Civil Rights v. City & County of San Francisco*, 624 F.3rd 1043 (2010).

'He is smart, conscientious and fair, but I don't think [his two previous gay rights rulings] tell us much about how he will rule on the numerous issues presented by the appeals in the Perry case.'
- Jon Davidson

In another San Francisco gay rights case, Hawkins wrote in support of city supervisors who formally disapproved as "hateful rhetoric" a Christian ad campaign that contended homosexuality is a sin and that homosexuals can change their sexual orientation.

Far from exhibiting religious hostility, Hawkins wrote, the supervisors' actions had the primary effect of "encouraging equal rights for gays and discouraging hate crimes." *American Family Association Inc. v. City & County of San Francisco*, 277 F.3rd 1114 (2002).

A veteran gay rights litigator who is legal director of Lambda Legal in Los Angeles, Jon Davidson, agreed that Hawkins may well be the swing vote in *Perry*.

But Davidson pointed out that complicated questions related to voter initiatives and constitutional principles are present in the Prop. 8 case, making prediction difficult.

"My impression of Judge Hawkins is that he is smart, conscientious and fair, but I don't think these two cases tell us much about how he will rule on the numerous issues presented by the appeals in the *Perry* case," he said.

Hawkins finds lessons for the present in the past as he completes research for a book about how his birthplace, Arizona, attained statehood. The book, *Inventing Arizona*, is due out for the state's centennial next year. Written with a pair of co-authors, it will describe a 1910 conflict between progressive union copper miners and nativists who wished to limit voting rights to English speakers.

"It's striking how recurrent these issues are," said Hawkins, 66, referring to Arizona's recent struggles over immigration politics.

Prop. 8 is hardly Hawkins' first marquee case. Last year he wrote for a minority of dissenters when an en banc panel voted 6-5 that the state secrets privilege means that terror suspects alleging torture cannot sue the U.S. and its subcontractor over the Bush administration's extraordinary rendition program.

Hawkins faulted the majority for "quickly dismissing the voluminous publicly available evidence supporting these allegations." *Mohamed v. Jeppesen Dataplan Inc.*, 614 F.3rd 1070.

"There wasn't much of a dispute that state secrets were involved," Hawkins said in an interview. "My concern was that a trial judge should ferret out the facts behind the government's claims."

Also in 2010 he wrote for a 6-5 en banc majority to affirm certification of a massive gender discrimination class action, *Dukes v. Wal-Mart Stores Inc.*, 603 F.3rd 571.

"Obviously, I was gratified by his rulings," said the plaintiffs' lead lawyer in that case, Brad Seligman of The Impact Fund. "He is highly regarded as a thoughtful and moderate judge."

Reversed by the U.S. Supreme Court, Hawkins was philosophical. "I saw a conservative blogger who advised fellow conservatives to get off the back of the 9th Circuit," he said, referring to the frequent derision directed by the right at the circuit's perceived frequent smackdowns by the high court.

The blogger's point, which Hawkins endorsed, was that the 9th Circuit does everyone a favor by justifying in writing its position on difficult and interesting issues. That tees up cases for Supreme Court scrutiny. "If they take an interest, then we get really good law on important topics that might not have existed otherwise," Hawkins said, paraphrasing the blogger's argument.

Hawkins cited statistics that point to what he called "the true story on the 9th Circuit's reversal rate." Over the course of a decade, he calculated, 12,000 9th Circuit cases reach final judgment. About 2,000 of the losing parties seek Supreme Court review, and the high court grants about 20 of them and reverses about 16.

"By that standard, our reversal rate is about one percent," he said, "and we're doing a good job."

That analysis puts Hawkins at odds with 9th Circuit conservatives like Diarmuid F. O'Scannlain and Carlos T. Bea, who proudly point to dissents they have written that get the Supreme Court's attention and lead to reversals.

But Hawkins said such disputes do not diminish the esteem that tends to bind judges of different political persuasions.

"Across the hall from me is Carlos Bea," Hawkins said, sitting in an away-from-home office at the San Francisco circuit courthouse. "I can't think of a single policy issue on which we agree. Yet I consider him a great friend. He's fun to be around."

"I feel exactly the same way about Mike," Bea said. "We do try to keep politics out of this. You know, there are other circuits where judges just don't even meet with each other."

Hawkins' scholarly pursuits led him in the mid-1990s to find time amid a heavy caseload for a two-year stint of summer classes at the University of Virginia. He got his master's degree in law in 1998 after penning a thesis on the politics of slavery.

He called slavery the "third rail" of the politics of its day: touching it was near political death to any office-seeker's national political ambitions in the period between 1820 and 1840.

What is today's equivalent? "Taxes," Hawkins said, "but we don't get to decide big tax issues here," the way earlier courts were faced with slavery questions as in the 19th Century Amistad and Dred Scott cases.

Even so, Hawkins wrote a major tax shelter decision involving 1,800 taxpayers confronting IRS attorneys who presented false testimony to the U.S. Tax Court following hidden payoffs to some defendants as part of a government scheme to convict the others.

Hawkins and colleagues crafted a remedy that sanctioned the government for fraud, extended relief to the taxpayers who were not paid off and quoted Justice Hugo Black on the IRS lawyers' efforts to hide their misconduct: "Truth needs no disguise." *Dixon v. Commissioner of Internal Revenue*, 316 F.3rd 1041 (2003).

Here are five of Hawkins' recent cases and the names of some of the lawyers involved:

Potrero Hills Landfill Inc. v. County of Solano, 657 F.3rd 876 (2011) - Younger abstention

For the plaintiffs: James B. Slaughter, Lily N. Chinn, Beveridge & Diamond PC, San Francisco and Washington, D.C.

For the defendant: James W. Laughlin, deputy county counsel, Fairfield

McCoy v. Chase Manhattan Bank USA, 654 F.3rd 971 (2011) - Truth in Lending Act

For the plaintiff: Barry L. Kramer, Law Offices of Barry L. Kramer, Los Angeles

For the defendant: Noah A. Levine and Daniel S. Volchok, Wilmer Cutler Pickering Hale & Dorr LLP, New York, N.Y. and Washington, D.C.

In re Bluetooth Headset Products Liability Litigation, 654 F.3rd 935 (2011) - attorney fee request

For the objectors: Theodore H. Frank, Center for Class Action Fairness, Washington, D.C.

For the plaintiffs: Daniel L. Warshaw, Pearson Simon Warshaw & Penny LLP, Sherman Oaks

For the defendants: Terrence J. Dee, Kirkland & Ellis LLP, Chicago

Horne v. U.S. Department of Agriculture, 2011 DJDAR 11160 (2011) - property rights

For the plaintiffs: Brian C. Leighton, Clovis

For the defendant: Assistant U.S. Attorney Benjamin E. Hall, Fresno

Pannu v. Holder, 639 F.3rd 1225 (2011) - deportation

For the petitioner: Joseph J. Siguenza and Ashwani K. Bhakhri, Law Offices of Ashwani K. Bhakhri, Burlingame

For the respondent: Assistant U.S. Attorney John B. Holt, Washington, D.C.

Judicial Profile: Procter Ralph Hug Jr.

COURT: Ninth Circuit U.S. Court of Appeals
APPOINTED: August 29, 1977, by Jimmy Carter
DATE OF BIRTH: March 11, 1931
LAW SCHOOL: Stanford, 1958
PREVIOUS JUDICIAL EXPERIENCE: None

Procter Hug proved his magisterial mettle by solving some thorny problems when he was Chief Judge of the 9th Circuit.

John Roemer
Daily Journal Staff Writer
June 16, 2010

Chief Judge Emeritus Procter Ralph Hug Jr. of Reno bailed the 9th U.S. Circuit Court of Appeals out of jams in four notable incidents during the 1990s.

Today Hug, 79, is a respected senior judge who on visits to circuit headquarters in San Francisco is assigned the elegant visiting chambers, complete with fireplace, that were originally designed for U.S. Supreme Court justices who traveled annually to the circuit through 1911 to hear appeals.

Hug is among the 15-member contingent of liberal judges, including Stephen R. Reinhardt, Harry Pregerson and Betty Binns Fletcher, that President Jimmy Carter placed on the 9th Circuit in the 1970s, displacing the court's Republican majority and tilting it to the left.

"I enjoyed being chief, but it was good to pass it on," said Hug, who handed the circuit's helm to Mary M. Schroeder of Phoenix in 2000. "Now, the nice thing about senior status is that I have half the case load. I still go to work every day, but I'm not as pressed."

Three of the 1990s incidents that Hug engineered to successful conclusions involved San Francisco Bay Area judges in trouble.

The first came when U.S. District Judge Robert P. Aguilar of San Jose was tried and convicted by a jury in 1990 for disclosing a wiretap and obstructing justice. The sensational case involved Aguilar's allegedly giving improper warnings to "Trigger Abe" Chapman, an organized crime figure and a distant Aguilar relative, about government surveillance.

Aguilar was the first federal judge charged with criminal conduct while in office, and the case proved to be an enormous embarrassment to the 9th Circuit as Aguilar's appeals dragged on for half the decade.

Hug wrote three separate appellate opinions that persuaded his colleagues to reconsider and ultimately to reverse the convictions. That kept Aguilar out of prison and let him retire with his bar card intact to practice law.

Hug first dissented when a three-judge panel voted to affirm the wiretap disclosure conviction.

Next, Hug wrote the opinion for an en banc majority in 1994 that reversed Aguilar's convictions entirely on the technical grounds that the wiretap authorization had expired, so Aguilar could not have illegally disclosed it, and that he had not obstructed justice because the statute in question applies to pending judicial proceedings and Aguilar had instead allegedly interfered with an FBI investigation.

Finally - after the U.S. Supreme Court restored the wiretap disclosure conviction and sent the case back to the 9th Circuit - Hug again wrote for an en banc panel, this time holding that the relevant jury instruction had been erroneous. The panel again vacated Aguilar's conviction and remanded for a new trial. *U.S. v. Aguilar*, 80 F.3rd 329 (1996).

At that point, federal prosecutors gave up and dropped the case in exchange for Aguilar's resignation and his acknowledgement, without admitting criminal wrongdoing, that he had disclosed the wiretap information.

Paul B. Meltzer of Santa Cruz, Aguilar's trial attorney, said of Hug at the time, "We're fortunate we had someone of his stature who would stand up for the legal principle that there's no crime without criminal intent."

Aguilar's 1996 resignation, finally ending the painful epic, came just as Hug took over the chief judge role from the former chief, J. Clifford Wallace of San Diego.

Wallace stepped down before his term was up so that Hug could assume the post just 10 days before his 65th birthday, at which point he'd have become ineligible under court rules.

A problem arose immediately. Concerned legal observers alerted Hug that Circuit Judge Cecil F. Poole of San Francisco, then 81, was suffering from mental confusion that left him unfit to decide cases. Complicating matters, Poole appeared unable to acknowledge that he was sick.

Hug said he realized that handling this hot potato would require him to advocate before a canny judge for his own retirement.

Friends had approached Poole privately with pleas to step down. But Poole, a proud black jurist who'd spent a lifetime taking courageous stands against prejudice, rebuffed them. Wallace and Hug both met with Poole. There were arguments, unpleasant scenes and indecision.

At one point, Hug said, Poole agreed to retire. Then he changed his mind. It took more meetings and all of Hug's persuasive powers for him and others to persuade Poole to take senior status, Hug said.

"We indicated to him that he had a wonderful reputation and that he shouldn't jeopardize it," Hug said.

At length, in 1996, Poole agreed to a graceful exit into senior status. He died in 1997 of complications from pneumonia.

Two more knotty problems loomed. Veteran U.S. District Judge Stanley A. Weigel of San Francisco was also showing symptoms of mental breakdown, and Hug was again called upon to intervene.

Weigel was known for a volcanic temper. "I'm afraid he'll throw you out of his chambers," one colleague worried as Hug arrived.

"We kept it cordial," Hug said. "And it only took one meeting. He went senior and didn't sit on cases any more." Weigel died in 1999 at age 93.

The touchy nature of the Poole and Weigel incidents remains evident. Hug at first declined to mention either man by name, though he confirmed their identities when the Daily Journal learned them elsewhere.

"We tried to keep things quiet," Hug said in explaining his reluctance to discuss what he considers skeletons in the circuit's cupboard. "All the work we did to keep it from the public," he lamented. "These things are so sensitive. You're trying to preserve the reputation of the judge when it's apparent he's slipping some."

In 1997, somewhat shaken by having to venture into psychiatry to aid colleagues, Hug and circuit officials retained Isaiah N. Zimmerman, a Washington D.C.-based clinical and consulting psychologist with wide experience with the judiciary, to field questions from chief judges and to deal with problem judges as needed.

Hug's last major headache also arrived in 1996. "Within three weeks of my appointment as chief, a 9th Circuit split proposal became a serious question in Congress, and I felt I had to go to Washington at once to deal with it," Hug said. "It took a lot of energy away from judging."

He took along as allies former Chief Judge James R. Browning of San Francisco, the veteran of an earlier successful anti-split campaign, and Circuit Judge Charles E. Wiggins of Las Vegas, who had previously served in the U.S. House of Representatives and whom Hug valued for his political insight.

To stall for time and to demonstrate that most informed onlookers opposed dividing the court, Hug and his crew promoted a study commission that held hearings in Seattle, San Francisco and elsewhere. "In Seattle, 30 people testified and only five were for the split," Hug said. Among the pro-split faction were Circuit Judges Andrew J. Kleinfeld and Diarmuid F. O'Scannlain.

"In San Francisco, only one was for it," Circuit Judge Joseph T. Sneed, Hug said.

Though the proposal faltered and eventually failed, Hug said that Sneed, who died in 2008, and a pro-split colleague, Circuit Judge Stephen S. Trott of Boise, Idaho, continued for years to circulate memos among their colleagues claiming that various circuit problems would vanish if the circuit were smaller.

For his part, Trott has nothing but praise. "Procter Hug is really everybody's model for an ideal federal judge," Trott said recently. "He has a phenomenal knowledge of the law, he has wisdom, judgment and temperament, he's respected by everybody and he's a terrific guy. He was a great chief judge and he made an impact on the law of the 9th Circuit during his long tenure."

A former clerk, Michael W. Large, now a senior associate at Reno's Laxalt & Nomura, said that his time with Hug in 2002-2003 was "the best job I ever had." Large especially appreciated Hug's habit of holding daily conferences with his clerks to discuss cases, current events and legal news. "He's extremely well-respected as a thorough, intellectual judge," Large said.

Hug's significant opinions include a landmark abortion ruling in *National Abortion Federation v. Operation Rescue*, 8 F.3d 680 (1993), in which Hug reversed a Los Angeles trial judge and revived a class action, holding that charges of conspiracy to block access to abortion clinics were actionable under federal law.

A case that makes Hug smile in retrospect involved his opinion for a 6-5 en banc majority that a jury, not a judge, must rule on facts necessary to establish the existence of an element of a crime and that a trial court's failure to follow that procedure is structural error. *U.S. v. Gaudin*, 28 F.3d 943 (1994).

Then-Circuit Judge Alex Kozinski wrote the dissent, predicting that "a tsunami" of habeas petitions would flood the circuit as a result of the majority's position.

Hug chuckled as he recalled that soon thereafter, he read that an actual tsunami had threatened the Hawaiian island of Kauai but had failed to materialize.

"That'll be known as the Kozinski tsunami," he joked, discounting the likelihood that appeals would actually engulf the court. When the U.S. Supreme Court voted 9-0 to deny certiorari, affirming Hug's position, Kozinski graciously brought him the news and congratulated him, Hug said.

Here are five of Hug's recent cases and the names of some of the lawyers involved:

Collins v. Runnels, 603 F.3d 1127 (2010) - habeas

For the appellant: Fay Arfa, Los Angeles

For the defense: Deputy Attorneys General David Andrew Eldridge and Justain Riley, Sacramento

Ramirez-Villalpando v. Holder, 601 F.3d 891 (2010) - immigration

For the petitioner: Brett A. Shumate , Wile y Rein, Washington, D.C.

For the respondent: Aimee J. Frederickson, U.S. Department of Justice, Washington, D.C

Espinosa v. City & County of San Francisco, 598 F.3d 528 (2010) - civil rights

For the plaintiff: Benjamin Nisenbaum, Law Offices of John L. Burris, Oakland

For the defense: Peter J. Keith, Deputy City Attorney, San Francisco

U. S. v. Sipai, 582 F.3d 994 (2009) - criminal sentencing

For the appellant: Rebecca Sullivan Silbert, Federal Public Defender, Oakland

For the appellee: Tracie L. Brown, Assistant United States Attorney, San Francisco

Citizens for Better Forestry v. U. S. Dep't of Agric., 567 F.3d 1128 (2009) - attorney fees

For the plaintiffs: Peter M.K. Frost, Western Environmental Law Center, Eugene, Ore.

For the defense: Andrew A. Smith, Andrew C. Mergen and Robert J. Lundman, U. S. Department of Justice, Washington, D.C.

Judicial Profile: Andrew Jay Kleinfeld

Court: Ninth U.S. Circuit Court of Appeals
Appointed: Sep. 16, 1991 by President George W. Bush
Date of Birth: June 12, 1945
Law School: Harvard Law School
Previous Judicial Experience: None

The Alaskan frontier is the perfect backdrop for Andrew Jay Kleinfeld's libertarian judicial philosophy.

John Roemer
Daily Journal Staff Writer
May 19, 2010

From the kitchen table in his log house near Fairbanks in Alaska's vast interior, Circuit Judge Andrew Jay Kleinfeld can gaze at Mt. McKinley on the 9th U.S. Circuit Court of Appeals' far northern frontier.

Kleinfeld lives closer to the North Pole than to circuit headquarters in San Francisco.

He extols Alaska's beauty, but he could do without the commute. So Kleinfeld confided that he has both public and private reasons for opting to take senior status when he turns 65 on June 12.

Publicly, he said he's determined not to become a liability to the court as have other judges he's watched linger too long.

Privately, he said he's tired of the monthly schlep to oral argument sessions at the 9th Circuit's West Coast courthouses. As a senior judge, he'll be entitled to a reduced workload that will cut down those 12-hour airline marathons.

"Fairbanks is so far west it's actually north of Hawaii," Kleinfeld said in an interview in San Francisco. "The travel is extremely burdensome for me. I've been a federal judge for 24 years now, and a lighter travel load is attractive."

Kleinfeld was born in New York City and got his legal education at Harvard Law School, where he graduated with honors. He fell for Alaska on a post-graduation trip and landed a clerkship with an Alaska Supreme Court justice. He went into private practice in Fairbanks, became a sled dog mushing fan and adapted to life below zero.

He likes the rugged pioneer spirit of the state's isolated townships. He keeps a photo he took of one general store's handmade sign: "Hyder, Alaska - a town of about a hundred happy people and a few old s---heads," on his San Francisco away-from-home chambers' wall.

Politically, Kleinfeld is strongly conservative. President Ronald Reagan made him a district court judge; President George H.W. Bush elevated him to the circuit, making him only the second Alaska resident after Senior Circuit Judge Robert Boochever to have been appointed to the federal appellate court.

"When President Reagan put me on the federal bench, he got what he was looking for," Kleinfeld said, referring to his Republican viewpoint. His urge to go senior outweighed his distaste for opening an active judgeship for a Democrat like President Barack Obama to fill. "My decision was to the contrary of my political preferences," he said.

Stephen L. Wasby, who studies the 9th Circuit as an emeritus professor of political science at the State University of New York at Albany, said that Kleinfeld has long been a member of the court's right wing. "He's consistently been part of a conservative bloc" composed of Diarmuid F. O'Scannlain, Richard C. Tallman, Carlos T. Bea, Consuelo M. Callahan, Sandra S. Ikuta, N. Randy Smith and sometimes Chief Judge Alex Kozinski and Ronald M. Gould, Wasby said.

"Now that vote will be lost, when the court decides whether to take a case en banc," Wasby added, referring to court rules that mostly exclude senior judges from the process of reviewing the circuit's most critical cases.

Kleinfeld's conservatism has a libertarian bent, according to Kozinski, another Reagan appointee, who said in a 2007 interview that he shares those values.

Libertarians are hard to pin down, Kozinski said.

"Put two libertarians in a room, it's like putting two Jews in a room - you get three opinions," Kozinski said. "Put me and Kleinfeld in a room. Now you've got two libertarians and two Jews - and you'll likely get about eight opinions."

Kleinfeld laughed at Kozinski's quote and said he couldn't dispute it. "I'll let other people label me," he said. "I don't work from a label to a result."

He took a mild dig at Kozinski. "Alex's writing is always fun to read," Kleinfeld said. "Mine is always clear."

Kleinfeld is proud of his legal craftsmanship, but a longstanding negative rap is that he is extremely slow to produce opinions. His first four signed panel opinions this year took an average of 15 months each to turn out, from oral argument to filing. One of them, even after it was amended to correct an error and add a citation, still contained an obvious mistake in which one witness was confused with another. *Primiano v. Cook*, 2010 U.S. App. Lexis 8859 (April 27, 2010).

By contrast, for all judges in the 9th Circuit, the median time from argument to filing is 1.3 months, according to 2008 court statistics.

Slow decision-making by the federal courts was one of the top gripes by practitioners at last year's 9th Circuit conference.

Delay can have serious consequences. A long-anticipated fifth Kleinfeld opinion this year, written for a 7-4 en banc majority, reversed a panel decision and rejected claims that federal law grants parole rights to California prison inmates. Hundreds of inmates' parole bids stalled while district courts waited for the needed guidance that Kleinfeld took 15 months to produce, from argument to filing. *Hayward v. Marshall*, 2010 U.S. App. Lexis 8411 (April 22, 2010).

Kleinfeld's sluggish drafting provoked judges with parole appeals clogging their dockets, according to Supervising Deputy Attorney General Jennifer Anne Neill of Sacramento, whose office oversees inmate litigation.

"We kept hearing judges say, 'We're tired of waiting for *Hayward*,'" Neill said. "That decision will impact about 1,500 cases currently in district courts statewide." About 140 inmate appeals at the circuit court level also remained in limbo until the decision was finally published.

As many as 30,000 state prisoners with sentences of life with the possibility of parole are potentially affected.

Kleinfeld's *Hayward* opinion came with a highly unusual dissent by an impatient Circuit Judge Marsha S. Berzon, who criticized him for wasting time.

"The majority ... engages in its abstract, superfluous discussion of state prisoner release systems, surveying a range of such systems - including, presumably because it is the home of the author of the opinion, Alaska's - and distinguishing between the general categories of 'good time' and 'parole,'" Berzon wrote. "This extended discussion is dicta of the most objectionable type. ... The upshot is that, if it has any effect at all, Part II of the majority opinion will only sow confusion."

Kleinfeld conceded that he's not a fast writer, but he has reasons. "Some come out slow," he said, "because I write my own opinions."

He has long been a critic of letting law clerks write first drafts, which judges then edit. "I do not think that is a good thing, but it clearly takes longer to write them than if you assigned them to someone else."

Kleinfeld does it himself in part because he's not sure he can trust his clerks. He believes that law schools in recent years have turned out politicized graduates steeped in questionable courses with titles such as "Gender and the Law," "Race, Racism and American Law" and the like, as he wrote in a 1994 essay. The "proliferation of electives in place of the traditional curriculum means that I cannot count on a law clerk's understanding of the law that we will need to apply in our cases. If I see too many 'Law and ...' courses on an applicant's resume, I am likely to reject it."

Jennifer Spreng, who clerked for Kleinfeld in 1996-1997 and is now an assistant professor at Phoenix School of Law in Arizona, said she's not surprised to hear her former boss critiqued for tardy opinions.

"He was always a few behind," she said. "If you're going to write collaboratively, that's bound to be slower. I think it's very honorable to have the integrity to say, 'I'm going to write them all.'"

Among Kleinfeld's best-known opinions was his arguably libertarian decision to reverse a district judge and write for a unanimous panel that an Alaska high school student's free speech right to wave a banner reading "Bong Hits 4 Jesus" was violated by the school principal, who suspended him. *Frederick v. Morse*, 439 F.3d 1114 (2006).

The question, wrote Kleinfeld, was whether school administrators could "punish and censor non-disruptive, off-campus speech by students during school-authorized activities because the speech promotes a social message contrary to the one favored by the school." The answer, he added, "is plainly, 'No.'"

However, the U.S. Supreme Court overturned Kleinfeld and colleagues on a 5-4 vote, holding that school speech can be restricted for promoting illegal drug use. *Morse v. Frederick*, 551 U.S. 393 (2007).

"Usually, I don't like to say I'm right and the Supreme Court is wrong," Kleinfeld said. "But that one is an exception."

Other times, the high court has seen things Kleinfeld's way. In a landmark assisted-suicide case, Kleinfeld dissented from the majority view that the 14th Amendment's due process clause protected physician-assisted suicide.

"I doubt that there is a constitutional right to commit suicide," he wrote. *Compassion in Dying v. State of Washington*, 79 F.3d 790 (1996). The U.S. Supreme Court agreed, 9-0, holding that because assisted suicide is not a fundamental liberty interest, the 14th Amendment offers it no cover. *Washington v. Glucksberg*, 521 U.S. 702 (1997).

"The Supreme Court quoted from my dissent," Kleinfeld said.

Cornell W. Clayton got to know Kleinfeld when Clayton and Kleinfeld's wife Judy taught at the University of Alaska.

"Andy was very smart, quick-witted and an engaging conversationalist," said Clayton, who is currently a political science professor at the University of Washington in Pullman. "His political views were conservative, but he could be very fair and open-minded. He was in many ways typical of the young, well-educated, ideologically passionate Federalist Society-type lawyers who were appointed to the federal courts during the Reagan administration."

Here are some of Judge Kleinfeld's cases and some of the lawyers involved:

Service Employees International Union v. U.S., 598 F.3d 1110 (2010) - tax law

For the plaintiff: William E. Taggart Jr., Oakland

For the defendant: Robert W. Metzler, Ivan C. Dale, tax division, Department of Justice, Washington, D.C.

Primiano v. Cook, 2010 U.S. App. Lexis 8859 (2010) - product liability

For the plaintiff: Peter C. Wetherall, Las Vegas, Nev.

For the defendant: Frederick D. Baker, Wayne A. Wolff, Sedgwick Detert Moran & Arnold, San Francisco

U.S. v. Alderman, 2010 U.S. App. Lexis 7758 (2010) - criminal sentencing

For the prosecution: Michael S. Morgan, U.S. attorney's office, Seattle, Wash.

For the defense: Ralph Hurvitz, Seattle, Wash.

In re Deuel, 594 F.3rd 1073 (2010) - bankruptcy

For the plaintiff: James C. Mitchell , Mitchell & Gilleon, San Diego

For the defendant: Michael Y. MacKinnon and Kathleen A. Cashman-Kramer, Pyle Sims Duncan & Stevenson, San Diego

Hayward v. Marshall, 2010 U.S. App. Lexis 8411(2010) - inmate parole

For the plaintiff: Michael Satris, Bolinas

For the defendant: Jennifer A. Neill, attorney general's office, San Diego.

Judicial Profile: Mary Helen Murguia

Court: Ninth U.S. Circuit Court of Appeals

Appointed: 2011, by President Barack Obama

Law School: University of Kansas School of Law, 1985

Previous Judicial Experience: District judge, District of Arizona, appointed by President Bill Clinton, 2000; counsel, then director, Executive Office for U.S. Attorneys, 1998-2000; assistant U.S. attorney and criminal deputy chief, Phoenix, 1990-1998; assistant district attorney, Wyandotte County, Kansas, 1985-1990.

Age: 51

By John Roemer

Growing up in humble beginnings as the daughter of Mexican immigrants, Circuit Judge Mary Helen Murguia never dreamed she'd end up as the newest jurist on the 9th U.S. Circuit Court of Appeals.

Her parents Alfred and Amalia Murguia settled in Kansas City, Kan., 60 years ago. Her late father was a steelworker and her mother made a home for the seven Murguia children, of whom Mary, 51, and her identical twin sister Janet are the youngest.

"It's a privilege to be here," Mary Murguia said in a recent interview at the 9th Circuit headquarters in San Francisco, where she was on panels hearing oral arguments. "Considering my family background, who would have thought?"

Murguia took office Jan. 4 and keeps chambers in Phoenix, Ariz.

'The idea that a Hispanic judge should never preside over a controversial case concerning alleged acts of racial profiling purportedly committed against Hispanics is repugnant...'
- Mary Helen Murguia

She and her siblings grew up watching TV, including shows like "Hill Street Blues" and "L.A. Law" in which women were cast as district attorneys, Murguia recalled. "Adam's Rib" featured a female lawyer crusading for women's rights.

"It was our view on the world," she said.

Her parents stressed education and community involvement. Mary and Janet Murguia earned undergraduate degrees from the William Allen White School of Journalism at the University of Kansas and both double-majored in Spanish. Then they studied law, as did two brothers, including Carlos Murguia, who is a U.S. district judge in Kansas.

"My sister and I went to school together for financial reasons," Mary Murguia said. "We lived in the same room, shared a blow-dryer. At one point our parents had five kids in college. We come

from not a lot of means. Fortunately there was financial aid, scholarships, work-study programs. We just had to figure out ways to finance it."

From 2000 until President Barack Obama placed her on the appellate bench, Murguia was a U.S. district judge in Phoenix, a President Bill Clinton nominee who won bipartisan backing to become the first Latina federal judge in Arizona. That post followed years as a federal prosecutor and as a director at the Executive Office for U.S. Attorneys in Washington, D.C.

Murguia's prosecutorial background meant she had to scramble to become a full-spectrum judge, said Circuit Judge Barry G. Silverman of Phoenix who has known her for years.

"Because Judge Murguia is a criminal-law lawyer at heart, one of the things that impressed local lawyers about her was how diligently she worked to master areas of the law with which she had no prior familiarity," Silverman wrote in an email. "In particular, shortly after becoming a district judge, she handled a couple of extremely complicated patent cases and was reputed to have worked very hard to learn the area and do a journeyman's job."

Janet Murguia, meanwhile, in 2005 became president and chief executive of the Hispanic civil rights lobby, the National Council of La Raza. Another brother, Ramon Murguia, an attorney in private practice in Kansas City, has served as chairman of La Raza's board of directors.

Those La Raza jobs led to a clash between Mary Murguia and the controversial Maricopa County sheriff, Joseph M. Arpaio, after the American Civil Liberties Union filed a potential class action against him in 2007 over Latino racial profiling claims. The case was assigned to Murguia.

In 2009 - one day after Murguia ruled against a defense motion to dismiss the case - Arpaio and his lawyers said they first learned about Janet Murguia's link to La Raza and called for Mary Murguia to recuse herself from the litigation for alleged bias in favor of the plaintiffs.

Mary Murguia's reaction was a test of her character, her family ties and her judicial chops. She issued a 27-page order citing Phoenix news articles published before the launch of the litigation outlining her sister's job, complete with quotes from Arpaio. Murguia questioned the defendants' truthfulness about their asserted prior ignorance of the La Raza connection, calling it "implausible" and suggesting that the recusal motion was a bad faith litigation tactic.

Even so, she wrote, she would decline to dismiss the motion as untimely "because the Court must abide by an unwavering commitment to the perception of fairness in the judicial process."

Instead, she addressed and rejected the claim that she harbored "personal animus or malice" toward Arpaio, as the recusal statutes require. Murguia pointed out she had previously presided over countless civil cases involving the sheriff and his department and had ruled in his favor on scores of motions.

"Beyond that," she wrote, "the idea that a Hispanic judge should never preside over a controversial case concerning alleged acts of racial profiling purportedly committed against Hispanics is repugnant to the notion that all parties are equal before the law, regardless of race."

She also shot down another of the sheriff's bases for recusal: that she allegedly favored the ACLU because a win for the plaintiffs would help to advance La Raza's political goals and Janet Murguia's career. "Interest," as defined in recusal law, means financial or tangible benefit, not personal satisfaction, she wrote.

And Murguia even raised an issue not addressed by the parties: whether recusal was required because she could be a member of the proposed class of Latino persons who might be stopped, detained, questioned or searched by Arpaio's deputies.

Murguia wrote that she had never been profiled, and, "even under the unlikely scenario that the Court becomes an unnamed class member, its interest in the outcome of the case would likely be de minimis and too insubstantial to necessitate recusal."

After all that, however, Murguia wrote that she would not dodge the critical question of whether in a high-profile case involving strong passions on both sides she should grant the recusal motion to avoid even the appearance of bias.

She quoted a 9th Circuit opinion noting that a "district judge is not a sterile creature who dons judicial robes without any prior contacts in the community but rather is very likely to be a man or woman with a broad exposure to all kinds of citizens of all shades of persuasion and background."

Murguia noted that the circuit has also instructed that when a case is close, the balance should tip in favor of recusal. Reluctantly, she wrote, "in an abundance of caution," she would step away from the litigation.

One of Arpaio's lawyers, Timothy J. Casey, this week called Murguia "a very fair judge." Casey, a name partner at Phoenix's Schmitt Schneck Smyth Casey & Even PC, said he had tried cases before Murguia in the past. "She was very competent," he said. "Our issue [in the Arpaio case] was with her twin. We asked, she recused and that was the court's order."

The case remains in litigation in the District of Arizona before another judge, who in June awarded the plaintiffs nearly \$100,000 in fees and costs as a sanction for defense discovery violations. *Melendres v. Arpaio*, 07-02513.

Murguia, who is single, said that the 9th Circuit workload consumes most of her time. Tending her mother, who has Alzheimer's disease, also occupies her. "I work out, go to movies, try to read," she said. "There never is enough time."

She breaks away occasionally to travel. "I got to Yosemite in February," she said. "Getting to the national parks, that's a goal."

Silverman, the circuit judge from Phoenix, praised Murguia's sense of humor. He remembered that a few years ago she made a video welcoming a court reporters' convention to Arizona. "Judge Murguia looked as though she were speaking from the bench in her courtroom," he wrote, "but when the camera pulled back you could see that she was sitting on a little chair in front of a witness stand with her hands on a court reporting machine. It brought the house down."

Here are some of Murguia's recent cases and the attorneys involved:

Porter v. Horel, 2011 U.S. App. Lexis 21877 - habeas corpus

For the petitioner: Gary Lawrence Huss, Fresno

For the respondent: Deputy District Attorney David Andrew Eldridge, Sacramento

Jit-Singh v. Holder, 2011 U.S. App. Lexis 21451 - immigration

For the petitioner: Robert B. Jobe, San Francisco

For the respondent: Assistant U.S. Attorney Francis W. Fraser, Washington, D.C.

San Francisco Aesthetics & Laser Med., Inc. v. Presidio Trust, 2011 U.S. App. Lexis 21160 - settlement enforcement

For the plaintiff: Stephen K. Rose, Sausalito

For the defendant: Assistant U.S. Attorney Charles M. O'Connor, San Francisco

U.S. v. Iraheta, 2011 U.S. App. Lexis 20848 - illegal reentry

For the plaintiff: Assistant U.S. Attorney Susan B. Gray, San Francisco

For the defendant: Assistant Federal Public Defender Ned Smock, Oakland

U.S. v. Jasso-Estrada, 2011 U.S. App. Lexis 20878 - attempted entry after deportation

For the plaintiff: Assistant U.S. Attorney Alessandra Serano, San Diego

For the defendant: Jennifer L. Coon, Law Office of Jennifer L. Coon, San Diego

Judicial Profile: Mary M. Schroeder

COURT: Ninth U.S. Circuit Court of Appeals

APPOINTED: 1979, by President Jimmy Carter

LAW SCHOOL: University of Chicago Law School, 1965

CAREER HIGHLIGHTS: Chief judge, 2000-07; appointed by President Jimmy Carter, 1979; judge, Arizona Court of Appeals, 1975-79; partner, Lewis and Roca LLP, 1971-75; law clerk, Arizona Supreme Court, 1969-1970; trial attorney, civil division, U.S. Department of Justice, 1965-69

Age: 70

Mary Schroeder broke gender barriers to enter the legal field in the 1960s. Now she prides herself on seeking fairness for others.

By John Roemer

SAN FRANCISCO - Mary M. Schroeder faced uncommon tests as the first woman to serve as chief judge of the 9th U.S. Circuit Court of Appeals, the nation's largest federal appellate bench.

Schroeder, 70, is a President Jimmy Carter appointee who keeps chambers in Phoenix, Ariz. She recently announced she'll assume senior status in 2012. She was chief from 2000 to 2007.

Given the challenges, it's little wonder she admires other strong women. She's currently reading Stacy Schiff's portrait of Cleopatra. Schroeder notes that her own mother was born on Women's Suffrage Day, Aug. 26. Is the women's rights movement in her blood?

"I have no doubt," Schroeder said.

The role of women on the bench, she has said, "is not to feminize the courts, but to humanize them."

During her tenure as chief, Schroeder fought off a determined effort by U.S. Senate Republicans to split the circuit, a campaign that pitted colleagues against one another in a rare display of judicial rancor on a court that publicly stresses its collegiality.

Schroeder also wrestled with a painful and protracted judicial misconduct investigation of U.S. District Judge Manuel L. Real of Los Angeles. Her labors to clear Real of claims he improperly aided a female litigant drew heat from her successor, Alex Kozinski, the current chief judge.

'It is up to us as judges to guard against bigotry.'

And Schroeder was in charge of the circuit on Sept. 11, 2001. She was in Washington, D.C., at Supreme Court headquarters for a U.S. Judicial Conference meeting with then-Chief Justice William H. Rehnquist when a jetliner commandeered by terrorists slammed into the Pentagon and another was reported en route for the Capitol before it ultimately crashed in Pennsylvania.

As Rehnquist ordered the building's evacuation and Schroeder headed on foot to her hotel, she resolved not to order a halt to the oral argument sessions about to get under way across the continent at circuit headquarters in San Francisco.

"I was very proud that the court kept its commitments," she said.

Her most moving moment that tragic week, she recalled, was when airports reopened and she was able to catch the first United Airlines flight back to Phoenix, where ground crew employees of the airline that lost two planes in the attacks lined the Jetway to greet deplaning passengers with lighted candles. Many wept, she said.

A week later, Schroeder was warning the Federal Bar Association in San Francisco about the expected legal and political blowback from the terrorist assaults.

Many in the post-Sept. 11 era would want to lower standards of proof and loosen protections for the individual in order to fight terror, she noted.

"It is up to us as judges to guard against bigotry," she said.

Schroeder said she still stands for civil rights, as she did in a dissent she wrote last year when colleagues affirmed the constitutionality of mandatory DNA tests for accused federal felons as a condition of pretrial release.

"No circuit has ever before approved such a warrantless search or seizure before an individual has been convicted of any crime," she wrote. The government, she added, "fails to justify a Fourth Amendment exemption of this magnitude." *U.S. v. Pool*, 621 F.3rd 1213 (2010).

In an interview, Schroeder insisted she decides such issues on a case-by-case basis. But she added, "There's no question we've been struggling on a really historic level to reconcile security and privacy and rights. I can't help but watch the passing parade and contemplate where we're going ultimately."

Schroeder broke barriers to get to where she is. One of six women in her 1965 class at the University of Chicago Law School, she applied and was rejected by virtually every all-male firm in Phoenix until prominent Arizona attorney John P. Frank hired her on at Lewis and Roca LLP. She made partner in 1973.

Frank, who died in 2002, became Schroeder's mentor and friend. Schroeder, in turn, mentored another woman who came to work at Lewis and Roca and went on to clerk for Schroeder before becoming Arizona's governor and head of the U.S. Department of Homeland Security - Janet Napolitano.

Wrote Napolitano in an email exchange with the Daily Journal, "Judge Schroeder leaves a large legacy for the 9th Circuit especially in her role as chief judge. She has mentored dozens of young people and remains close with her former clerks across the country."

Through much of her tenure as chief judge, Schroeder faced repeated efforts by Senate Republicans to split the 9th Circuit to isolate California and the alleged liberal bias of its circuit judges from the cultural conservatives in states like Nevada, Idaho and Montana.

She flew to Washington repeatedly to lobby against the measure. When necessary, she brought high-powered help. She placed one call to William H. Neukom of Seattle, who at the time was Microsoft Inc.'s longtime chief lawyer, as well as chairman of the firm now known as K&L Gates LLP. Neukom, who is now managing general partner of the San Francisco Giants, testified forcefully before the Senate against a circuit split.

"I needed an articulate spokesman for the IP and IT industry, someone who could describe the links between Silicon Valley and the Pacific Northwest and how they fit together within our circuit, and Bill was very authoritative," Schroeder said.

Said Neukom recently, "Judge Schroeder did in the end retain a unified 9th Circuit, and I hope I contributed to that good result. She was an outstanding leader of the circuit as its chief and also an outstanding member shouldering the workaday responsibilities of that remarkable group of judges."

One of them, Circuit Judge Diarmuid F. O'Scannlain, collected and reported to the Senate the names of 10 colleagues, plus himself, in favor of splitting the court. In an interview last year, O'Scannlain acknowledged that there were bruised feelings.

"I suppose a couple of colleagues felt a little personally upset about it and offered the thought that it was an attempt to divide our collegiality, which it clearly was not," he said.

In the long-running judicial discipline matter, Schroeder three times signed orders absolving Real - a feisty Los Angeles trial judge who has often found himself on the wrong end of circuit reversals - of claims he had intervened in a bankruptcy dispute to aid an attractive female litigant.

In the third order, the circuit's discipline committee backed her up, but Kozinski filed a flaming 39-page dissent. "Our first duty as members of the Judicial Council is not to spare the feelings of judges accused of misconduct," he complained. "I therefore cannot agree, either with the Chief Judge's conclusion that no misconduct occurred or the majority's conclusion that there has been sufficient corrective action to justify dismissal of the complaint."

The matter eventually ended before the U.S. Judicial Conference and led to Real's public reprimand.

Real's lawyer, Donald C. Smaltz of Spiegel Liao & Kagay LLP, dealt with Schroeder extensively during the investigations. "She's a first-rate judge," he said. "Smart, able, decisive and fair."

Said Schroeder, "The truth is that 99 percent of judicial misconduct complaints are not valid. Complaints that raise serious issues are few and far between. And those are difficult to deal with."

Looking back, she said that after several decades on the bench, "I still believe this is the best job the legal profession has to offer." Of her prominent decisions, she rates highest the one that she predicted will appear in her obituary, a case in which she ruled that the internment of Japanese-Americans in the U.S. during World War II was unconstitutional. *Hirabayashi v. U.S.*, 828 F.2d 591 (1987).

She is married to Milton Schroeder, a professor at Arizona State University's Sandra Day O'Connor College of Law. They have two children.

Here are some of Schroeder's recent cases and the some of the lawyers involved:

Islamic Shura Council of Southern California v. FBI, 2011 DJDAR 4702 - FOIA

For the plaintiffs-appellees: Ahilan T. Arulanantham, ACLU of Southern California

For the defendants-appellants: Beth S. Brinkman, U.S. Department of Justice

Lewis v. Verizon Communications Inc., 627 F.3rd 395 (2010) - consumer class action

For the plaintiff-appellee: Michael J. McMorrow, Edelson McGuire LLC, Chicago

For the defendant-appellant, Paul J. Watford, Munger Tolles & Olson LLP, Los Angeles

Bowoto v. Chevron Corp., 621 F.3rd 1116 (2010) - Death on the High Seas Act

For the plaintiffs-appellants: Theresa M. Traber, Law Offices of Traber & Voorhees, Pasadena

For the defendants-appellees: Craig E. Stewart, Jones Day, San Francisco

California State Foster Parent Association v. Wagner, 620 F.3rd 1115 (2010) - family law

For the plaintiffs-appellees: Richard S. Ballinger, Morrison & Foerster LLP, Palo Alto

For the defendants-appellants: Deputy Attorney General Susan M. Carson, San Francisco

Price v. Stossel, 620 F.3rd 992 (2010)- defamation

CALIFORNIA FEDERAL DISTRICT COURT JUDGES

Judicial Profile: William Alsup

COURT: Northern District of California
APPOINTED: Aug. 17, 1999
DATE OF BIRTH: June 27, 1945
LAW SCHOOL: Harvard Law School, 1971
PREVIOUS JUDICIAL EXPERIENCE: None

Judge Alsup not afraid to try something different

Jeff Chorney
The Recorder
May 25, 2004

Here are three important things about U.S. District Judge William Alsup:

He gets to work at 5:30 a.m.

He has strong feelings about class actions.

He goes backpacking every summer in the high Sierras with a cumbersome medium-format camera. It's tough to make pictures and still pack light. But the results are worthwhile, if Alsup's Ansel Adams-esque landscapes decorating the attorney lounge in the Federal Building are any indication.

Alsup said his camera work has improved over the years. "I think the key thing is I would learn from my mistakes," he said.

Alsup uses the same words when discussing his three decades practicing law. It's that ability to learn, combined with being "thoroughly" well-prepared, he said, that made him a successful trial lawyer at Morrison & Foerster where he worked for more than two decades.

Now, nearly five years after President Clinton appointed him to the federal bench, Alsup is still known for his diligence. He's also recognized as a thoughtful judge who is willing to work as hard -- or harder -- as the lawyers who appear in front of him.

Those attorneys call Alsup "innovative," usually in reference to the judge's handling of class actions and securities cases. He's made headlines in his short bench tenure by refusing to just baby-sit those matters.

Instead, Alsup prefers a more active role, requiring, among other things, lead plaintiffs to shop around before settling on a law firm even if some big name first brought their matter to his court.

"He's not afraid to experiment, which I love," said Reed Kathrein, a partner at the San Francisco office of Lerach, Coughlin, Stoia & Robbins, the San Diego-based plaintiffs firm.

Kathrein saw some of Alsup's non-traditional case management in four securities class actions. Besides seeing his client interview other firms -- something Kathrein said wasn't "pleasant" -- he's also seen Alsup order defendants' personal assets be assessed to ensure plaintiffs get the recompense they deserve.

Although these techniques might rub some attorneys the wrong way, Kathrein said the hands-on approach indicates the judge is engaged in the case, which he said means his client will be treated fairly.

"I think it's a great experience. It's a learning experience," Kathrein said.

During a discussion of his approach to class actions, Alsup brought up a check for 52 cents he recently received -- his cut of a class action settlement. It probably cost more than that amount to print and mail it, Alsup said.

"Class actions work pretty well as long as the parties are adversarial," he said. "At first they always are, but if there's a settlement, this is where problems arise."

Some of Alsup's techniques are already being adopted by other judges doing class actions.

Steven Schatz, a partner at Wilson Sonsini Goodrich & Rosati, said he expects more judges will copy Alsup. Schatz thinks one ruling -- allowing defense attorneys to depose confidential plaintiff witnesses in a securities fraud case -- will become more common.

"He doesn't necessarily assume that the way things were done in the past *is* always the best way to proceed," Schatz said.

Although most laud the judge's innovations, another lawyer who's been in front of Alsup said there could be a danger, too.

Joseph Tabacco Jr. of Berman DeValerio Pease Tabacco Burt & Pucillo, another plaintiffs firm, said that although well-intended, the consequences of Alsup's practices could have "the potential to inhibit attorney-client relations."

Alsup said he's not trying to invade the attorney-client privilege. But the lead plaintiff has a duty to the rest of the class, and Alsup believes they therefore should be diligent about picking counsel.

That minor criticism aside, Tabacco said he still knows Alsup will give him a fair shake.

Alsup's feelings of fairness go all the way back to the genesis of his legal career. The judge originally had wanted to be an engineer. But while at Mississippi State University in the mid-1960s, Alsup got involved with the debate team and with a student organization that tried to bring civil rights figures to speak on campus.

Alsup and other students had to fight the administration and even threatened legal action in order to get permission to host the president of the state chapter of the National Association for the Advancement of Colored People.

Alsup called his experience a "footnote" in the larger civil rights movement. Nevertheless, he went to Harvard Law School and, after clerking for U.S. Supreme Court Justice William O. Douglas, returned to Mississippi, his home state, and practiced as a civil rights attorney.

That only lasted six months. Then Alsup and his wife came out to California. But for a brief stint as assistant to the U.S. solicitor general from 1978 to 1980, Alsup worked at MoFo from 1973 until his 1999 appointment.

Alsup speaks very fondly of his time as a trial lawyer, saying he enjoyed nothing more than standing in front of a jury to make an argument. But being a judge seems to suit him, too.

"There are lawyers and judges who work just as hard as I do, but I will say that I am slightly more driven," Alsup said. "I like what I do and I like to see it done as well as it could be done. I see great rewards from all the hard work."

Judicial Profile: Sandra Brown Armstrong

COURT: Northern District of California

APPOINTED: 1991, by President Bush

DATE OF BIRTH: March 23, 1947

LAW SCHOOL: Harvard Law School, 1971

PREVIOUS JUDICIAL EXPERIENCE: Alameda County Superior Court, 1989-91

A winning, forceful personality on the bench

Jason Hoppin
The Recorder
January 21, 2003

Sandra Brown Armstrong has a disarming demeanor for a cop.

Or a former cop, at least. As sweet as the one-time Oakland Police Department officer comes off, though, defense attorneys say not to expect a spoonful of sugar when her rulings come down.

"She's conservative," said one longtime defense attorney. Another said she was "an independent thinker, though not with a pro-defense orientation."

That doesn't mean she's going to railroad anyone. People who have appeared before her say she'll let lawyers make their arguments, though it may take a supreme effort to get her to change her mind once it's made up.

There are exceptions.

In 1998 she flip-flopped, reversing a previous ruling that illegal aliens weren't subject to Fourth Amendment protections. And she has gone after the government in some very high-profile ways, once throwing out the fruits of a federal wiretap because it had only "conditional" authorization from the required Justice Department officials. She also ruled that former President Clinton's "Don't Ask, Don't Tell" policy on gays in the military was unconstitutional. The 9th Circuit U.S. Court of Appeals overruled her.

She presided over the case of a prominent Berkeley landlord now serving prison time in connection with an alleged scheme to import young girls to work for him, and, in some cases, have sex with him. Armstrong rejected a plea deal between Lakireddy Bali Reddy and the government as too lenient. Armstrong later recused herself from the remainder of the case.

She got her law degree by going to classes at night at the University of San Francisco School of Law during her seven-year career as a police officer in Oakland.

"I was exhausted most of the time, but law school was the first educational opportunity I had that I thoroughly enjoyed," she said.

Armstrong spent much of her career in the criminal justice area. She has worked as both a state and federal prosecutor, and once served as a consultant to the Senate Assembly Committee on Criminal Justice. She was commissioner of the U.S. Parole Commission and has also served as a vice chairman of the U.S. Consumer Product Safety Commission.

The first President Bush nominated her to the Northern District bench after she had served two years on the Alameda County bench. She is one of the many Alameda County lawyers now on Bay Area benches who served under former District Attorney D. Lowell Jensen, now her colleague on the federal bench.

Lawyers say Armstrong will let you argue a case. During one recent evidentiary hearing, there was a question on whether she had granted a *Franks* hearing, or the more routine motion to suppress. Despite her own belief that she hadn't granted a *Franks* hearing, she seemed willing to hold one if the government and the defense attorney could agree to one. The hearing was continued on other matters.

People consistently comment on Armstrong's personality -- she doesn't appear to be the kind of judge who'll beat up on lawyers.

Anything but.

"I think that she was very kind to both sides, but also kind of stuck to her guns," said San Francisco solo Angela Bean, who argued a *habeas corpus* case before her. "She made up her own mind about things."

One lawyer, who wanted to remain anonymous, said: "You can get through to her if you are very careful in what you say and what you write and if you are persistent. Somebody might say something they consider to be a throwaway argument and off the argument goes in that direction."

But, the lawyer added, "You will get your chance to be heard."

Armstrong agrees with most of that.

"When I make up my mind, it's not an arbitrary experience. My decision is an informed decision based on the arguments that have been presented," she said in reference to comments that she sticks to her guns.

In civil cases, she will cancel oral arguments if she's made up her mind on the briefs. "Lawyers should know that if I don't take it off calendar it means I have questions that need to be addressed."

But, she added, she will keep the argument on calendar if the losing party wishes. "I generally will hold it."

Motions take on added weight in Armstrong's courtroom, not only because she might rule based

solely on the papers, but because even if an argument is scheduled, "My preference in oral argument is to stick to what arguments have been made in the papers."

Armstrong is also one of the more civic-minded federal judges going. The Oakland native heads the Northern District's CARES committee (Community Access, Relations, Education and Service) and now that her youngest child is about to leave home, is interested in working for a crisis hotline or possibly volunteering as a counselor.

"One of the things I look forward to is filling time with more philanthropic activities," she said. "Until you just kind of get out of yourself and get into somebody else, you don't realize how much you have to be thankful for."

Judicial Profile: Judge Charles Breyer

COURT: Northern District of California

APPOINTED: 1997, by President Bill Clinton

DATE OF BIRTH: June 3, 1928

LAW SCHOOL: Boalt Hall School of Law, 1966

PREVIOUS EMPLOYMENT: Law clerk, U.S. District Judge Oliver Carter; attorney, Juvenile Hall Project, Legal Aid Society of San Francisco; special prosecutor, Watergate prosecution force, DOJ; chief assistant DA, San Francisco; private practice at Coblentz, Cahen, McCabe & Breyer

AGE: 69

PLACE OF BIRTH: San Francisco

POLITICAL AFFILIATION: Democrat

CLE SUBJECTS: Adjunct professor at Hastings College of the Law; evidence, sentencing, trial practice

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

A: I think [what] I enjoy most about it is making decisions that affect the parties, that have some bearing on the outcome in any disputes. I enjoy making decisions.

Q: What do you enjoy least about being a judge?

A: I think needless antagonism between counsel.



For video footage from this interview, click the image above.

Q: If counsel become involved in a heated argument before you in a motion how do you typically handle that?

A: Of course the question is does the argument make a difference? Are they arguing something that's important, or are they arguing something that's unimportant. If they argue something important, that's good, that's what you're here for, to listen to important argument. I think that if it's unimportant, it becomes annoying, and I try to bring them back, bring the parties, the lawyers back to points that are important. And also, I don't welcome any personal remarks between the counsel.

Q: With regard to motion practice, do you decide motions solely on the briefs or do you prefer to hear argument from the attorneys?

A: The answer is both. In federal practice, briefs are very important, but there is no substitute for oral advocacy, and oral advocacy frequently puts the flesh in a motion into the case, which is a part of people's lives. So I welcome oral advocacy. And I certainly can change my mind based upon oral advocacy.

Q: To make case management conferences run smoothly, what would you advise attorneys to have done and to have prepared before coming to court?

A: Of course [to] discuss the case with their opposing counsel and to see whether there is a consensus as to how the case should proceed. In particular ... every case presents a problem. It presents a problem because it wouldn't be a case unless there was some problem. They would have resolved it, or there wouldn't have even been an issue. So when it comes to me, it comes to me always as a failure in communication. Not always a failure in communication, but a failure in resolution. And sometimes the problem is communication, sometimes it isn't. And so I want them to at least have communicated with one another before they come in and see me.

Q: How do you typically handle discovery disputes?

A: Refer them out to magistrate judges. I do it for several reasons, and that's not true of my colleagues — some keep it, some don't. Number one, I do it because I don't think I'm particularly good at it. I refer it out to people who are very good at it, and I don't consider myself very good at it, at resolving these disputes, so I turn it over to an expert. Secondly, I am concerned that I would form a judgment as to what side is being unreasonable in the process and [what] side isn't, and I wouldn't want that judgment to influence the outcome of the case.

Q: Over the years, what impact has technology had on litigation and especially in jury trials?

A: It's had an enormous impact — both good and bad. In terms of the good, it has enabled parties to focus on information, and to obtain and focus on information that is crucial to the case — there are no buried documents, it's possible to get everything. That's on the good side. On the bad side is the same thing — it's possible to get everything. So as a result, the focus can become diffused, and that's not a good side. How does it affect the juries? I think that because of technology, PowerPoint, highlighting documents and so forth, it's made the cases more understandable to jurors. It's enabled them to understand the issues, the facts.

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

A: I would say, first, by being very straightforward; by paying attention to their cases, not letting them languish, not going through all available processes in order to prepare their case for trial. They have to make judgments in the civil area, they have to make judgments based upon cost — sort of a cost-benefit analysis. That's what lawyers can do and should do. That would be useful.

Q: What advice do you have for new attorneys just entering the field?

A: I would say that every attorney who comes in front of the court has 100 percent credibility. If you don't know them at all, I would take whatever they would say at face value and believe it. What happens is they can lose their credibility. And so I say to new lawyers, "Be careful, you come in with all of your credibility, and your job is to maintain it."

Q: What are some common mistakes you see experienced attorneys make?

A: Experienced attorneys know the judge, know *their* judge, understand what's important in presenting the case to the judge who has the case in front of him or her. That's really the keystone. Lawyers who may be very experienced but don't understand the judge can run into some difficulties.

Q: What are some of the most common reasons for sanctioning an attorney in your courtroom?

A: In 12 years, I think I've imposed sanctions less than half a dozen times. It concerns me if an attorney makes representations which are untrue, in matters in which the attorney would have specific knowledge, like what he or she did. That would be sanctionable conduct. Arriving late is an example, or missing a court appearance, without an excuse. I think when a pattern develops that this happens, then I would impose monetary sanctions. But again, I go back to the fact that I don't think I've done it more than six times. Now, I found that a look from the bench can be just as effective as any other sanction.

Q: Do you participate in any community activities?

A: I do a lot. Of course, I teach [at Hastings College]. But I'm very active in bench-bar type of activities. We developed a media room in this building. We developed attorneys lounges in all three of our courthouses — San Francisco, Oakland and about to open one in San Jose. Those are the activities I'm involved in. I'm involved in strategic planning for the judiciary of the United States. I've been very involved in that. This is [showing document] a strategic plan for the federal judiciary that was adopted. We spent two years writing it; it was adopted by the judicial conference, which means that this is the guiding document for development of the judiciary in the next five years. So I spent a lot of time on that.

Q: Speaking of the judiciary, we've seen a lot in the news lately about federal judges not being appointed given the political climate. Do you think if you were appointed today, would you be willing to go through the process given what it's become?

A: The answer is yes because the job itself is worthwhile. But the partisanship that exists is appalling. I have found that when an individual is appointed a judge, for the most part, they are nonpartisan as they should be. Their role is different — they are not an advocate for a particular side, or a particular philosophy, or a particular ideology. They decide, especially in district court judgeships, the issues before them, parties before them. And it's sad and alarming the politicization of the nomination process.

Judicial Profile: Larry A. Burns

COURT: Southern District of California

APPOINTED: 2003

LAW SCHOOL: University of San Diego School of Law, 1979

CAREER HIGHLIGHTS: Appointed U.S. District judge, 2003; visiting trial judge in other federal districts, including Idaho, Guam, and the Southern District of New York; U.S. magistrate judge, San Diego, 1997; assistant U.S. attorney, San Diego, 1985-97; deputy district attorney, San Diego, 1979-85.

Age: 56

By Pat Broderick

SAN DIEGO - Mario Conte, a former executive director of Federal Defenders of San Diego, wasn't at all surprised to hear federal Judge Larry Burns would be presiding over a tragic case that has left the nation reeling.

The San Diego judge, a former prosecutor, was tapped Jan. 12 by Alex Kozinski, chief judge of the 9th U.S. Circuit Court of Appeals, to hear the case of Jared Lee Loughner, accused in the Jan. 8 mass shooting in Arizona that left six dead and 13 wounded. In the shooting, Arizona U.S. Rep. Gabrielle Giffords was critically injured and federal Judge John Roll and a Giffords aide were killed.

On Wednesday, a federal grand jury in Tucson returned an initial three-count indictment against Loughner for attempting to kill Giffords and two of her aides.

Burns was chosen after all federal judges in Arizona recused themselves.

"He was one of the most talented - if not the most talented - prosecutors around," said Conte, who now teaches advanced trial practice at California Western School of Law and who has been on the other side of the aisle from Burns. "I've always said that trying a case against him probably made me a better lawyer."

Before he was appointed as a district judge by President George W. Bush in 2003, Burns served as a U.S. magistrate judge for six years. Prior to that, he was an assistant U.S. attorney in San Diego from 1985 to 1997, and a deputy district attorney from 1979 to 1985.

But Bob Rose, a partner at Sheppard Mullin Richter & Hampton in San Diego and chief of the firm's white-collar practice team, said Burns' background should not lead prosecutors on the Arizona case to think it will be a slam dunk.

'He know how to handle sensitive cases that are high-profile.'

- Charles S. LiMandri

"I would expect the prosecution had better prove its case and follow the rules," said Rose, a former federal prosecutor who has known Burns since his days in the district attorney's office. "They are not going to be cut any slack because he was a prosecutor. He remembers how it was supposed to be done correctly."

San Diego defense attorney Michael S. Berg, who has known Burns for years, credits him with possessing "one of the quickest wits of anybody I ever met."

"He runs a tight courtroom, and is a very harsh sentencer," Berg said.

Shaun Martin, who teaches civil procedure and professional ethics at the University of San Diego School of Law, agrees that Burns is "a no-nonsense judge."

As for Burns' Arizona assignment, Martin said, "This will not be a case that takes two to three years to go to trial. Judge Burns will press the lawyers to get ready and get ready quickly."

For the duration of his assignment in Phoenix, Burns is begging off media interviews. But there will be no getting away from the glare of the media spotlight.

Rose said he doubts that will be a problem for Burns.

"I don't think he's intimidated by any job that he has had," Rose said. "He approaches cases with the confidence that he'll succeed."

Allison H. Goddard, past president of the Federal Bar Association's San Diego chapter and a partner at Jaczko Goddard, agreed.

"He'll treat this case like any other case before him," she said. "I don't think the glare of the media or the spotlight will affect his judgment at all."

Not that Burns is a stranger to headline-generating cases. He presided over the prosecution and sentencing of the notorious Arellano Felix drug cartel and the bribery trial of former Congressman Randy "Duke" Cunningham. In 2008, Burns issued a controversial ruling in the ongoing saga of the cross on Mount Soledad in La Jolla, writing that it "communicates the primarily non-religious messages of military service, death and sacrifice. As such, despite its location on public land, the memorial is constitutional." *Jewish War Veterans v. Gates*, 3:06-CV-01728-LAB-WMC, (S.D. Cal., filed July 29, 2008).

Recently, Burns' ruling was reversed by a 9th Circuit panel that found the cross does violate the Constitution.

Lawyers on both sides of that case only had positive words for Burns.

"We disagreed with his ruling, but he certainly did a very thorough job with the Soledad case," said David Blair-Loy, who represented the Jewish War Veterans for the ACLU Foundation of

San Diego and Imperial counties. "I respect him very much. He seems to manage his courtroom well, allowing the parties to be heard, but also managing the process appropriately."

Blair-Loy also credits Burns for his even-handedness.

"I've heard him talk about discovery in criminal cases, and he seems to be in favor of erring on more discovery, rather than less, that justice is not serviced by hiding the ball."

He's also "an active judge," Blair-Loy noted.

"He's the kind of judge who does his own research and poses his own questions that parties haven't posed - interesting and challenging questions."

Charles S. LiMandri, a Rancho Sante Fe lawyer who fought to keep the cross on Mount Soledad, agreed.

"We were the prevailing party, but regardless, he has an excellent reputation for taking the time to read and understand the briefs, and make sure he applies the law in an evenhanded manner," LiMandri said. "He knows how to handle sensitive cases that are high-profile."

Burns, 56, a Pasadena native and married father of two sons, earned his law degree from the University of San Diego School of Law in 1979.

Pam Naughton, a partner at Sheppard Mullin Richter & Hampton in Del Mar, has known him for many years.

"He was famous in the district attorney's office for his skill at trial, particularly cases dealing with forensic evidence," she said.

Last year, a Washington, D.C. TV station included Burns in a story about Google's images of neighborhoods and the idea that they could threaten privacy and security. In the report, Burns shares this concern, saying that he had a gated home and kept a half-dozen handguns.

A friend of Burns confirmed that he does keep handguns in his house, something that's not unusual, he said, considering that Burns has been involved in such cases as the Arellano Felix trial, and that he is the son of a police officer.

Naughton considers Burns to be "a very affable guy, very sociable. What you see is what you get. He is very honest and forthcoming."

And Berg noted that Burns enjoys the occasional poker game and a cigar, but added, "He's a better judge than a poker player."

Here are some of Judge Burns' cases and the lawyers involved:

Jewish War Veterans v. Gates, 3:06-CV-01728-LAB-WMC - civil rights

For the plaintiff: A. Stephen Hut Jr. and Jonathan H. Siegelbaum, Wilmer Cutler Pickering Hale and Dorr, Washington, D.C.; and David Blair-Loy, ACLU Foundation of San Diego and Imperial Counties

For the defendant: U.S. attorney's office, San Diego

For the intervenor: Christine M. Davenport, U.S. general counsel's office, House of Representatives, Washington, D.C.

U.S. v. Cunningham, 05-CR-2137 - bribery

For the plaintiff: U.S. attorney's office, San Diego

For the defendant: Mark Holscher , formerly with O'Melveny & Myers and now with Kirland & Ellis, Los Angeles; Kristina M. Hersey, formerly with O'Melveny & Myers; and K. Lee Blalack II, O'Melveny & Myers, Washington, D.C.

U.S. v. Arellano Felix, 3:97cr2520K - drug trafficking

For the prosecution: U.S. attorney's office, San Diego

For the defense: Eugene Iredale, Law Office of Eugene G. Iredale; Mark F. Adams, Law Offices of Mark F. Adams; Michelle D. Anderson, Law Office of Michelle D. Anderson; David H. Bartick, Law Offices of David H. Bartick; Julie A. Blair, Law Office of Julie Blair; Todd W. Burns, Federal Defenders of San Diego; Marc Xavier Carlos, Bardsley and Carlos; Grant L. Eddy, Law Office of Grant L. Eddy; Robert A. Garcia, Law Office of Anthony A. Garcia; Carolyn L. Oliver, Law Offices of Carolyn L. Oliver, all of San Diego

Quechan Tribe v. U.S. Department of the Interior, 10CV2241 - land use

For the plaintiff: Frank R. Jozwiak, Thane D. Somerville, Morisset, Schlosser & Jozwiak, Seattle, Wash.; Bryan R. Snyder, Law Office of Bryan R. Snyder, San Diego

For the defendant: David B. Glazer, U.S. Department of Justice, San Francisco

For the intervenor: Julie A. Jones, Bingham McCutchen, San Francisco

Bryan v. McPherson, 3:06-CV-01487 - excessive force

For the plaintiff: Eugene G. Iredale, Law Office of Eugene G. Iredale, San Diego

For the defendant: Steven E. Boehmer, McDougal Love Eckis Boehmer & Foley, La Mesa

Judicial Profile: Edward M. Chen

COURT: Northern District of California

APPOINTED: 2009, by President Barack Obama

DATE OF BIRTH: June 3, 1928

LAW SCHOOL: Boalt Hall School of Law, 1979

CAREER HIGHLIGHTS: Nominated by President Barack Obama to U.S. District Court, Northern District, August 2009, and renominated January 2010, September 2010 and January 2011; confirmed by the Senate, May 2011; Magistrate judge, U.S. District Court, San Francisco, 2001-11; Staff attorney, American Civil Liberties Union Foundation of Northern California, 1985-2001; Associate, Jacobs, Sills & Coblenz, 1982-85; Law clerk to James R. Browning, 9th U.S. Circuit Court of Appeals, 1981-82; Attorney, Asian Law Caucus, San Francisco, 1980-81; Law clerk to Charles B. Renfrew, U.S. District Court, San Francisco, 1979-80

Age: 58

By Jill Redhage

SAN FRANCISCO - U.S. District Judge Edward M. Chen doesn't remember how much it cost him to sponsor a discus fish for the tropical fresh-water aquarium in his colleague's chambers.

"It wasn't cheap - more than a lunch," he said.

Despite the price, veteran Judge Charles R. Breyer convinced Chen and the court's other newest district judge, Richard G. Seeborg, to each buy one. Magistrate Judge Joseph C. Spero - a district judge hopeful - got talked into buying the third. (According to a cursory Web search, a 3-inch fish goes for \$50 to \$150.)

Perhaps sponsoring a fish is an end in itself. But it's also a good excuse for the judges to roam down the hall for a visit. Chen, who was confirmed by the Senate in May after first being nominated by President Barack Obama in 2009, has a reputation as a quality sounding board.

'He is not a doctrinaire person and never was. He's always been skeptical of people who think they know the answer before they know the facts.'

- Richard G. Seeborg

"The great danger in becoming a district court judge is you can become too insular," Breyer says. "One of the reasons why I like new judges coming on is because they are far less set in their ways and more willing to discuss the merits of any process that they follow."

After serving 10 years as a magistrate, Chen has made a name for himself on the Northern District court as a quick-witted and open-minded thinker. Attorneys who have appeared before him talk about his willingness to listen to all of their arguments and to not rush to conclusions.

So it's perhaps ironic that Republican senators held up Chen's nomination for nearly two years by questioning his ability to dole out evenhanded justice.

"It wasn't easygoing, because I guess the decision had been made sometime along the way that my record was going to be scrutinized," Chen said, "so [of the four judicial nominees], I got the brunt of the questions."

Part of the criticism against Chen stemmed from his connection to the American Civil Liberties Union, where he spent 16 years as a staff attorney before joining the bench in 2001 as a magistrate judge.

Some media outlets also raked him over the coals. Conservative columnist Warner Todd Huston, whose comments were referenced on dozens of websites during the nomination process, accused Chen of imagining America to be more racist than it is. Other conservative websites called him "pro-abortion" or "a liberal activist judge" and questioned his patriotism.

"That was personally painful to take," Chen said, "even though people said, 'Oh, you should take it as a badge of honor,' or 'Oh, it's really not about you. It's about a larger political dialogue that's going on between the president and the Republicans in the Senate.' ... Nonetheless, when your name is dragged through the mud in public, it is very hurtful and stressful."

Ultimately, the Senate confirmed Chen with a 56-42 vote in May, more than 21 months after the White House first announced his nomination on Aug. 6, 2009. He was subsequently nominated in January 2010, September 2010 and this past January. Each time, Republicans forced him to go back through the Judiciary Committee for approval.

Seeborg, who was nominated the same day in August 2009 but confirmed by the Senate on Dec. 24, 2009, said he thinks Chen's critics got him wrong.

"He is not a doctrinaire person and never was," Seeborg said. "He's always been skeptical of people who think they know the answer before they know the facts. ... I think people who think they have him figured out because of that [ACLU] connection are in for a surprise."

Lawyers and judges who know Chen uniformly comment on his intelligence and sense of humor. San Francisco attorney Edwin Prather, Chen's first law clerk in 2001 and a strong advocate for him during his confirmation process, describes him as brilliant for the way he approaches legal issues.

"He doesn't just look at the two sides," Prather said. "He will look at things many different ways, always searching for the right answer."

Chen recently presided over a trial in which Onyx Pharmaceuticals Inc. accused Bayer Corp. of breaching a collaboration agreement over the development of certain cancer drugs.

Onyx attorney Michelle S. Rhyu of Cooley LLP said she was struck by Chen's willingness to consider Bayer's motion to bifurcate the claims in the case, which would have sent some issues to the judge and some to the jury, even though Bayer reversed course with the motion and filed it shortly before trial. In the end, Chen decided to leave all claims to the jury.

"It reflects his willingness to listen to the arguments and not to jump to snap judgments," Rhyu said.

Chen said he tries to be as transparent as possible with attorneys about his thought processes.

"I like to engage with the parties, and I like to test whether my understanding might be wrong or my analysis might be wrong," Chen said. "On more than one occasion, I have changed my views 180 degrees after listening to the attorneys."

Chen is also particularly good at managing the courtroom, according to Philip S. Beck of Bartlit Beck Herman Palenchar & Scott LLP in Chicago, who defended Bayer in the trial versus Onyx.

"He's very focused on getting any disagreements highlighted and resolved before the jury is seated for the day," Beck said. "He doesn't like sidebars. He likes to get started on time. And he likes an absolute bare minimum of interruptions so the jury doesn't feel like they're sitting around wasting their time."

Chen said he thinks a lot of people don't understand that a large part of a district judge's job is managing.

"It's not just deciding cases and figuring out the law and trying cases," he said. "It's also managing cases, managing people, managing lawyers."

Beck said that in spite of tense moments between the lawyers, Chen was able to keep conduct in the courtroom professional and cordial and to even lighten the mood.

When Onyx and Bayer reached a settlement mid-trial, Chen told the jury that its efforts weren't in vain.

"Since you've been through such a rigorous process, this court will award a diploma in organic chemistry to each of you that we will send you in the mail, so you get something out of this process," he joked.

In addition to handling a caseload of more than 300 civil cases and a few dozen criminal cases, Chen has devoted himself to a key administrative task - ensuring public access to the courts.

He has chaired the federal courts committee of the California Commission on Access to Justice and has served on the 9th U.S. Circuit Court of Appeals' task force on self-represented litigants. He also sits on similar committees for the Northern District and serves as its liaison judge for all things involving nonprisoner pro bono and pro se matters.

His work in the area has not gone unnoticed.

"I don't know a better federal judge anywhere on issues of access to justice," said Morrison & Foerster LLP partner Jack W. Londen, who has followed Chen's career since they were both

clerks in the Northern District. Chen clerked for Northern District Judge Charles B. Renfrew from 1979 to 1980 and for 9th Circuit Judge James R. Browning from 1981 to 1982.

For all his positive attributes, at least one colleague has noticed Chen can be a little absent-minded.

Seeborg, who traveled the world with him for magistrate judge trainings, recounted a time when Chen forgot his laptop at a security checkpoint in Germany and had to backtrack through immigration to get it. In South Africa, he left his malaria pills in a restaurant and had to bum them off other judges for the rest of the trip.

And then there was the time Seeborg stopped him from stepping in front of an oncoming bus in Buenos Aires.

Thanks to Seeborg's attentiveness, Chen survived to face his confirmation process. And he weathered that with the help of hundreds of supporters in the legal and Asian-American communities who wrote letters and made phone calls on his behalf.

"I'm just very fortunate to be here," Chen said. "People say it's probably more important to be lucky than good, and luck has a lot to do with it. You happen to come across somebody who volunteers to be helpful - you just never know what will come along that might serve a role in trying to ameliorate some problem."

Here are some of Chen's recent cases and the lawyers involved:

Onyx Pharmaceuticals Inc. v. Bayer Corp., 09-CV-2145 - breach of contract

For the plaintiff: Stephen C. Neal, Michelle S. Rhyu and Martin S. Schenker, Cooley LLP, Palo Alto

For the defendant: Philip S. Beck, Bartlit Beck Herman Palenchar & Scott LLP, Chicago

Securities and Exchange Commission v. Pattison, 08-CV-4238 - stock-option backdating

For the government: Robert L. Tashjian, William Salzman and Susan F. LaMarca, SEC

For the defense: Patrick J. Richard, Nossaman LLP, San Francisco

Church & Dwight Co. Inc. v. Mayer Laboratories Inc., 10-CV-4429 - antitrust

For the plaintiff: John D. Huh, DLA Piper US LLP, East Brunswick, N.J.

For the defendant: Neil S. Cartusciello, Cartusciello & Associates PC, Mendham, N.J.

Kanbar v. O'Melveny & Myers LLP, 11-CV-0892 - employment discrimination

For the plaintiff: Pamela Y. Price, Price & Associates, Oakland

For the defendant: Katherine C. Huibonhoa, Paul Hastings LLP, San Francisco

Pet Food Express Ltd. v. Royal Canin USA Inc., 09-CV-1483 - breach of contract

For the plaintiff: John Douglas Moore, Henn, Etzel & Moore Inc., Oakland

For the defendant: Steven M. Schneebaum, Greenberg Traurig LLP, Washington, D.C.

Judicial Profile: Maxine Chesney

COURT: Northern District of California

BORN: Oct. 29, 1942

APPOINTED: 1995, by President Bill Clinton

LAW SCHOOL: Boalt Hall School of Law

CAREER HIGHLIGHTS: San Francisco Superior Court, 1983-1995; San Francisco Municipal Court, 1979-1983; San Francisco district attorney's office (1968 to 1979).

With Chesney, you get a judge who likes to listen

Jason Hoppin
The Recorder
August 05, 2003

When you walk into Maxine Chesney's courtroom, you'll find a diminutive woman with coiffed, curly blonde hair. She doesn't come across as intimidating, and if you get your idea of judges from Hollywood, she's not the kind of person you'd expect to find behind the bench.

Yet she's been doing it for more than 20 years, first in San Francisco Superior Court and lately as a federal judge. Her experience shows -- she handles her courtroom well, has an easygoing manner and yet is not afraid to send a message to lawyers who she feels need to be straightened out.

For example, Chesney recently chastised one assistant U.S. attorney for a run of sloppy paperwork from his office. She did it gently, but the message was firm.

She also has one of the driest wits you will ever come across.

During another recent hearing, she suggested that a defendant enlist the services of a federal public defender who was in court because, Chesney said, the defender was quite good. "She got me overturned by the Ninth Circuit," Chesney offered as proof. The defender blushed bright red.

The defendant in the matter was Dennis Alexio, a heavyweight kickboxing champion who took second billing to Jean-Claude Van Damme in the 1989 film "Kickboxer." The Hawaii resident was in San Francisco on bank fraud charges for bouncing child support checks.

Alexio infused his *pro se* briefs with Biblical passages and acted in a way that led Chesney to question whether he was competent to stand trial. Extra U.S. marshals were present, but Chesney never lost her cool or added to what could have been a tense situation.

When Alexio asked if the court was solvent, Chesney said: "You mean me personally?" When Alexio asked if this was an admiralty action, Chesney said she didn't see any boats. When he asked if the court were operating with clean hands, she said yes, then bid him adieu with a salutation from his home state: "Mahalo."

The incident shows a couple of things about Chesney. She is patient, and will engage lawyers on most questions. This also means her hearings can sometimes be lengthy. Though Chesney said she will set time limits on civil matters, she will not do so on criminal matters.

"I'm always willing to entertain an argument," Chesney said. "That's doesn't mean I'm going to be persuaded by it."

Chesney started her career as a prosecutor, during which she established the first special unit in the country dedicated to the comprehensive handling of sexual assault cases. She has worn the robe since 1979 and said she still enjoys the job.

"Every day is different. You can plan ahead, but you never know what's going to happen," she said. She added that she particularly enjoys working in the Northern District, with judges who have an array of experiences and interests.

As for in court, Chesney said, "I don't have any unusual expectations" of lawyers.

Several lawyers said they like appearing in front of Chesney -- one mentioned her sense of humor specifically -- while one said she can sometimes be curt.

Chesney is "very pleasant, businesslike but not stuffy," said Douglas Young of Farella Braun & Martel.

Young said he represented a criminal defendant whom he thought deserved a break due to extenuating circumstances. With the government's consent, Chesney was willing to give the defendant a lighter sentence than he was due under the guidelines.

"What I appreciated was that she was extremely well prepared, very empathetic and she listened to the lawyers," Young said.

One lawyer suggested that Chesney is cautious about finding the right law and applying it.

"She is a very careful judge in that she follows the law," said Dean Paik of Cohen & Paik. "She's not results-oriented."

Chesney has seen a few high-profile cases in her time on the bench. Most recently, she tossed the fruits of what she deemed an illegal search at the San Francisco Human Rights Commission office of Zula Jones, who was indicted as a part of a high-profile city corruption probe. Chesney was upheld by a fairly conservative panel of Ninth Circuit U.S. Court of Appeals judges.

She also OK'd San Francisco's purchase of the Mt. Davidson cross, a huge religious symbol visible from most of the western part of the city.

As a state court judge, she held unconstitutional a California law requiring minors to obtain parental consent for abortions.

Asked if there was anything she would change about the legal system, Chesney said lawyers should return to the days when they weren't so aggressively competitive.

"I see lawyers on their best behavior, but I know that behind the scenes there seems to be an increasing lack of civility among the bar. I don't think it's anything I can change."

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

A: I probably enjoy the same thing that most judges enjoy. I would say, I like the range in complexity of the cases. I have heard cases that cover just about every subject you can think of, ranging from patent cases on fiber optics; a transsexual who brought a civil rights claim based on a body cavity search that they argued was prompted by curiosity rather than necessity; a multiple-murder criminal case involving the death penalty; the Mount Davidson Cross; hospital mergers, you name it. And the issues that come up in those cases also vary considerably. In one instance, I learned about a doctrine known as "suicide by cop." In another, there was a doctrine, "non-obvious type double patenting," which I won't try to explain because doing so would be about as difficult as explaining the infield fly rule.

The people who come before us every single day are so different. We are generalists. Lawyers today are primarily specialists. As a result of that, their clients tend to follow a particular pattern. We hear everyone here, from prisoners to the Vatican Bank, although, I didn't really expect the Pope to appear. Those aspects of the job are what I enjoy a great deal.

I also enjoy the courtroom. We are trial court judges. I like the interaction with the attorneys in the courtroom and engaging in a meaningful discussion about the issues with them. We're also very fortunate to attract the brightest young minds as law clerks. Everyone in my chambers staff is so talented, and in my courtroom staff as well. And we have a collegial bench. I've heard stories about other courts in which that collegiality is absent. I can't imagine a job in which you do not enjoy working with the people that you see every day.

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

A: I recently read an article that said sitting is very bad for your overall health. What verb comes to mind and is used most commonly in describing this position? What do we do? We sit. If someone challenges a judge, such as on a state court — we, of course, are not subject to state challenge — that person is described as challenging a sitting judge. So, it would be better if we were not quite so much nailed to the bench.

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

A: I have a form order that I issue when an attorney has not provided courtesy copies. In that order we direct the attorney to file forthwith. If it happens again, I have another order that explains to them in more severe terms why it's important that they follow the general orders of the Northern District and my standing orders, and alert them to the fact that if this happens again,

in all likelihood, sanctions will be imposed in the form of striking the pleading or otherwise. That usually does the trick.

Q: How you ever issued sanctions for failure to provide courtesy copies?

A: I have issued an order striking a filing. I do not recall issuing any other type of sanction for that type of conduct.

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

A: It depends on the type of case before me. If the briefs fully explain the issue and discuss it sufficiently, and additional research that my chambers might do has been completed, and I feel that there's really nothing else to be added, I may well take the motion off the calendar. If questions remain that I feel could be clarified by the parties, then I hold a hearing.

Q: Do you find oral argument helpful?

A: In many instances they are helpful. The downside to having a hearing is when the attorneys see things going against them and decide to change the case either by recharacterizing their position or asking for leave to supplement the record thus, essentially, starting the entire proceeding over. Then I have to make the call as to whether to allow them to do it. That can be frustrating.

Q: When ruling on a motion, do you issue written opinions? If only sometimes, under what circumstances are you most likely to issue a written ruling?

A: I issue a written opinion on almost every motion in a civil matter. In the criminal cases, I will more often rule from the bench. I've developed this tendency idiosyncratically. But it seems to work.

[My tendency to rule this way] may be partially for expediency's sake. Most of the criminal defendants before us are in custody. If they are making a dispositive motion that may make the difference between whether they're going to continue on as a defendant or be released, it's important that they know the outcome as soon as possible.

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: The first thing they should have is themselves. Our rules require that lead counsel be present for the case management conference. On some number of occasions, more than I would like to see, they will send someone else in their stead who announces that the lead counsel could not be here because they have another appearance, which simply suggests that that appearance was more important to them than the one they were required to make before [me].

I don't kill the messenger, but I make it very clear that they are to take the message back to lead counsel. It can be very frustrating if one is trying to schedule a trial, a pretrial conference or a motion practice in some instances, not to have an attorney present who is fully familiar with the attorney's schedule who is going to be handling the case. After that, they just need to be prepared. I may ask some questions about the case in an effort to determine how to schedule matters and what may be important to a resolution of the case.

I do not have my case management conferences made a matter of record. In other words, there's no court reporter there, which, I think, encourages a greater degree of candor and also just a willingness to discuss matters without looking over one's shoulders. But we do make all the rulings that occur there a matter of formal record in the clerk's minutes, and if appropriate, in a pretrial order.

Q: What impact has technology (computers, Internet, video animation, etc.) had on litigation, especially in jury trials?

A: I think it's had a beneficial effect on jury trials involving complex issues concerning patents and any other case that is document dependent. It's very difficult for anyone, whether it's the jury or the court, to follow the witnesses' testimony and to follow what's important if you don't see the document at the time that it's being discussed by the witness. Also, in the area of patent litigation, there has been a great deal of creativity brought to bear on endeavoring to make the technology understandable to the jury in a variety of graphic ways. I think that's very helpful as well.

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

A: I'm not sure that I have any terribly creative advice to offer. If the attorney is involved in litigation, which is what I am most concerned about, I would say, remember who your audience is. You're not writing for yourself, you're writing for the reader. Avoid sniping at the other side. Avoid ad hominem comments. Don't write more than you have to. If you have two good issues, don't bury them amid eight other issues that may not be good. We have only a finite amount of time. If you dilute that time, and essentially, the court's attention, the court may miss what's really important and favorable to your side.

In the courtroom itself, be willing to engage in a discussion on the topics the judge is interested in discussing. Don't evade tough questions. Be flexible always and ready to change course, if necessary. Do not come in with a script. No one else will follow it. Don't try to pattern yourself after other lawyers. Try to develop your own style. Always maintain your integrity and civility. We will remember you.

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

A: Not being familiar with the rules of evidence. You can have the best case in the world, but you are not going to win it if you cannot put your evidence in. Today, the cost of litigation has risen to the point where attorneys have far less opportunity to actually try cases. So, what may have come naturally and almost without thinking to a trial attorney of earlier years may be far

less familiar to an attorney today. I have seen many experienced trial attorneys become very frustrated when unable to deal easily with objections made by the other side.

There is one other matter that I might suggest in complex cases, where the client can afford a team of lawyers of some significant number. It is not unusual that I may see a trial with, perhaps, six attorneys at each counsel table. The lead counsel needs to be as familiar with the briefing as the associate who wrote it.

Q: Since attorneys have fewer opportunities to litigate, how do you suggest they familiarize themselves with the rules of evidence?

A: I think that one needs to read the rules of evidence and think about how you're going to present your case before you start presenting it. Certainly, continuing legal education programs could be helpful as well. And again, I would urge an experienced attorney as much as I urge the new attorney to stay flexible and be creative. If an objection is made, don't just keep butting your head against the same wall. Step back and think of a way to get around it.

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

A: I really can't think of the last time that I imposed a sanction on an attorney for conduct in the courtroom. I ordinarily simply try to deal with it at the time it arises, and depending on the circumstances, make the attorney either feel bad or look bad. The last time that I imposed a sanction on an attorney, and it was fairly recently, that attorney's law firm had, on a number of prior occasions, simply failed to appear for a case management conference. This occurred in several different cases and each time the attorney assigned to the case had an explanation. I just tallied up all those instances. And I believe it was the third occasion when the firm failed to appear and the attorney presented an explanation again, which was not that they were in Santa Barbara in a body cast. They had simply failed to calendar the matter appropriately. I did issue a monetary sanction.

Maxine M. Chesney

Judge Maxine M. Chesney is a sounding board for her colleagues - and also an avid hiker.

Maxine M. Chesney

U.S. District Judge

Northern District (San Francisco)

Career highlights: Nominated by President Bill Clinton to U.S. District Court, Northern District, January 1995; judge, San Francisco County Superior Court, 1983-1995; judge, San Francisco Municipal Court, 1979-1983; deputy district attorney, San Francisco, 1968-1979

Law school: UC Berkeley School of the Law, 1967

Age: 69

By Jill Redhage

SAN FRANCISCO - Game. That's how U.S. District Judge Maxine M. Chesney's colleagues describe her, whether it's about banter over legal quandaries or backpacking in the California wilderness.

"She's a game beginner mountaineer, and a most congenial colleague," said U.S. District Judge William Alsup, who has led several backpacking trips to Yosemite National Park for the Northern District bench. He remembers Chesney, now 69, as the most eager participant. (U.S. District Judge Charles R. Breyer claims he's still recovering from the latest trip, which was in 2003).

Lawyers, meanwhile, say Chesney is decisive and accommodating, and that her strict judicial temperament has mellowed since she transitioned to senior status in June 2009.

"It's hard to believe it's been three years," Chesney said, noting it took at least a year before she noticed any dropoff in her caseload. "For some reason I seem to be working as much, and I haven't quite figured out what I'm doing wrong!"

Gregory M. Fox of Bertrand, Fox & Elliot PC in San Francisco, who has appeared before Chesney many times during her 12 years on the San Francisco County Superior Court and 17 years in the Northern District, said she's doing things right.

"When I first appeared before her on the federal bench, at the time it appeared that she was not as decisive as she is today," Fox said, explaining that the judge spent a long time evaluating all sides of an argument. "She's more able now to get to the heart of the matter."

"She is the go-to judge if you have a question about evidence, a question about what is an appropriate sentence or you simply want to explore your thinking out loud."

- Judge Charles R. Breyer

Mark J. Kenney, chairman of Severson & Werson PC in San Francisco, pointed out that being strict has been a strength of Chesney's over the years.

"She can appear as 'the strict grandmother,' but she has this rare clarity... that you appreciate as a trial lawyer," Kenney said. "You absolutely know what the rules are and that she's going to adhere to them."

In recent years Chesney has balanced punctiliousness with patience.

"She definitely seems to be a little bit more relaxed," Fox said.

Gene J. Stonebarger of Stonebarger PLC in Folsom said the judge has taken a hands-off approach in a putative class action against Citibank NA that alleges the bank reduced or suspended borrowers' Home Equity Lines of Credit regardless of whether the underlying property values had decreased. *In Re: Citibank HELOC Reduction Litigation*, 09-CV-350 (N.D. Cal., Filed Jan. 26, 2009).

Following complicated settlement negotiations, the parties have reached an agreement in principle.

"She's been helpful in allowing the parties to work through the details so that [the settlement] can be done correctly and completely without having to rush the process along," Stonebarger said.

Attorneys also say Chesney keeps close watch on the interests of class-action plaintiffs and self-represented litigants, making sure classes are adequately represented and pro se defendants have the time they need to seek advice or mount their defense.

Chesney references Nora Ephron's recent book on aging gracefully, "I Remember Nothing," when she thinks back on her own work over the past decade and her transition to senior status.

"We do so much. You tend to forget how much you've actually done," Chesney said. "I look back and say, 'Oh my goodness! That was quite a year.'"

Notably, in 2009, Chesney presided over the trial of Dennis Cyrus Jr., who was convicted of killing three people during the drug wars of San Francisco's Western Addition neighborhood. In 2010, the judge sentenced Cyrus to three life terms in prison. Prosecutors had sought the death penalty, making it the first capital trial in the Northern District since 1948. *U.S. v. Cyrus*, 05-CR-324 (N.D. Cal., Filed May 24, 2005).

She has also been handling several large putative class actions against banks, including a lending discrimination suit and another that disputes minimum monthly payment practices for mortgages. *In Re: Wells Fargo Mortgage Lending Practices Litigation*, 08-md-01930 (N.D. Cal., April 10, 2008); *In Re: Chase Bank USA NA "Check Loan" Contract Litigation*, 09-CV-2032 (N.D. Cal., Filed June 26, 2009).

Although Chesney has the ability to turn down case assignments now that she's a senior judge, she says she tries to be "sportsmanlike," taking on anything but death penalty habeas cases.

"What you do have is the opportunity to spend more time on some of the more interesting cases than might have been available before," she said.

Off the bench, Chesney is known as a sounding board for her colleagues, or just a fun person with whom to blow off some steam.

"She is the go-to judge if you have a question about evidence, a question about what is an appropriate sentence or you simply want to explore your thinking out loud," Breyer said. "She has excellent judgment and plenty of common sense."

Chesney was born and raised in the Bay Area and has lived here all her life. She earned her undergraduate and law degrees from UC Berkeley. She worked as a deputy district attorney in San Francisco from 1968 to 1979 before she was appointed to the San Francisco Municipal Court. Four years later she was elevated to the San Francisco County Superior Court bench, where she served until President Bill Clinton appointed her to the federal court in 1995.

Because of those experiences, Chesney's institutional knowledge of the Bay Area legal community is hard to beat. And Alsup says she has a wealth of tales to go with it. Not that she's a gossip. But she's a storyteller "in the best of the Barry Portman tradition," Alsup said, referencing the long-time federal public defender in San Francisco known for his narration.

"She is the life of the party - on the trail and in the corridors of the courthouse," Alsup said.

Here are some of Judge Chesney's recent cases and the lawyers involved:

In Re: Citibank HELOC Reduction Litigation, 09-CV-350 - truth-in-lending

For the plaintiffs: Sean Reis, Edelson McGuire LLP, Rancho Santa Margarita; David C. Parisi, Parisi & Havens LLP, Sherman Oaks; James R. Patterson, Harrison Patterson & O'Connor LLP, San Diego; and Gene J. Stonebarger, Stonebarger Law PLC, Folsom

For the defendant: Debra L. Bogoyanov, Andrew S. Rosenman and Lucia Nale, Mayer Brown LLP, Chicago

U.S. v. Cyrus, 05-CR-324 - drug conspiracy, murder

For the prosecution: William Frentzen and Robert David Rees, U.S. attorney's office, San Francisco

For the defense: James S. Thomson, Berkeley, and John T. Philipsborn, San Francisco

In Re: Chase Bank USA NA "Check Loan" Contract Litigation, 09-CV-2032 - truth in lending

For the plaintiffs: Barry R. Himmelstein, Lief Cabraser Heimann & Bernstein LLP, San Francisco

For the defendant: Julia B. Strickland, Stroock & Stroock & Lavan LLP, Los Angeles

In Re: Wells Fargo Mortgage Lending Practices Litigation, 08-md-01930 - fair housing, equal credit opportunity

For the plaintiffs: Andrew S. Friedman and Wendy J. Harrison, Bonnett, Fairbourn, Friedman & Balint PC, Phoenix

For the defendant: David S. Reidy, Reed Smith LLP, San Francisco

Ottovich v. City of Fremont, 09-cv-04181 - prisoner civil rights

For the plaintiff: Mark Ottovich, in pro se

For the defendant: Gregory M. Fox, Bertrand, Fox & Elliot PC, San Francisco

Judicial Profile: Samuel Conti

COURT: Northern District of California

APPOINTED: 1970, by President Richard Nixon

LAW SCHOOL: Stanford Law School, 1948

CAREER HIGHLIGHTS: Appointed by President Richard M. Nixon, 1970; judge, Contra Costa County Superior Court, 1968-1970; assistant city attorney and city attorney, Concord, 1960-1968; partner, Coll & Conti, Concord, 1950-1967; sole practitioner, San Francisco, 1948-1950.

Age: 89

Samuel Conti once sent draft dodgers to jail. Now, he's presiding over a landmark veterans' case.

By John Roemer

SAN FRANCISCO Senior U.S. District Judge Samuel Conti was steamed, and the hapless government lawyer standing before him at a status conference in a landmark veterans' rights case was in his crosshairs.

During Conti's four decade career on the Northern District bench, Assistant U.S. Attorney Daniel Bensing was hardly the first lawyer to draw the short-tempered jurist's wrath, and he's unlikely to be the last.

"He's a very stern judge," said veteran criminal defense lawyer Richard B. Mazer, who has practiced before Conti since 1971. "When he's on the bench, there's no foolin' around."

The May 27 incident involving Bensing came at a critical point in long-running litigation over allegedly poor mental health care for suicidal vets. Conti had earlier found veterans suffering and the government's response deficient. Now the 9th U.S. Circuit Court of Appeals was sending the case back his way with orders to craft remedies.

Bensing had noted in court papers that Conti, 89, who served in World War II and has long taken a keen interest in military affairs, did not currently have jurisdiction to hear the matter because remand from the 9th Circuit wasn't yet final. Conti's clerk, Bensing wrote, had been "in error" in setting the hearing date.

Bensing ran into the buzz saw that Conti can display from the bench when questions arise about his legal savvy.

"I've been doing this for 40 years," growled the President Richard Nixon appointee, according to attorneys who were present, "and I know when I have jurisdiction and when I don't."

'When he's on the bench, there's no foolin' around.'

- Richard B. Mazer

Not only that, Conti announced, when the veterans' case was again officially before him, he planned evidentiary hearings to learn why the matter has been pending for three years with little government remedial action on view.

"He was salty," plaintiffs' lawyer Ryan G. Hassanein of Morrison & Foerster LLP said of Conti. As if to underline his displeasure, Conti's order memorializing the eight-minute hearing correctly spelled the names of Hassanein and every other plaintiffs' lawyer present. Daniel Bensing, however, was listed as "Dabuek Bebsubg." *Veterans for Common Sense v. Shinseki*, 07-03758.

Bensing declined comment. But possibly to avert a further encounter with Conti, his fellow Department of Justice attorneys on Friday filed court papers seeking to have an 11-judge en banc panel review federal courts' authority to oversee the U.S. Department of Veterans Affairs, a move that would postpone the remand.

Conti, who ignored interview requests, is a judge from another era. Like a Central District colleague of similar vintage, 87-year-old U.S. District Judge Manuel L. Real of Los Angeles, Conti is old-school, no-nonsense and sometimes cantankerous. "They're both tough on criminals and you'd better come to their courtrooms completely prepared," said antitrust maven Maxwell M. Blecher of Los Angeles' Blecher & Collins, who has practiced before both men. "They get excited only when lawyers show up who aren't following the local rules."

A persistent rumor has it that Conti once told a clerk he favored raw meat for breakfast so he'd be ready for the lawyers.

Conti has been at the center of several of the Northern District's marquee cases, and he's stayed in character as the irascible black-robed scourge of his courtroom. He once sentenced Assistant U.S. Attorney Charles R. B. Kirk to 10 days in prison for lying to him in a civil suit over Black Panther Elmer "Geronimo" Pratt's lengthy term of solitary confinement at Corcoran State Prison, where he was doing time on a murder conviction that was later reversed.

Pratt's longtime lawyer, Stuart Hanlon, said that in trial Conti had been "incredibly fair" to his client, who'd won a Silver Star during two combat tours in Vietnam. "Conti did not like the Panthers, but he was terrifically in favor of veterans," Hanlon said. "Kirk lied to him and he had the guts to see right through that."

The 9th Circuit, voting 2-1, reversed Conti's criminal contempt judgment against Kirk. The dissent, contending Kirk's conviction should stand, quoted from Conti's comment on the case: "Honesty and integrity should be paramount in the dealings of all attorneys with fellow attorneys and with the court. Otherwise we reduce justice to a battlefield with no holds barred." *In re Kirk*, 641 F.2d 684 (1981).

In earlier cases, Conti established his reputation as a tough sentencer - and earned the nickname "Maximum Sam" - when he uniformly sent Vietnam War draft resisters to prison for two years, acting at odds with the Bay Area's image as a haven for protesters and ignoring colleagues in other jurisdictions who ordered probation in similar cases.

The late San Francisco attorney Nate Cohn, a longtime pal of Conti's, once explained to the Daily Journal, "Judge Conti thought poor men were having to go [to Vietnam], and people with money and influence were getting their kids out. He thought everybody has to go. If they refused, they went to jail."

Conti's prison sentences intentionally mirrored the two-year duty tours draftees served, Cohn said.

Conti and Cohn shared offices in San Francisco's financial district when the two practiced as criminal defense lawyers. Conti sometimes represented prostitutes who worked outside wartime factories in Contra Costa County, according to retired Marin County Superior Court Judge William T. McGivern Jr., a former law clerk.

"He knew the streets. He didn't come from a wealthy family but worked his way through Santa Clara [University] and Stanford Law School," McGivern said.

Conti's signature case was doubtless the epic nine month Hell's Angels trial of 1979-1980, in which 18 bikers faced racketeering charges related to drugs and weapons.

"It was nine months and it seemed longer," said one of the lawyers involved.

Government prosecutors presented 194 witnesses and more than 2,000 exhibits, according to one published tally. Conti ruled on 347 written motions and more than 1,000 oral motions and held 67 hearings on motions to suppress evidence.

Weeks into the trial, Conti collapsed on the bench and was hospitalized with exhaustion. When proceedings resumed, he jailed defense attorney Ray Archuleta overnight following a heated exchange about bail revocation for Archuleta's client.

Robert L. Dondero, who was the lead government prosecutor and is now a state court appellate justice in San Francisco, called Conti evenhanded during the marathon trial.

"There were some pretty strong personalities among the defendants," including Hell's Angels founder Ralph "Sonny" Barger, Dondero said. "Judge Conti ran a fair and appropriate courtroom. He was abrupt at times, but he had a lot to put up with. He allowed the lawyers to rise or fall on their ability to conduct cross-examinations."

The trial ended with a hung jury on the major criminal conspiracy counts.

In March, when he passed a milestone as longest-serving Northern District judge, Conti said he plans to remain on the bench "until they carry me out." Another time he quoted his old friend Cohn as having often said, "You only live once, but if you do it right, once is enough."

Here are five of Conti's recent cases and some of the lawyers involved:

Rhynes v. Stryker Corp., 2011 U.S. Dist. Lexis 58286 - product liability

For the plaintiff: Steven R. Anthony, Anthony & Associates, Oakland

For the defendant: Mario Horwitz, Sedgwick LLP, Los Angeles

Cruz v. Dollar Tree Stores, Inc., 2011 U.S. Dist. Lexis 24860 - wage and hour

For the plaintiffs: Molly Ann DeSario, Scott Cole & Associates, APC, Oakland

For the defense: Maureen E. McClain, Littler Mendelson P.C., San Francisco

Reynoso v. U.S., 2010 U.S. Dist. Lexis 135023 - tax

For the plaintiff: Paul Ham, Ham Law Firm, San Francisco

For the defense: Assistant U.S. Attorney Blake D. Stamm, San Francisco

Concorde Equity II, LLC v. Miller, 732 F. Supp. 2d 990 (2010) - fraud

For the plaintiff: James L. Jacobs and Kenneth R. VanVleck, GCA Law Partners, LLP, Mountain View

For the defense: Timothy A. Dolan, Ropers, Majeski, Kohn & Bentley, San Francisco

Sussex Financial Enterprises v. Bayerische Hypo-Und Vereinsbank AG, 2010 U.S. Dist. Lexis 73884 - fraud

For the plaintiff: Richard Leonard Katz, Richard L. Katz Inc, Mill Valley

For the defense: David Ross and Seth Benjamin Davis, Kasowitz, Benson, Torres & Friedman LLP, New York

Edward J. Davila
U.S. District Judge Northern District (San Jose)

Career highlights: Appointed to the Northern District bench by President Barack Obama, March 2011; judge, Santa Clara County Superior Court, 2001-11; partner, Davila & Polverino, 1989-2001; legal aide and deputy, Santa Clara County public defender's office, 1979-88 Law school: UC Hastings College of the Law, 1979 Age: 60

By John Roemer

SAN JOSE - U.S. District Judge Edward J. Davila displays on his chambers wall a big poster featuring his hero, heavyweight boxer Muhammad Ali, facing off with rival Joe Frazier. Sometimes, when litigation negotiations stall, Davila assembles the fractious lawyers for a look.

"I bring 'em back here to show them what a real fight looks like," Davila said with a smile.

Davila, 60, donned his federal robe in March 2011 after President Barack Obama nominated him twice. In 2010, the Senate recessed without confirming him, but on the second try the next year lawmakers voted him onto the bench 93-0.

He's no stranger to the courtroom. In 2001, Gov. Gray Davis appointed Davila to the Santa Clara County Superior Court. Earlier, he met wife Mary Greenwood when they worked together in the county public defender's office.

"Just another PD romance," Davila said happily. "She's the best thing that ever happened to me."

Davila, who was born in Palo Alto, is very aware of the history of the region.

"Rose Bird came out of the PD's office here, and became California's first woman chief justice," he said. "That's huge."

'I like that kids and litigants and lawyers and law students can see me on the bench and see women on the bench and see what our nation looks like.' - Edward J. Davila

In 2005, Greenwood became the county's chief public defender. This year, Gov. Jerry Brown placed her on the same Superior Court her husband just left.

Federal judge or not, Davila has fun. He strides to a wall of leather-bound law books lining his chambers and swings a section of false spines open to reveal a secret liquor cabinet.

"Spencer Williams had this installed," he said, referring to the late long-serving jurist who previously occupied the space.

That reminded Davila of a toast from "The Maltese Falcon" with which he likes to regale lawyers: "Here's to plain speaking and clear understanding," actor Sydney Greenstreet, the Fat Man, says to Humphrey Bogart as Sam Spade.

"Of course, as he says it he slips Spade a Mickey," Davila said.

From a window, he looked down at a favorite courthouse watering hole, Original Joe's. "A lot of cases get settled there," he said.

When he was confirmed to the Northern District bench, fellow Latinos celebrated his status as the first Latino on the federal trial court in the Bay Area in more than 15 years, since U.S. District Judge Robert P. Aguilar resigned in 1996 in a deal with federal prosecutors to end a controversial case involving allegations he improperly disclosed a wiretap.

Davila said he was encouraged and supported by prominent Latino jurists Carlos R. Moreno and Cruz Reynoso, both former California Supreme Court justices. After Davila was confirmed, they attended a gathering in his honor hosted by Wilson Sonsini Goodrich & Rosati PC partner Fred W. Alvarez and Justice Maria P. Rivera of the 1st District Court of Appeal.

"I brought my guitar and Carlos brought his voice," Alvarez said of the event. "We were happy both for who Ed Davila is and what he symbolizes for us. You know, he was the first Latino president of the Santa Clara County Bar Association. We hadn't had a Latino federal judge here in a long time. It's wonderful to have one and it's wonderful that it's Ed."

Davila likes his new job. "Judging skills are transferable" from state to federal court, he said, "but the cases we see here are different. Carlos Moreno told me you have to be a generalist."

Moreno's son Nick, a student at Stanford Law School, is currently working as a summer intern for Davila.

As a state court judge, Davila oversaw the criminal sentencing in 2006 of the couple who planted a human finger in a bowl of Wendy's chili in an extortion plot. "It was an interesting case, with interesting characters," he said of the defendants, Anna Ayala and Jaime Placencia, and of the owner and workers at the San Jose Wendy's franchise.

"What impressed me was the prosecution's use of victim impact testimony," Davila added. "It was very profound." The first witness was the mother of Placencia's 10-year-old daughter, present because of add-on child support charges Placencia had agreed to pay along with criminal penalties for extortion. "The woman said, 'Your honor, our daughter is here, and it's the first time she's seen her father,'" Davila recalled. "The courtroom was hushed. It was very moving."

Much of Davila's federal caseload involves technology issues from Silicon Valley, but there are emotionally charged cases there too.

In *Singh v. City of Gilroy*, a federal jury in April awarded \$1.25 million to the widow and children of a man fatally shot by a Gilroy police officer. Prominent San Francisco sole litigator Karen L. Snell represented the widow; Timothy J. Schmal of Burton Schmal & DiBenedetto LLP represented the city.

"It was plain good lawyering. Judges like that," Davila said. "Be prepared and show me your best. There wasn't a lot of fighting, they got their case in for the jury, things just flowed very well."

Snell enjoyed appearing before Davila. "I'm a huge fan," she said. "The fact that he has a lot of trial experience really shows, and his demeanor is calm - that just makes it very pleasant."

Davila extends his work into the community, putting on mock trials in his courtroom for fifth graders from the Beechwood and Trinity schools in Menlo Park, with students filling the roles of prosecutors, defense lawyers, witnesses and jurors. He wrote a case scenario involving mistaken identity during a robbery at a teashop. "The sun is in the witness' eyes," Davila said, grinning. "Some of the kids' parents are lawyers, and they helped out."

One of the parents is Edward D. (Ward) Johnson, the partner in charge of Mayer Brown LLP's Palo Alto office. "It's a huge treat for the kids," Johnson said. "It's amazing how they get the concepts of reasonable doubt and leading questions. It's great because it's early-on positive exposure to the justice system. I've heard that some of the kids now want to be lawyers."

When the trial was over, one boy from Beechwood spoke up, Davila said. "He expressed his gratitude for the chance to participate in a program about the law in a place he had never been before. It was really quite moving. I am certain English was his second language and his remarks were heartfelt and inspiring."

At his judicial investiture, Davila had the students from the mock trial lead the Pledge of Allegiance.

"I recognize the significance" of being a Latino in a prominent post, Davila said. "It's not lost on me. I like to think it's merit based. I like that kids and litigants and lawyers and law students can see me on the bench and see women on the bench and see what our nation looks like."

Here are some of Judge Davila's recent cases and some of the lawyers involved:

Kaufman & Broad Monterey Bay v. Travelers Property Casualty Co. of America, 10-2856 (2010) - insurance coverage

For the plaintiff: A. Eric Aguilera, The Aguilera Law Group APLC, Costa Mesa

For the defendant: Jason Y. Chao, Bohm Matsen Kegel & Aguilera, Costa Mesa

West v. Quality Gold Inc., 2012 U.S. Dist. Lexis 98700 (2010) - patent infringement

For the plaintiff: Dirk van Ausdall, King and Kelleher LLP, San Francisco

For the defendant: Ian K. Boyd, Harvey Siskind LLP, San Francisco

Globalmedia Group LLC v. Logitech Inc., 2012 U.S. Dist. Lexis 97882 (2010) - petition to compel arbitration

For the plaintiff: John J. Edmonds, Colins Edmonds Pogorzelski PLLC, Santa Ana

For the defendant: I. Neel Chatterjee, Orrick Herrington & Sutcliffe LLP, Menlo Park

Cullen v. Netflix Inc., 2012 U.S. Dist. Lexis 97884 (2012) - disability access

For the plaintiff: Gregory Steven Weston, The Weston Firm, San Diego

For the defendant: David Frank McDowell, Morrison & Foerster LLP, Los Angeles

Salinas v. City of San Jose, 2012 U.S. Dist Lexis 97802 (2012) - wrongful death

For the plaintiff: Dale K. Galipo, Woodland Hills

For the defendant: Michael J. Dodson, city attorney's office

Judicial Profile: Gary A. Feess

COURT: Central District of California

APPOINTED: 1999, by President Bill Clinton

LAW SCHOOL: UCLA School of Law, 1974

CAREER HIGHLIGHTS: Nominated by President Bill Clinton to U.S. District Court, Central District, Los Angeles, 1999; appointed by Gov. Pete Wilson to Los Angeles County Superior Court, 1996; partner, Quinn Emanuel Urquhart & Sullivan, 1992-96; partner, Jones Day 1989-92; interim U.S. attorney and chief assistant U.S. attorney, 1987-89; partner, Jones Day, 1987; chief of major fraud unit and assistant U.S. attorney, Los Angeles, 1979-87; associate, Jones, Day, Reavis & Pogue 1979-76; associate, McKenna & Fitting 1974-76

Age: 62

By Gabe Friedman

LOS ANGELES - More than two decades ago, Gary Feess broke his arm trying to tag a runner in a friendly game of softball.

The break was so bad, the bones in his left-hand migrated close to his wrist, Feess said.

"It was really something to look at," he recalled. "But six weeks later, I had [the cast] off and was playing again."

Those who know Feess said it is a fitting illustration of the drive he displays as a U.S. district judge in Los Angeles.

"He was incredibly competitive," said Richard Marmaro of Skadden Arps Slate Meagher & Flom, who played ball alongside Feess.

From the bench, Feess strikes an imposing figure, with a reputation for reading every word of every brief and wearing any skepticism on his sleeve. That ethos became familiar to any attorney involved in the federal consent decree that Feess oversaw between the Los Angeles Police Department and the U.S. Justice Department.

"He certainly does not suffer fools lightly," said Terree Bowers of Arent Fox, who spent years trailing Feess up the career ladder at the U.S. attorney's office. "It's not that he has a temper - he just expects you to be prepared, and he's not patient with people who do not come ready to proceed."

'I want the lawyers to explain to me why they're entitled to whatever it is they're asking for.'

The judge grew up in a hardscrabble town outside Cleveland, where his father worked as a machinist before making management. He graduated from Ohio State University in 1970 and moved to California after receiving a fellowship to study East Asia at UC Berkeley.

He left Berkeley after a year - not because of the tumult of the countercultural revolution, he said, but because the graduate program seemed removed from his pragmatic approach to life. He moved to Los Angeles to attend UCLA School of Law, where he graduated in 1974.

He started in private practice, spending his first several years at Jones Day. But in 1979, Feess joined the Los Angeles U.S. attorney's office, leaving and rejoining over the next 12 years, during which time he held nearly every major position, from interim U.S. attorney and chief assistant to chief of the major fraud unit. His wife, Deborah Kranze, works as a prosecutor in the Los Angeles County district attorney's office.

Giving up life as a prosecutor for good in 1989, he eventually settled at Quinn Emanuel Urquhart & Sullivan, where Feess spent four years and made partner.

There, his practice was primarily civil litigation, which proved unsatisfying. Arguing a position because it's the line your client wants is not the same as arguing what you believe is right, Feess said of those years.

To offset that experience, he found volunteer work in the world of law enforcement as co-deputy general counsel to the Christopher Commission, which looked to reform the Los Angeles Police Department in the wake of the Rodney King beating.

Though Feess is a self-described "middle-of-the-road Democrat," Gov. Pete Wilson appointed him to Los Angeles County Superior Court in December 1996. There, he oversaw a criminal docket, staying for two and a half years before President Clinton nominated him to the federal bench.

The biggest case of his judicial career to date was also one he was well well-suited to handle. He monitored the LAPD consent decree from 2001 until finally signing off in June 2009. It was happenstance that Feess, who had helped write the Christopher Commission Report earlier in his career, received the case.

His philosophy was that the reform-oriented litigation would not work unless both sides believed he was fair. In one of his most important decisions, he appointed Michael Cherkasky, a former assistant district attorney in New York, to monitor the decree.

"Maybe the department feels I was too tough on them," he said. "I don't know ... [but] I don't think it's the same department it was in 1999."

He added, "Do I think it's where it needs to be? Probably not."

Asked if he sees any problem with the increasing number of gang cases in federal court, cases some of his colleagues on the bench say should be filed in state court, Feess demurred.

"Probably I have less concern than some of my colleagues," he said, "although I do have some concern about the federalization of criminal law." The problem, he said, is there are just several dozen active judges on the federal court versus hundreds of judges on the Los Angeles County Superior Court, meaning federal prosecutors should always be conscious of resources when filing their cases.

But Feess was less reserved in describing the problems that the high case loads create for him.

"The work is mind-numbing," he said, pointing to a mountain of paper stacked in neat piles on a table in his chambers. "That's five cases, and it's typical."

The judge can display a gruff side that some lawyers trace to his no-nonsense Midwestern values.

During a recent class certification hearing in a case against a children's clothing manufacturer whose labels caused skin irritation in some cases, Feess showed that tough side.

"They're still leeching into children's skin today as we speak," argued Joe Whatley, a plaintiffs' attorney from Alabama.

As Feess fired off questions and Whatley answered, the court reporter struggled to keep up. Asked to speak slowly, Whatley coyly said his Southern drawl usually drew the opposite complaint.

"It's hard for me to believe you've never been accused of talking [too fast]," Feess snapped. "I don't think this is a problem of recent vintage."

During trials, he is extremely careful about preventing lawyers from posing argumentative questions. Arguments in front of a jury are for opening and closing statements, he said.

And during hearings, he wants organization.

"I want the lawyers to explain to me why they're entitled to whatever it is they're asking for," he said.

Jimmy Slaughter of Beveridge & Diamond in Washington, D.C., spent several years representing the city of Los Angeles in a case before Feess over whether the city could ship its biosolids, or treated waste, to Kern County and use it as fertilizer there. The county had passed an ordinance to ban the practice, but Feess ruled the ban ran afoul of federal and state law.

Though Feess also slashed Slaughter's fee application from \$1.9 million to \$900,000, the lawyer had no complaints.

"We were very impressed with Judge Feess," he said. "He writes very thorough, solid opinions."

However, the 9th U.S. Circuit Court of Appeals disagreed with Feess, finding the case had no standing in federal court and ordering it to be transferred to Los Angeles County Superior Court, where it continues.

Reports about Feess from lawyers tend to sound similar: He fires off questions hard and fast.

"He's like a heat-seeking missile," said Julie Werner-Simon, an assistant U.S. attorney in Los Angeles who has appeared for trials in Feess' courtroom. "He reads everything, and you know he does, because he asks questions that show it."

Here are some of Judge Feess recent cases and the lawyers involved:

Stephan v. Realpage, Inc., 10-4925 - consumer credit

For the plaintiff: George J. Stephan, Buchalter Nemer, Los Angeles

For the defendant: Paula G. Tripp, Anderson, McPharlin & Connors, Los Angeles

Webb v. Carter's, Inc., 08-07367 - product liability and property damage

For the plaintiff: Joe R. Whatley Jr., Whatley Drake & Kallas, New York

For the defendant: Eric Y. Kizirian, Lewis Brisbois Bisgaard & Smith, Los Angeles

Smukler v. Charney, 10-07518 - shareholder derivative

For the plaintiff: Vahn Alexander, Faruqi & Faruqi, Century City

For the defendant: Harriet S. Posner, Skadden, Arps, Slate, Meagher & Flom, Los Angeles

FDIC v. Kirkland, 10-03286 - contract

For the plaintiff: Jennifer Muse, Anderson, McPharlin & Connors, Los Angeles

For the defendant: Todd Stevens, Keeney, Waite & Stevens, San Diego

Los Angeles v. Kern County, 09-1111 - constitutional law

For the plaintiff: Jimmy Slaughter, Beveridge & Diamond, Washington, D.C.

For the defendant: Theresa Goldner, Office of the County Counsel, Bakersfield

Judicial Profile: Jeremy Fogel

COURT: Northern District of California

APPOINTED: 1997, by President Bill Clinton

PREVIOUS JUDICIAL EXPERIENCE: Santa Clara County Superior Court (1981 to 1998)

PREVIOUS EMPLOYMENT: Private practice (1974 to 1978); lecturer, human development, California State University (1977 to 1978); Law Foundation Inc. (1978 to 1981); directing attorney, Mental Health Advocacy Project (1978 to 1981), executive director (1980 to 1981)

AGE: 61

PLACE OF BIRTH: San Francisco

POLITICAL AFFILIATION: Democrat

CLE: Ethics and professional conduct; family law; ADR; intellectual property

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

A: I enjoy the variety of what I do. This job, in particular, is wonderful that way because I can go from doing a very heavy criminal case, to doing a patents case, to doing a civil rights case, to an environmental case, and no two days are the same. There's just the chance to get into a lot of different things and know a lot of different things. It's kept me interested for almost 30 years. It'll be 30 years this year. It's still really interesting. My work is never boring. I have days that I don't particularly enjoy, but the work has a lot of variety to it. And I think that's what I like the best.

Q: What do you like the least about being a judge?

A: I think the hardest part is when people get so caught up in their positions that they can't see anything else. It's a lack of perspective, I guess, that I see in litigation. I don't expect people to abandon their positions or believe that they're not entitled to things, but it's the inability to see anything else — the lack of the ability to see that there might be someone else who has a different point of view. Whether you agree with them or not, you don't have to treat them like they're not human. It's some kind of self-righteousness that really gets to me.

Q: What do attorneys do to give perspective and come to an accord?

A: I think its temperamental. I think some people are not like that and some people are. I think that by and large we [Santa Clara County] have a really good bar association and there's a lot of civility, and I like that. I think we're very fortunate. It's not like that everywhere in the country, but every now and then someone will come in and be very one-dimensional and I find that really frustrating. I think that if you can get some traction — if you can just get people talking, even if you need to go to trial you can at least define what really needs to be tried and what doesn't. You don't have to have all the personal pettiness and all that kind of stuff.

Q: You've been involved with an emotionally charged case for a while, the *Morales v. Tilton* case. In your article for the Fordham Urban Law Journal commenting on the case, "[In the Eye of the Storm: A Judge's Experience in Lethal-Injection Litigation](#)," you mentioned that you admired Judge Learned Hand for his insistence on deciding controversial cases on the basis of legal principles rather than social agenda. After almost five years, do you still have that admiration?

A: Even more so. Because [the case] has been so public I am aware of the passions that are out there. Some of them have been directed at me. It's made me be a stronger person because I've had to say, "Whatever I do with this case, someone is going to be really upset with me." I think it's sort of realizing that in a very personal way. The only thing that can keep you sane in a situation like that is to follow that philosophy — what are the facts, what's the law, how do I go through this process and do what the facts and the law require because there are going to be people screaming at me the whole time. So, I've found that approach to be really, really helpful. I think if I had an agenda, it would make it easier to make a decision, but I wouldn't feel as good about it. I think that it's when we get these really hard cases is when we're really tested as judges. We need to remember what our job is and what our job isn't.

Q: What lessons have you learned from *Morales* now that the case is coming to a close?

A: I tried to lay that out in the [Fordham Urban Law Journal] article as much as I could.

Q: But wasn't the article published three years ago?

A: I'm kind of reluctant to say much more than that. In the last section of the article, I tried to talk about what I learned. I guess what I would add to what's in there is that we judges have a very important role to play in society. We have to be the arbiters of these conflicted issues. You have to be strong enough to do what the role requires. You have to be serious and be serious-minded, and be diligent, and you have to give it your best.

And you also have to recognize that we're human, and we're fallible, and we make mistakes. You have to do a really hard job and you have to stay humble at the same time. And I think humility probably is the biggest lesson I've learned from that case. I've learned that I can't do a perfect job at it. I have made mistakes. I will mistakes, not just in that case, but in life generally. Probably the biggest moral lesson that I've learned about that case is that when you get into something that's as hard as the death penalty is — and it's one of about a half a dozen issues that are like that — it'll inevitably put you in a spot where you're going to have to face that you're not perfect, that you can't do a perfect job. You can't reconcile the differences of opinion and the different views that people have because they're just too disparate. And at the same time, you don't get to be the legislature. You don't get to decide what the law should be. You have to figure out what the law is.

I just find it extremely daunting. I think it's really hard. With no false modesty, I take my job very seriously. I give it my best shot. I work really hard. And even with that, I'm going to fall short. I think it's a good life lesson. I think it's a hard life lesson.

Q: How do you remain humble when everyone calls you, "Your Honor"?

A: That's even harder with the robe and the bench and everything. And I think it gets harder as you move up the ladder. That gets back to your own spiritual orientation, I think. I became a judge, in part, because I didn't like the way I saw judges treating my clients. That was what first inspired me to get interested in this profession. I really felt that a lot of judges treated my clients very poorly, and my clients were very vulnerable. I think part of that is because people take all the trappings [of being a judge] seriously. When people call me "Your Honor" and are deferential, I know it's because of the office, it's not me. And I think also that being a parent has been very important in that regard. My kids are not deferential at all [laughing]. And I don't want them to be. I want to have very honest relationships with them. They're both adults now, and we love each other a lot, but I never got false deference because I was their dad.

Q: What happens when there's not a lot of precedent to guide you, or the precedent is so old that it seems inapplicable?

A: That comes up a lot in the copyright field, for instance, or in the IP field generally. Technology is evolving much faster than the law.

I'm thinking of Internet cases — no one anticipated YouTube or Facebook. No one dreamed of either of those things 10 years ago. We had to decide what happens to intellectual property rights. But, you can still say, what are our core principles in the area of intellectual property or with the Eighth Amendment; what has the Supreme Court said about intellectual property cases? What guidance can we take from that? I think where we get into trouble is when we start to think, "Well, what do I think would be the best solution." If I wanted to do that, then I should get elected to the legislature. There is a role for people who want to do that. Believe me, as I've gotten into [the *Morales* case], I certainly have opinions as to what ought to happen. But I have to be very disciplined about not making my decisions on that basis.

Q: Is it harder to withhold your moral judgment given your background in religious studies?

A: Yes, I think I'm more aware, in some ways, of the moral dimensions of capital punishment — and it's not just the death penalty. I've had some abortion cases when I was in the state court. In addition to the legal stuff that I have to figure out, I have the moral issues to consider. It's not like I don't have feelings as a person, that I don't have my own reactions. And I think one of the things that's hardest to do as a judge is to set your personal moral framework aside. You need to look at the legal framework you're operating in and what is the correct decision under that framework. Which is not to say that the law is amoral, but rather that [the legal and moral frameworks] aren't exactly overlapping. You know, it's not like you can say, "Well, all I need to do is read the Bible or the teachings of Buddha and I can figure out how to decide this case." It doesn't work that way. There are probably people who want it to work that way, but that's not the way it works.

Q: You will have been on the bench 30 years in September. Have you seen a change in the way judges treat litigants, especially the vulnerable ones?

A: Yes. I think it's a lot better.

Q: To what do you attribute this change?

A: I think it's just generational changes. Part of it is that our whole culture is less authoritarian than it used to be. I think that the other thing that's made a big difference is diversity. The bench has a lot more women and people from diverse backgrounds now. When I started here as a lawyer in the mid-'70s, I think there was one woman on the bench in the Superior Court, Judge Marilyn Zecher. There were a couple of women on the municipal court.

Q: Wasn't Judge Rise Pichon, an African-American woman, on the bench then?

A: I was on the court when she came. I was a commissioner. I became a judge in 1983 or 1984, so she's been around a long time. But it was right about that time that things started to change. It was in the late '70s with [Gov.] Jerry Brown then [Gov.] George Deukmejian continued that with younger and more diverse appointments. Now, [the bench] is much more representative of the community. In the '70s, it wasn't. It was kind of a white male bastion. In a place like San Jose it was a pretty narrow band in terms of the place where people had come from. The judges came from Santa Clara University and Bellarmine College Preparatory high school — that was the pipeline. I think one of the effects of that is people realize there are different ways to see things and there's a lot of different kinds of people. So it's just not as clubby. That is a lot of the reason why, I think, people are treated better.

Q: What is your advice for new attorneys?

A: Get educated. Do the CLEs. If you can get some mediation skills — that's really good — interviewing skills, getting involved in bar association activities. The main thing is to not be isolated. I mean, I had so much doubt as a lawyer for so many years. And really, the only thing that gave me any sense that I wasn't a complete idiot was when I could interact with other people and I realize that they're having the same struggles; they're having the same questions. I realized, "Maybe there are some things I know that I can help them with." That really was important to me. To the extent that I was isolated personally, professionally as a lawyer, that made it really hard.

Judicial Profile: Thelton Henderson

COURT: Northern District of California
APPOINTED: 1980 by President Jimmy Carter
DATE OF BIRTH: Nov. 28, 1933
LAW SCHOOL: Boalt Hall School of Law, 1962
PREVIOUS JUDICIAL EXPERIENCE: None

Jeff Chorney
The Recorder
August 09, 2005

Senior U.S. District Judge Thelton Henderson walks with a cane these days, the result of an autoimmune disease that's attacking his muscles.

The judge doesn't expect it to force him off the bench anytime soon. That's good, because he has a lot of work to do. He just ordered a federal receiver to take over California's state prison medical system, and he's determined to see it through.

Henderson, 71, could use the disease as an excuse to finally do what he's been threatening: leave the bench to fully devote himself to his beloved hobby, fishing. Having maxed out his pension, Henderson is essentially working for free.

But even with the cane, the judge is hardly slowing down.

"He has taken to being a senior judge the way [Jimmy] Carter took to being an ex-president," said criminal defense attorney Edward Swanson, who clerked for Henderson in 1992 and 1993. "He's as engaged as he was before, and he continues to do great work."

Henderson has been an admired, if controversial, figure since beginning his career in 1962 as the first black lawyer in the U.S. Department of Justice's civil rights division. The judge sees his recent prison work as a corollary to the earlier DOJ job, except instead of enforcing voting rights for Southern blacks, now he's trying to ensure proper medical care for another disenfranchised group.

"If you don't take an interest in these kinds of cases, prisoners who don't have an effective voice, you can't legitimately take an interest in things that happen to other kinds of underdogs," Henderson said in a recent interview. "That's what our Constitution is about."

The belief has driven Henderson throughout his career. It's also made him some enemies.

Conservatives derided the proud liberal as an "activist" judge before that label was popular. He faced the sharpest criticism after his 1996 decision to strike down Proposition 209, which

outlawed affirmative action. The Ninth Circuit U.S. Court of Appeals reversed Henderson in *Coalition for Economic Equity v. Wilson*, 122 F.3d 692. Afterward, Henderson told the *San Francisco Chronicle* that it would be the case he will best be remembered by, "for better or worse."

Henderson said his feelings about such criticism changed recently because of the Terri Schiavo case, when Republicans in Congress lobbed the term at conservative judges. "An activist judge is someone who displeases politicians," he said.

Now it's the prison cases that could be his lasting legacy. While some of his actions have run afoul of the prison guards' union, most of Henderson's work has been embraced by the litigants: the Prison Law Office, which represents prisoners, and state officials, who are the named defendants.

Both sides have come out in favor of Henderson's receivership decision, but perhaps more indicative of what the parties think of him is the story of how he got the case, *Plata v. Schwarzenegger*, 01-01351, in the first place.

While he was the Northern District's chief judge, Henderson worked to get representation for inmates suing *pro se*. Eventually, he also picked up the case that became a landmark class action over conditions at Pelican Bay, the highest-security prison in the state.

In that matter, *Madrid v. Gomez*, 889 F.Supp. 1146, Henderson ruled that harsh conditions violated inmates' Eighth Amendment right to be free from cruel and unusual punishment.

"I don't think one could dream of getting something as detailed and closely reasoned as the court put out in the Pelican Bay case," said Prison Law Office attorney Steven Fama.

And even though most of the decision went against the state, officials did not appeal.

"Judge Henderson actually has a judicial temperament," said Bruce Slavin, the state lawyer who represents the corrections department. "He listens to both sides."

When *Plata* was filed, the state agreed with plaintiffs to ask Henderson to relate the two cases to ensure he would be the judge. "I was deeply flattered," Henderson said. "It suggested to me they thought my handling of *Madrid* was evenhanded."

Judges on senior status typically handle about 50 percent of an active judge's caseload. They cannot pick which cases they get, but can decline certain types of cases. Henderson no longer takes criminal or patent cases, but otherwise is on "the wheel."

Right now, he's doing about 30 percent of an active caseload because of the amount of time needed for *Plata*. He said he's currently putting in about 60 hours a week but expects to slow down once a receiver is in place.

Those close to the judge say Henderson is devoted to *Plata* because it's the kind of case that

makes him "tick" as a lawyer and a judge.

"Judge Henderson is a person with a past," said his former law partner, Sanford Rosen, who pointed out that before his civil rights work for the government and in private practice, Henderson grew up in South Central Los Angeles and played football at UC-Berkeley.

"So what we have in Thelton is a very sweet and wonderful person who is also tough," Rosen said. "If he's going to be a senior judge he's not interested in pushing paper to reduce workload."

Even so, Henderson admits that being on senior status hasn't quite turned out the way he expected. He thought he would slow down and be able to spend more time fishing and hanging out with his family.

Although he's running faster than he wanted, "in a way, it's energizing," he said. When he went senior, he feared that deep down he was a "couch potato," he added. "But that hasn't happened."

Henderson said improving prisoner medical care is like steering an ocean liner. Along with cutting through a sluggish, entrenched bureaucracy, one of the biggest challenges will be to change the culture. Right now, medical care takes a backseat to custodial concerns, and Henderson said that's got to change.

"It's possible but not easy," he said.

He said he's actually grateful he picked up the case while on senior status because he wouldn't have been able to give it the same amount of time with an active caseload.

Henderson said he's received boxes of letters from prisoners and their families thanking him and asking for more help. The prison work, especially ordering the receivership, is certainly groundbreaking, but it's probably too soon to tell whether it will indeed be Henderson's lasting legacy.

Already, the receivership order has forced filmmaker Abby Ginzberg to redo the ending of her documentary film about Henderson's life. The hourlong piece is set for a September premiere.

"I'm afraid if I waited any longer to finish the film, I'd have to tell some new story," Ginzberg says.

Henderson, too, says *ç* only half-joking *ç* that something else could come up that would change how people remember his career.

"I want to fade off into the sunset, and these things keep coming," he said.

Judicial Profile: Lowell Jensen

COURT: Northern District of California
APPOINTED: 1986
DATE OF BIRTH: June 3, 1928
LAW SCHOOL: Boalt Hall School of Law, 1952
PREVIOUS JUDICIAL EXPERIENCE: None

Jason Hoppin
The Recorder
September 02, 2003

Near the end of "The Man Who Shot Liberty Valance," an old newspaperman barks "This is the West, sir. When the legend becomes fact, print the legend."

When it comes to D. Lowell Jensen, the legend is true. And Jimmy Stewart's character in "Liberty Valance," an earnest lawyer who courageously brings order to a lawless West, might be one of the few attorneys in fact or fiction who approach Jensen's integrity.

As Alameda County district attorney from 1969 to 1981, Jensen was the top prosecutor for one of the more tumultuous eras in California history. He was there for the Symbionese Liberation Army and the Black Panthers. He was a top assistant in the office during the Free Speech Movement. He personally prosecuted the infamous 1976 Chowchilla kidnapping, in which 26 schoolchildren were taken from a school bus and later buried in a moving van.

In 1981, he was tapped to run the Justice Department's criminal division under newly elected President Ronald Reagan. He eventually rose to become the Justice Department's second-highest official, serving as deputy attorney general under another giant figure in Alameda County legal history, Edwin Meese III.

Jensen emerged from his political pursuits unscathed. While someone who prosecuted Huey Newton and Mario Savio could easily earn the reputation as a political hack, Jensen has pulled off a remarkable trick. At 75, his reputation for fairness, decisiveness and patience is unassailable.

Jensen is, says defense attorney Harold Rosenthal, "as close to the Platonic ideal of judicial temperament as you can find."

Even back when Jensen was in the Alameda County DA's office, he urged all his prosecutors to be even-handed.

Howard Janssen of Lafayette's Janssen Doyle said Jensen always told his prosecutors to consider two things before bringing a case -- not only whether they could win, but whether they truly believed the suspect was guilty. And once they made their decision, Jensen never second-guessed his deputies -- another factor which helped form Jensen's apolitical reputation.

Jensen also told deputies to treat every suspect the same.

"It didn't matter if it was a mayor or someone without a job," Janssen said he was told. "The impact [of criminal charges] is just as traumatic."

Jensen took senior status in 1997, but has maintained a fairly active calendar. Last year, he sentenced former Media Vision CFO Steven Allan to 3 1/2 years in prison for securities fraud. A week later, he sentenced the government's star cooperating witness, CEO Paul Jain, to a substantial 2 1/2 years. The sentences were considered middle-of-the-road, in line with his reputation.

Despite his background, Jensen shouldn't be considered pro-prosecution. He overturned the conviction of George Franklin in the infamous "repressed memory" murder case, largely putting to rest a trend of using psychiatrist-aided recovered memories to win convictions.

Some judicial reputations are built on spectacular cases. Jensen's seems built between the lines -- in court and away from the headlines.

"He's human, he can lose his patience -- but he's good to counsel in front of juries. He gives you a chance to make your record," said Rosenthal, who used the words "wisdom," "compassion" and "detachment" in praising Jensen.

But his influence extends far beyond his courtroom. His former deputy prosecutors dominate the Northern California bench, from Supreme Court Justice Ming Chin to several California Court of Appeal justices to a legion of superior court judges and two colleagues on the federal bench. Even U.S. Attorney Kevin Ryan worked under him.

Lawrence Callaghan, a partner at Tucker Ellis & West, said Jensen is one of the best trial lawyers he's ever known.

"Put together brains, personality, experience and judgment," Callaghan said. "I've never heard anyone complain about Judge Jensen."

George H. King
U.S. District Judge
Central District (Los Angeles)

Career highlights: Appointed by President Clinton to U.S. District Court for the Central District, 1995; magistrate judge, U.S. District Court for the Central District, 1987-95; sole practitioner, 1980-87; Lillick, McHose & Charles, senior associate, 1979-80; assistant U.S. attorney, Los Angeles, 1975-79; associate, Mitchell Silberberg & Knupp LLP, 1974-75

Law school: USC Gould School of Law, 1974

Age: 60

By Gabe Friedman

LOS ANGELES - On any given Monday, most courtrooms in the downtown federal courthouse are buzzing with activity. That's not usually the case for the courtroom of U.S. District Judge George King, who rarely holds oral arguments.

More likely, King is in his chambers by 8 a.m., reading papers, considering arguments - and discussing it all with his two law clerks.

King said he holds oral arguments infrequently because lawyers often repeat what's already in their papers, making it an unproductive use of his time. Instead, when King calls an oral argument, it's because he's puzzled by something. It's not a "pro forma" procedure, and he expects lawyers to know their arguments and authority inside out and be ready for some intellectual jousting.

"It is essentially like a moot court session, only it is not moot," King said. "I challenge the lawyers, and I want them to challenge me. The purpose of holding oral arguments is I want them to convince me why I should go their way."

King, 60, may hold hearings infrequently, but his visibility is about to rise: He is set to take over as chief judge of the Central District at the end of the year under the local rules, which assign the four-year term to the longest serving judge younger than 65 years old.

King's demeanor in court can vary between curt and courteous, but he's usually demanding.

'I'm demanding, in that I want to get the best possible product out the door, and my product is rulings.'

A recent status conference showed King sticking to his typical tight ship and firm deadlines.

The hearing involved Alfred Nash Villalobos, a lawyer convicted in 2011 of taking \$50,000 cash in a scheme to force his client to lie to a grand jury investigating immigration visa fraud. The judge sought to lay out a schedule for post-trial motions and a sentencing date.

Villalobos' lawyer, Sonia Chahin, asked for a sentencing date in 12 weeks, arguing the U.S. Probation Office had not yet submitted its report on her client, that she was new on the case and that new bail developments would take time to research.

"Why would we need so much time?" King said, making a note to require the U.S. Probation officer assigned to the case to submit his report promptly and allotting 10 weeks.

"I'm demanding, in that I want to get the best possible product out the door," King said during a recent interview, "and my product is rulings."

The judge receives high praise from attorneys, who say he does not simply try to clear his docket.

"He holds the attorneys before him to a very high standard of 'analytical rigor' and holds himself to an even higher standard," said Mark Yohalem, an assistant U.S. attorney who worked on the Villalobos case. "He's not looking for the shortest way to get from point A to point B. He really wants to understand the issue."

As chief judge, King will inherit a variety of administrative tasks related to the judges' internal business and will also become a de facto spokesman for the Central District at bar functions and other meetings. Never one to seek the spotlight, King is nonetheless excited about the honor and has prepared for the added workload.

Being one of the oldest is also an odd position for King, who spent much of his life as the youngest. He graduated from high school at 16, college at 19 and law school at 22.

"It's a very odd circumstance to find myself in now," he said, "where everyone's younger than me."

King was born in Shanghai but moved to Hong Kong at 7. Both his parents worked as accountants, and they moved the family to the U.S. when King was 11 - first to the Bay Area and then to Los Angeles.

He traces his interest in becoming a lawyer to when he was 13. His parents had office space in a building shared by Charles E. Lloyd, one-time law partner of former mayor Tom Bradley and an accomplished trial lawyer. His father asked Lloyd to talk to young George about the legal profession, and the boy was mesmerized by their discussion.

"I was extremely impressed with Charlie, because even though I was a little kid, he treated me like an important client," King said.

In 2002, the judge conveyed the same story to the Daily Journal, using almost the same language - a testament to how that encounter shaped him, as well as how controlled the judge is about sharing details of his private life.

Although rumors suggest he may be headed for an appellate appointment, the judge said he has no interest in such a move at his age and that it would be presumptuous to act as if he deserved promotion.

His career as a lawyer has been a steady ascent. After graduating from law school in 1974, he was hired as an associate at Mitchell Silberberg & Knupp. Early on, he was assigned to monitor the criminal trial of an executive accused of selling false insurance policies to corporations.

The experience whet his appetite for trials, and he left the firm in July 1975 to join the U.S. attorney's office in Los Angeles. Throughout four years as a line prosecutor, he tried 25 cases to verdict, including bank robberies and Ponzi schemes.

"I never had a second chair because I pretty much insisted I don't want to rely on someone else," King said. "My view was I represent the government and, if something happens, I'm going to take responsibility, for better or worse."

He re-entered private practice at the now-defunct business litigation firm Lillick McHose & Charles, leaving after a year to open his own firm, King & Chen. A year later, he went out on his own, handling business litigation from 1981 to 1987 in federal court.

He applied and was selected to be a magistrate judge in 1987 and oversaw habeas corpus petitions, discovery disputes and the occasional civil trial when all parties consented.

Between that job, being a prosecutor and working as a sole practitioner, King said he felt well-equipped when President Bill Clinton nominated him for a district judge position in 1995. Still, for the first 18 months, he worked seven days a week until he felt more comfortable.

Now, King works at least one day each weekend. He said his orders are typically a minimum of five to 10 pages unless the motion is frivolous. In those cases, King says he issues a short order that states the motion was denied, hoping to send a message to the litigants to not waste his time.

The judge does not hesitate to issue technical rulings. For example, King last year rejected the plan of allocation in a \$45 million settlement related to the \$580 million sale of Myspace to News Corp. after receiving objections from certain class members.

"He was willing to listen to what everyone had to say," said Michael Bowse of Browne George Ross LLP, who represented an objector. "It was clear he knew all the issues and was really trying to get it right."

Other lawyers said King will not issue tentative opinions but will signal at hearings which way he's leaning. The judge sometimes still questions deals reached by both sides in criminal cases.

"He's not going to rubber stamp whatever you agree to with the prosecutors," said Dana Dorsett of Moon & Dorsett. "He makes his own independent decisions, so whatever arrangement you have with prosecutors, you have to expect Judge King to make his own decision."

Here are some of Judge King's recent cases and the lawyers involved:

Brown v. Brewer, 06-3731 - securities

For the plaintiffs: Randall Baron, Robbins Geller Rudman & Dowd, San Diego

For the defendants: Richard Stone, Jenner & Block, Los Angeles

USA v. Isaacs, 07- 732 - distribution of obscene matter

For the prosecution: Michael W. Grant, U.S. Department of Justice, Washington, D.C.

For the defendant: Roger Jon Diamond, Law Offices of Roger J. Diamond, Santa Monica

USA v. Galvan, 10-602 - possession of methamphetamine with intent to distribute

For the prosecution: Cameron Schroeder, U.S. attorney's office, Los Angeles

For the defense, William Domnarski, sole practitioner, Riverside

Biller v. Toyota Motor Corp., 09-05429 - civil racketeering

For the plaintiff: Joseph Wohrle, Allen & Wohrle, Santa Monica

For the defendant: David L. Schrader, Morgan Lewis & Bockius LLP, Los Angeles

Crawford v. Finley, 09-3956 - civil rights

For the plaintiff: Ronald O. Kaye, Kaye McLaine & Bednarski LLP, Pasadena

For the defendant: Susan E Coleman, Burke Williams & Sorensen LLP, Los Angeles

Lucy Koh



COURT: NORTHERN DISTRICT OF CALIFORNIA

AGE: 44

CONFIRMED: JUNE 2010

APPOINTED BY: OBAMA

Even though Judge Lucy Koh is new to the bench, the powerhouse litigators who recently tried Apple Inc.'s suit against Samsung Electronics Co. Ltd. before her knew that she already had a fierce reputation. During the smartphone and tablet patent infringement case, they found out just how fierce she could be.

Koh, who sits in San Jose, has often heard complex patent cases since she joined the bench in June 2010, and lawyers know her for immediately taking charge and working quickly through complex matters. One lawyer who has appeared before her says that the judge is known for holding "lawyers' feet to the fire." That was certainly true in *Apple v. Samsung*, which was assigned to Koh in April 2011. She made it obvious that she wasn't intimidated by the big names in her courtroom.

At a hearing this past August, Samsung counsel John Quinn of [Quinn Emanuel Urquhart & Sullivan](#) clearly angered Koh when he asked her to reconsider a decision about the evidence that his client could enter. "Don't make me sanction you," the judge snapped. Two weeks later, during the trial, it was Apple counsel William Lee of [Wilmer Cutler Pickering Hale and Dorr](#) who drew Koh's ire for submitting a long list of additional witnesses whom his client wanted to call. "Unless you're smoking crack, you know these witnesses are not going to be called," Koh sharply told him. (Lee and Quinn declined to comment for this article.) At another point during the trial, Koh said, "I don't trust what any lawyer tells me in this courtroom."

A jury returned a \$1.05 billion verdict for Apple on August 24. (If upheld, it would be the biggest patent verdict in history). The attorneys in the case haven't heard the last of Koh, however. She's scheduled to hear Apple's request for a permanent injunction against Samsung in December, and in March she'll begin trial in a second suit between the two companies.

Koh, who is of Korean descent, is the first Asian American district court judge in the Northern District of California. After graduating from Harvard Law School in 1993, she went to work in Washington, D.C., first for the Senate Judiciary Committee and then for the U.S. Department of Justice. In 1997 she moved west to become an assistant in the U.S. attorney's office in Los

Angeles, leaving after three years to become a senior associate at [Wilson Sonsini Goodrich & Rosati](#). In 2002 she became a partner in [McDermott Will & Emery](#)'s Silicon Valley office, where her workload focused on representing technology companies in patent matters. Then-governor Arnold Schwarzenegger nominated her to be a judge for the Superior Court of California for Santa Clara County, where she served from 2008 to 2010.

John A. Kronstadt

Judge John Kronstadt scales mountains for fun while he seeks out new challenges in his career.

John A. Kronstadt

U.S. District Judge

Central District of California (Los Angeles)

Career highlights: Confirmed by the Senate as U.S. district judge, Central District of California, April 12, 2011; nominated by President Obama to Central District, Nov. 17, 2010; appointed by Gov. Gray Davis to Los Angeles County Superior Court, 2002; partner, Arnold & Porter LLP, Los Angeles, 2000-02; co-managing partner, Blanc, Williams, Johnston & Kronstadt, 1985-2000; partner and associate, Arnold & Porter LLP, Washington, D.C., 1978-85; law clerk, William P. Gray, 1976-77

Law school: Yale Law School, 1976

Age: 61

By Gabe Friedman

LOS ANGELES - Having scaled the Adirondack Mountains, as well as mounts Rainier and Whitney, U.S. District Judge John A. Kronstadt knows a thing or two about self-motivation.

It helps explain why he would seek a higher workload for a lower salary by trading his position at the Los Angeles County Superior Court for a spot on the federal bench.

"I was attracted by the challenge of learning new things," he said.

Kronstadt was confirmed to a seat on the federal court in Los Angeles in April 2011 after nearly a decade as a state court judge.

"I'd like to think that I compete with myself," he said. "I want to meet and exceed my own standards."

G. Andrew Lundberg, a Latham & Watkins LLP partner who climbed Mount Rainier with Kronstadt, said his friend carries a card in his wallet that indicates his membership in the club of people who have hiked all 46 peaks in the Adirondacks. Those mountains aren't that tall but are rugged and difficult to climb, Lundberg said.

'I'd like to think that I compete with myself.'

- Judge John A. Kronstadt

"It's kind of one of those things, you have to set a goal," Lundberg said. "You don't do it in a week or a month."

Kronstadt showed a similar attitude as an attorney, including in the 15 years he spent building his firm, Blanc, Williams, Johnston & Kronstadt, which was acquired by Arnold & Porter LLP in 2000. During more than two decades of complex litigation in the areas of antitrust, intellectual property and securities, he enjoyed situations where his opposing counsel knew more than he did. He said it provided a catalyst for him to work even harder.

In federal court, Kronstadt has presided over a vast range of trials, from a bank robbery prosecution to a patent dispute - even a lemon law case that transferred to his courtroom from state court on a diversity argument.

His wife, Helen I. Bendix, is a judge on the Los Angeles County Superior Court. The two met as undergraduates at Cornell University, where he majored in government. They attended Yale Law School together and moved to California for clerkships in 1976 - he with then-U.S. District Judge William P. Gray, while Bendix clerked for then-9th U.S. Circuit Court of Appeals Justice Shirley Hufstедler.

The couple has three children.

Besides artwork and photos of his children, Kronstadt's chambers are decorated with pictures of his late father - an architect, engineer and planner who played a big role in his life after his mother, who had worked as a chemist and a model, died when he was 9.

After his appointment to the state bench in 2002, Kronstadt saw a varied caseload, overseeing family law matters, misdemeanor cases and civil disputes. He handled several attention-grabbing matters, such as the pop star Prince's \$150,000 dispute with his Beverly Hills landlord and a convoluted ownership spat over an 840-pound Bahia emerald worth hundreds of millions of dollars.

During more than a decade on the bench, Kronstadt has earned a reputation as a hardworking but usually sweet-tempered jurist who occasionally ruffles feathers with his formal demeanor.

"He's a delight, he really is," said Joel F. Tamraz, a sole practitioner in Century City who recently appeared before Kronstadt representing a client facing a trade secrets theft claim and counterclaiming defamation. "He's a very intelligent guy, very courteous, and he asks good, intelligent questions."

The job of a judge, according to Kronstadt, is to figure out what the law is, and he said he finds the process of reaching that decision immensely rewarding.

Glenn Kantor of Kantor & Kantor LLP said the judge expressed interest in learning about his complex and specialized area of the law to deal with a fairly arcane ERISA claim.

Kronstadt asks for oral arguments in nearly all of his civil matters and often on criminal cases, too.

"It's an opportunity to get things right," the judge said, adding that he sometimes issues tentative rulings but always wants the lawyers to point out if he's missed something.

That jives with how lawyers relate their experience in his courtroom.

"It was very clear to me he'd read all the papers, which were voluminous," said James R. Rosen of Rosen Saba LLP, who represented a defendant on a summary judgment motion. "He gave us his tentative and cited cases and evidence and then let us have at it."

Rosen, whose client is facing a claim of wrongful termination in violation of public policy, said it was an important opportunity to hear what Kronstadt was thinking.

Here are some of Judge Kronstadt's recent cases and the lawyers involved:

White v. Hartford Life and Accident Insurance Company, 11-09780 - ERISA

For the plaintiff: Glenn R. Kantor, Kantor & Kantor LLP, Northridge

For the defendant: Melissa M. Cowen, Burke, Williams & Sorensen LLP, Los Angeles

Nunag-Tanedo v. East Baton Rouge Parrish School Board, 10-1172 - racketeering

For the plaintiff: James Knoepp, Southern Poverty Law Center, Atlanta

For the defendants: Don Hernandez, Hernandez Schaedel & Associates, Pasadena

U.S.A. v. Reyes, 11-675 - bank robbery

For the prosecution: Michael Dore, U.S. attorney's office

For the defendant: Johh L. Littrell, federal public defender's office

Friedman v. Conair Corp., 11-4156 - wrongful termination

For the plaintiffs: Andrew Morrison, Ross & Morrison, Beverly Hills

For the defendants: James R. Rosen, Rosen Saba LLP, Beverly Hills

Ceniceros v. U.S.A., 10-8892 - wrongful death

For the plaintiffs: James O. Heiting, Heiting & Irwin, Riverside

For the defendant: Geoffrey D. Wilson, U.S. attorney's office

Judicial Profile: A. Howard Matz

COURT: Central District of California

APPOINTED: 1998, by President Bill Clinton

LAW SCHOOL: Harvard Law School, 1968

- Sep. 02, 2010

A. Howard Matz

U.S. District Judge A. Howard Matz applies the lessons of his mentor, Morris Lasker, by guiding a new generation of young attorneys.

By Evan George

Daily Journal Staff Writer

LOS ANGELES - The first time U.S. District Judge A. Howard Matz received career advice from a practicing lawyer was while he was sitting shiva for his mother, who died in 1962. Matz was 18.

A family friend giving the advice was a "gopher" for the notorious Democratic Party machine in King's County, N.Y., during the 1940s and 1950s.

"He tried to talk me out of it," Matz recalled. "He said, 'you don't want to go into a profession that's so dirty.'"

Matz, who went on to become a corporate lawyer, a federal prosecutor and an early partner at a now well-established L.A. firm, was not dissuaded by the cynic's advice.

"I could see what lawyers could do to shape America that other professions couldn't quite achieve," he said.

Claiming Robert Kennedy as a legal hero, he helped organize Lawyers Against the War to oppose U.S. involvement in Vietnam.

In 1998, President Bill Clinton appointed Matz, a Democrat, to the U.S. District Court for the Central District.

Since assuming the bench, Matz has won respect from lawyers who appreciate his exhaustive preparation, detailed tentative rulings and strict managing of his courtroom. Like some judges with broad legal experience, Matz can, at times, dominate lawyers who aren't making the arguments he finds valuable, like a director who knows the script's lines better than the actors.

In his 12 years on the bench, Matz has handled several blockbuster copyright disputes, including the on-going war between search engine Google Inc. and the adult-content site Perfect 10 over

the use of photo thumbnails. Matz handed down an injunction against Google that the high-tech giant appealed and saw partially reversed.

Lawyers involved in that and other copyright litigation still pending before Matz declined to comment, but it is clear that both sides are rarely happy with the way he has come down on some important Internet copyright issues.

"It certainly seems like he has more than his fair share of important cases dealing with the treatment of copyright on the Internet," said Steve Marenberg, a partner at Irell & Manella. "Given the importance of these rulings, by their nature he will be subject to a certain amount of scrutiny."

Social service cases like the one known as "Katie A," also are dear to Matz's heart. In that case, advocates of foster care youth sued California for allegedly failing to provide the level of care required by federal Medicare laws.

"He's shown he is concerned about poor children with mental health issues," said Robert Newman, senior counsel at the Western Center on Law and Poverty.

That case also is pending, and Matz has had to weigh the rights of disabled children with what the judge called "the collapse of the financial budgetary system in California."

Perhaps most important to Matz has been his recent support of the creation of a pro se workshop on the fifth floor of the main federal courthouse in downtown Los Angeles.

Matz grew up in the 1950s in Malverne, N.Y., about 40 miles outside of Manhattan. The racially mixed, immigrant enclave was a "small town that was hugely influential in shaping who I am," he said.

Despite those early discouraging words to forget about law, Matz attended Harvard Law School.

When he graduated in 1968, he clerked for U.S. District Judge Morris Lasker of the Southern District of New York.

The experience was formative: Lasker became a role model to his impressionable, 26-year-old clerk. The well-known jurist remained a mentor to Matz until Lasker's death at 92, while still a sitting judge.

Matz joined the Wall Street law firm Hughes, Hubbard & Reed in 1970, the year he passed the New York bar.

Though he and his wife, Jane Matz, had deep ties to New York, the firm made an offer he couldn't refuse: open up Hughes, Hubbard & Reed's West Coast office in Los Angeles. They paid for the California State Bar Exam and bought him a car, though he didn't plan to stay.

In Los Angeles he defended Howard Hughes' Summa Corp. from a high-profile defamation suit and dealt with antitrust matters for Atlantic Richfield Co.

In 1974, he joined the U.S. attorney's office in Los Angeles, and rose to chief of the fraud and special prosecutions units. In 1979, Matz returned to Hughes Hubbard's L.A. office as a partner, specializing in commercial litigation.

In 1983, he joined some friends from the U.S. attorney's office at the firm Bird, Marella, Boxer, Wolpert & Matz. For the next 15 years, until he was appointed to the bench, he specialized in business litigation and federal criminal litigation, with a subspecialty representing lawyers and law firms.

That experience with both sides of the trial bar informs his efforts to manage cases and run trials. He has been known to e-mail tentative orders several days before to pinpoint and control the flow of arguments.

"My tentative orders ... can be pretty detailed, they're meant to shape the discussion," Matz said.

Last December, a potentially combustible case between pornography magnate Larry Flynt and his nephews came to Matz's court.

"He went beyond well prepared," said Dan DeCarlo, an attorney with Lewis Brisbois Bisgaard & Smith in Los Angeles who represented the nephews. "[He] forces people to go faster."

The case was especially tricky because most of the evidence was pornography and it was a jury trial.

"That could have been a two-week trial and it was done in less than a week," said Mark Hoffman, Flynt's attorney.

Matz is adamant about balancing his work with family, a value he said he learned from his mentor, Lasker.

Though Matz's three children are grown, including a son in the U.S. attorney's office for the Central District, that balance now applies to his toddler granddaughter.

Also like Lasker, he plans to usher several of his law clerks into a more fully rounded career in the law, perhaps even to the bench.

Matz, whose photos of his clerks have begun to creep halfway down the long wall in his chambers, has made room for more than a decade's worth of new portraits.

Here are some of Matz's recent cases and the lawyers involved:

UMG Recordings Inc. v. Veoh Networks Inc., CV07-05744

For the plaintiff: Brian D. Ledahl, Irell & Manella, Los Angeles

For the defense: Robert G. Badal, Wilmer Cutler Pickering Hale & Dorr, Los Angeles

U.S.A. v. Bradshaw, CR08-00429

For the prosecution: Christopher K. Lui, U.S. attorney's office

For the defense: Anthony P. Brooklier, Marks & Brooklier in Los Angeles

Larry C. Flynt v. Flynt Media Corp., CV09-00048

For the plaintiffs: Mark S. Hoffman, Labowe Labowe and Hoffman in Los Angeles

For the defense: Daniel DeCarlo, Lewis Brisbois Bisgaard & Smith in Los Angeles

Goldstein v. City of Long Beach, CV04-09692

For the plaintiffs: Ronald O. Kaye, Kaye McLane & Bednarski, Pasadena

For the defense: Peter James Ferguson, Ferguson Praet & Sherman, Santa Ana

Friedman v. 24 Hour Fitness USA Inc., CV06-06282

For the plaintiffs: Melissa M. Harnett, Wasserman, Comden & Casselman, Tarzana

For the defense: Elizabeth Lee Deeley, Kirkland & Ellis, San Francisco

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Judicial Profile: Margaret Morrow

COURT: Central District of California
APPOINTED: 1998, by President Clinton
LAW SCHOOL: Harvard Law School

- Aug. 27, 2010

Margaret M. Morrow

U.S. District Judge Margaret M. Morrow is trying to reignite a stalled plan to build a new courthouse in Los Angeles.

By Ciaran McEvoy

Daily Journal Staff Writer

LOS ANGELES - A literary analogy for the opening of a new federal courthouse in Los Angeles could be Samuel Beckett's play "Waiting for Godot." But U.S. District Judge Margaret M. Morrow is hoping to change that.

A member of the Central District of California's ad hoc courthouse committee since joining the federal bench in 1998, Morrow has worked with the Los Angeles mayor's office, numerous members of Congress and the General Service Administration to move forward the long-delayed project.

The courthouse has been stalled because of its estimated expense - \$1 billion - red tape and the recession that hit Southern California's construction businesses hard. The future federal courthouse site is currently a giant dirt hole, ringed by a chain link fence, comprising a city block in downtown Los Angeles.

Nevertheless, Morrow said she is "optimistic and hopeful" that the nation's second-largest city will get a new home for its federal judges.

"We've had some extremely positive conversations with GSA about how to proceed," Morrow said, though she declined to elaborate further. "I hope in the next several months they'll bear fruit."

Besides Morrow's behind-the-scenes leadership on the court - she also sits on the court's case management and assignment, and alternative dispute resolution committees - she manages a full caseload.

Assistant U.S. Attorney Cheryl O'Connor Murphy, who prosecuted a family accused of running an international sex trafficking ring, called Morrow "very intelligent and dedicated."

"Although she can be a tough audience, you know she will listen to your argument and, whichever way she rules, that you will have gotten a fair shot," Murphy said. "A lawyer really can't ask for anything more than that."

Other lawyers who have appeared in Morrow's courtroom note her strong work ethic, attention to detail and her well-prepared tentative rulings.

"When the person in the black robe in the courtroom is the smartest, best prepared, fairest and has the best moral compass in the room, the result is going to always be good," said Deputy Federal Public Defender Reuven L. Cohen.

Perhaps Morrow's morals and ethics stem from her small town roots.

An only child, Morrow was born in Columbus, Neb., in 1950. She has fond memories of the town's centennial, which was celebrated just before her family moved to California when she was six years old.

Her father, George E. Morrow, landed a job at Union Bank when the family moved to San Gabriel. He became a lawyer late in life - obtaining his law license when Morrow was a 6th grade student at St. Therese School in Alhambra.

At Pasadena's Mayfield Senior School of the Holy Child Jesus, Morrow was in the glee club, edited the yearbook and played tennis.

In 1968, Morrow began attending Bryn Mawr College in Pennsylvania - majoring in history.

Taking only three years to get her bachelor's degree, Morrow then attended Harvard Law School, which had only recently begun to admit women. On her first day at Harvard, she keenly felt the sting of discrimination and prejudice, including that of one male student who took umbrage when she told him she was studying law.

"He literally turned, looked at me and said, 'What are you doing taking the place of a man who wants to provide for his family?'"

"I was just really stunned because having come from where I came from I never heard anything quite like that," Morrow said.

Upon graduation in 1974, Morrow worked for Kadison, Pfaelzer, Woodard, Quinn & Rossi, where she stayed for 13 years. In 1987, 10 partners left to form the smaller practice of Quinn, Kully & Morrow. That firm merged in 1996 with Arnold & Porter.

Unlike many of the handful of women in her law school class, Morrow stayed in private practice her entire career as a lawyer.

"You couldn't show weakness, but it was worth it," she said, recalling her days as a trailblazing female attorney.

After working as a mediator and getting involved in court-related issues as president of the State Bar of California, President Bill Clinton nominated Morrow to the federal bench in 1995 - sparking a partisan political fight that delayed her eventual confirmation for nearly three years.

Looking back, Morrow is philosophical about the experience.

"When you're going to give somebody life tenure, then I think it's an appropriate inquiry to comb through their background, to learn as much as you can learn about their views and as much as you can about how they're going to act so you can anticipate that they're going to act as a judicial officer," Morrow said.

Since then, she has been known as one of the hardest-working judges in the busy Central District.

"Literally, I have never been bored a single day here," she said. "I'm still learning new things in terms of the body of law."

While rumored to be a potential nominee for the 9th U.S. Circuit Court of Appeals, Morrow insists, "I'm happy in my current job."

In addition to triumph, there also has been tragedy. In September 2007, Morrow's husband, 2nd District Court of Appeal Justice Paul Boland died of cancer.

Morrow credits her judicial colleagues with helping her endure the loss.

"They just closed around me and helped me get through it," she said. "I will be grateful to them forever."

In her free time, Morrow looks after her parents, is an avid Lakers and Dodgers fan, watches tennis (especially Roger Federer), reads mysteries and spy novels, and spends time with her golden retrievers, Molly and Paddy.

Her son, Patrick Boland, is a deputy press secretary for Rep. Scott Murphy, a Democratic congressman who represents a district in upstate New York.

Here are some of Judge Morrow's recent cases and the lawyers involved:

United States v. Valenzuela, CR 07-11 - sex trafficking

For the plaintiff: Cheryl O'Connor Murphy, U.S. attorney's office, Los Angeles

For the defense: Ivan L. Klein, Ivan Klein Law Offices, Santa Monica

Wilshire Associates Inc. v. Ashland Partners & Co. LLP, CV 08-3008 - breach of contract

For the plaintiff: Eric M. George, Browne Woods George, Los Angeles

For the defense: Andrew A. August, Pinnacle Law Group, San Francisco

Henry v. Federal Deposit Insurance Corp., CV 08-6625 - FDIC dispute

For the plaintiff: Michael D. Stein, Tisdale & Nicholson, Los Angeles

For the defense: Rita M. Hausler, Hughes Hubbard & Reed, Los Angeles

United States v. Karapetyan, CR 09-321 - health care fraud

For the plaintiff: Stephen M. Arkow, U.S. attorney's office, Los Angeles

For the defense: Michael J. Treman, Michael J. Treman Law Offices, Santa Barbara

Friendly Family Production LLC v. Little House on the Prairie, CV 08-6602 - trademark infringement

For the plaintiff: Marcia B. Paul, Davis Wright Tremaine, New York

For the defense: Gail J. Standish, Winston & Strawn, Los Angeles

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Judicial Profile: Christina A. Snyder

COURT: Central District of California

APPOINTED: 1997

LAW SCHOOL: Stanford Law School, 1972

- Sep. 15, 2010

Christina A. Snyder

U.S. District Judge Christina Snyder is never far from work, even when she's on the other side of the globe.

By Ciaran McEvoy

Daily Journal Staff Writer

LOS ANGELES - For an admitted Type A personality like U.S. District Judge Christina A. Snyder, work is never far away - even in far-flung locales such as China and India.

Despite flying thousands of miles on a recent vacation to dynamic cities such as Mumbai, Snyder regularly communicated about pending cases with her staff in chambers by laptop and telephone, calling in between 6 a.m. and 7 a.m. local time. She even called her staff from China, despite a 15-hour time zone difference.

"You figure it out and you get a routine that you'll call during the day," she said. "Then I'm able to go through the orders because the litigants shouldn't be waiting for three weeks for me to return."

Snyder, 63, downplays her long-distance commitment to her job, stating she isn't the only one known to travel with her computer to stay on top of cases.

Most of the time, Snyder handles her busy caseload at the Spring Street federal courthouse in downtown Los Angeles. While she has a reputation for sometimes taking her time to make a ruling, attorneys have noted her attention to detail.

"She is very careful and methodical, but has the courage to make a decision and dismiss a case rather than linger on when she thinks it doesn't have merit," said Ronald C. Redcay of Arnold & Porter in Los Angeles.

Redcay represented NBC Universal Inc., in a complex antitrust lawsuit that sought to give consumers the ability to order cable TV channels a la carte instead of bundled packages. Snyder ruled in favor of the cable programmers and the case is currently up on appeal.

Peter J. Bezek of Foley Bezek Behle & Curtis in Santa Barbara praised Snyder's abilities, despite the fact she reversed a \$5 million jury award in one of his intellectual property cases. The 9th U.S. Circuit Court of Appeals later upheld her decision. On retrial, Bezek's client won \$2.3 million.

"She was equally prepared and fair in the second [trial]," Bezek said. "She defined the law correctly and applied it correctly. Unfortunately for my client, the 9th Circuit agreed with her."

"She worked very hard during the trial - as hard as any of the lawyers there," he said. "She let you try your case, but she made you support your positions. She did a great job."

An only child, Snyder was born in Montebello, the daughter of two prominent professionals. Her mother, Elizabeth Snyder, was the first female chair of the California Democratic Party. Her father, Nathan Snyder, was a well-known attorney.

In 1956, the Snyders fell on hard times when her father was convicted of conspiracy and perjury stemming from his role as secretary of the National Democratic Club of California and his involvement with William G. Bonelli's campaign for the Board of Equalization. The state Supreme Court later quashed the conviction, and Nathan Snyder was a free man after spending two years in prison. He resumed practicing law.

While the experience was tough and contributed to a childhood shyness and introversion, it brought her family closer together, Snyder said. More than half a century removed from the experience, Snyder said it doesn't influence her decision-making regarding criminal sentences.

Snyder relocated to Huntington Beach when she was 14, attending Marina High School. Thanks to her mother's connections, Snyder met California's Democratic political heavyweights such as Gov. Pat Brown, State Assembly Speaker Jesse Unruh and others.

Along with future state treasurer and gubernatorial candidate Kathleen Brown, Snyder was a page on the platform committee at the 1964 Democratic National Convention, which was held in Atlantic City, N.J.

But a life in politics, where the few female politicians at the time were financially dependent on their wealthy husbands, wasn't in the cards for her.

"My mother always wanted me to become a lawyer," Snyder said. "She did not want me to become involved in politics because she took the view that it was very important for women to support themselves and be independent."

Snyder attended Pomona College, majoring in history. At one point, she flirted with the idea of going to Harvard to receive a doctorate in the subject, but decided to take her parents' advice and become an attorney.

In 1969, she enrolled at Stanford Law School. Her professors included Gerald Gunther, a constitutional scholar who authored what is considered the definitive biography of Judge Learned Hand.

Her first job as a licensed attorney was at Wyman Bautzer Kuchel & Silbert - home to legal legends such as antitrust defense lawyer Frank Rothman and his wife, Mariana Pfaelzer, now a federal judge in Los Angeles. Snyder called them "extremely great mentors."

"They challenged me to grow," she said. "They taught me what great lawyers did, how to think about a legal problem, how to serve a client, how to conduct oneself in court. They exacted the highest standards in legal research, presentation and writing."

Pfaelzer called Snyder "a very, very well-qualified and superior lawyer."

Specializing in antitrust defense, securities and business law, Snyder eventually made partner and stayed at the firm until it dissolved in 1991.

"She is somebody who truly understands more complex litigation," Pfaelzer said. "She had a lot of experience in that. The court is very happy and glad - and should be - to have her."

For the next three years, she worked at Katten Muchin Rosenman, before joining her husband, prominent plaintiffs' attorney Marc M. Seltzer, at Corinblit & Seltzer.

In 1997, the U.S. Senate confirmed Snyder's nomination to the federal bench. Despite her years working on complex litigation - even writing a brief for a case that ended up before the U.S. Supreme Court - she wasn't prepared for the breadth of knowledge needed for the federal bench. She called the experience "like going back to school."

"This is such a demanding job sometimes," she said. "You have such frightening power over people's lives in terms of sentencing and issues like that."

In her free time, Snyder enjoys hiking, theater and the symphony.

"There's just not enough time to do it all," she said.

Here are some of Judge Snyder's recent cases and the lawyers involved:

Securities and Exchange Commission v. Smith, CV 05-941

For the plaintiff: Charles D. Stoghill, Securities and Exchange Commission, Washington, D.C.

For the defendant: George B. Newhouse Jr, Brown White & Newhouse, Los Angeles

American Trucking Associations Inc. v. City of Los Angeles, CV 08-4920

For the plaintiff: Christopher C. McNatt Jr., Scopelitis Garvin Light Hanson & Feary, Pasadena

For the defendant: Steven S. Rosenthal, Kaye Scholer, Washington, D.C.

United States v. Vorburger, CR 07-220

For the prosecution: Ellyn M. Lindsay, U.S. attorney's office, Los Angeles

For the defendant: Mark J. Werksman, Los Angeles

United States v. Adolphus, CR 04-402

For the prosecution: Rob B. Villeza, U.S. attorney's office

For the defendant: David J.P. Kaloyanides, Los Angeles

Brantley v. NBC Universal Inc., CV 07-6101

For the plaintiff: Maxwell M. Blecher, Blecher & Collins, Los Angeles

For the defendant: Bryan A. Merryman, White & Case, Los Angeles

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Judicial Profile: James Ware

COURT: Northern District of California

APPOINTED: 1990, by President George H.W. Bush

LAW SCHOOL: Stanford Law School, 1972

CAREER HIGHLIGHTS: Elevated by seniority to the chief judgeship, Jan. 1; appointed to the federal bench by President George H.W. Bush, 1990; judge, Santa Clara County Superior Court, 1988-1990; associate and partner, Ritchey Fisher Whitman & Klein, Palo Alto, 1973-88

Age: 64

By John Roemer

SAN JOSE - A dozen years ago, U.S. District Judge James Ware endured the career-altering exposure of a lie he had long told in public about the shooting death of his brother by Alabama racists.

Today, at 64, Ware is striving toward redemption as a respected jurist who has just become chief judge of the Northern District of California.

Ware intends to relocate his chambers from the Robert F. Peckham Federal Courthouse in San Jose to Northern District headquarters in San Francisco, he said, if the U.S. Senate confirms nominee Edward Davila to the federal bench in San Jose, filling the gap Ware's departure would leave.

"If that doesn't happen, I'd be just as happy to stay here," Ware said. "I won't desert my [San Jose] colleagues if we don't get an additional judge."

Ware replaced the current chief, Vaughn R. Walker, on Jan. 1, for a seven-year term. The chief judge position is filled on the basis of seniority by district judges who have not yet reached age 65.

In 1997, Ware, who is black, was about to be elevated from the district bench to the 9th U.S. Circuit Court of Appeals when it emerged that for years he had told a spellbinding untruth about a shared Sunday bicycle ride in his childhood when white youths shouting racial epithets shot his younger brother Virgil off the handlebars.

Virgil's awful death in his arms in a Birmingham, Ala., ditch left him with a passion to confront racism, Ware told hushed audiences around the nation.

'In my zeal to educate others about black history, I made the mistake of making myself a part of the story. I shouldn't have.'

"I came out of that ditch with a hunger for justice," he would conclude in recounting his well-polished falsehood. "Since that day, I dedicated my life toward equal justice and a life where everyone can be proud."

The startling revelation that Ware, who was born in Birmingham, had stolen the sad history of a different James Ware and his brother and retold it as his own forced the judge to withdraw his candidacy for a 9th Circuit robe. The circuit's judicial council censured and reprimanded him. Newspapers in San Francisco and San Jose called for his resignation.

Yet Ware stuck it out, announcing he would not quit and flying to Alabama to deliver a personal, tearful apology to the authentic James Ware. And his Northern District colleagues stood by him, issuing a public letter of praise for "all the hard work and dedication [Ware] contributes to the court."

The complicated reality is that although Ware's story was bogus, his judicial service appears to embody the ideals he's often voiced about racial equality.

As Ware noted from the bench in another context, it's been challenging.

In October, he delivered a near-fatal setback to the plaintiffs in a complex antitrust suit over construction contractors' alleged bid-rigging.

Ware surprised the courtroom by dismissing all claims against one defendant for lack of evidence. *Advanced Microtherm Inc. v. Norman Wright Mechanical Equipment Corp.*, 04-02266.

The plaintiffs' lead lawyer, Joseph M. Alioto Sr., pleaded with the judge that the proper course would be to let the jury decide.

Ware disagreed. "It's rare that the court grants a motion for judgment," he said.

"It would be far easier to just say, 'Okay, members of the jury, go ahead and figure this out,'" he added as he explained that it was nevertheless his duty to rule on evidential sufficiency as a matter of law.

"I don't take the easy road," Ware said.

The quote could sum up Ware's career to date. "The events and lessons of the past stay with you," he said recently. "In my zeal to educate others about black history, I made the mistake of making myself a part of the story. I shouldn't have. One of my regrets is that I didn't do it better. I apologized and tried to move on."

Sloan C. Bailey, the Flynn Williams partner representing the defendant Ware dismissed, afterwards praised Ware's courtroom style.

"He's a gentleman and a scholar with a laser-like intelligence," Bailey said. "He is intellectually honest in the face of the teeth-gnashing of the parties. If his decision had gone the other way, I

suppose I wouldn't be saying all this to a reporter, but I would be saying it privately back at the office."

Not all who have watched Ware's career are convinced he has lived down the lie he once told about his past.

"Judge Ware would be on the 9th Circuit but for this event," said Shaun P. Martin, a University of San Diego School of Law professor who writes the California Appellate Report blog. "It remains a stain on his career. He told the lie - and told it often - while he was a federal judge, which among other things showed a serious lack of judgment and character. This was, admittedly, many years ago, but it was a sufficiently serious matter that people haven't forgotten."

The back wall of Ware's courtroom displays posters of his icons: Barack Obama, Rosa Parks, Jackie Robinson and a 1964 Norman Rockwell painting of four white deputy U.S. marshals escorting a six-year-old black girl to desegregate a New Orleans public school.

Ware is an enthusiastic student of civil rights history. He lectures at local law schools on the 25 separate court cases flowing from *Brown v. Board of Education*, 347 U.S. 483 (1954), that were central to the Civil Rights Movement.

"Courageous judges sustained and enforced the law," he said. "I conduct Law Day every year with inner city students, and I consider the courtroom ripe for teaching."

In his chambers are other photos showing Dr. Martin Luther King Jr., Frederick Douglass and Nelson Mandela. There's also a shot of a youthful James Ware sporting an Afro.

"My daughter gave me that picture," Ware said. "She told me to never forget that radical part of myself."

The daughter, Carlie Ann Ware, is a Santa Clara County deputy public defender. Every so often, Ware said, "I sneak away and sit in the back of the courtroom where she's working and watch her in action, and it's great."

Ware and his wife, Susan, a Santa Clara County deputy county counsel, also have a son, Jeremy, a computer analyst at Stanford.

Ware's politics have vacillated. As a youth, when pro-segregation Democrats were known as Dixiecrats in his part of the country, he was a Republican. Disenchanted when Richard Nixon's presidency ended with impeachment and resignation, he became a Democrat, then switched again and became eligible for GOP President George H.W. Bush to place him on the federal bench in 1990. Now he's back with the Democrats, with a caveat, despite that Obama poster.

"I want people to see me as one who makes decisions irrespective of politics," he said.

Many who have appeared before him are enthusiastic. "He'll be a great ambassador for the court [as chief judge]," said Edward R. Reines, a technology litigation partner at Weil Gotshal & Manges' Redwood Shores offices. "It's healthy for the chief judgeship to move around. True, the center of the district is in San Francisco, but it will be great to have the perspective of Silicon Valley and San Jose represented."

Ware has overseen his share of Silicon Valley cases, including epic decade-long litigation pitting semiconductor rivals Altera and Xilinx against one another on patent infringement claims. Ware reversed a jury's award to Xilinx, ruling one patent invalid and holding that Altera had not infringed another. *Xilinx Inc. v. Altera Corp.*, 93-20409.

More recently, Ware ruled the state secrets act barred the plaintiffs in the so-called CIA torture case from pursuing claims against Jeppesen Dataplan Inc., the Boeing Co. subsidiary that allegedly flew them to brutal interrogations in foreign countries.

The 9th Circuit, sitting en banc, affirmed Ware's ruling but in a dissent critiqued his handling of the case. "By refusing to examine the voluminous public record materials submitted by plaintiffs in support of their claims... [Ware] forced every judge of the court of appeals to undertake that effort," wrote Senior Circuit Judge Michael Daly Hawkins, who wrote for the 6-5 minority that would have let the case proceed. *Mohamed v. Jeppesen Dataplan Inc.*, 614 F.3d 1070 (2010).

Hawkins contended the circuit should have sent the case back to Ware. Failure to do so, Hawkins warned, "not only rewards district courts for failing to do their job, but ensures that future appeals courts will have to do that job for them."

"I'm never concerned to be reversed or criticized," Ware said. "That's their job. I was challenged [in writing the *Jeppesen* opinion] because I could not say all I might have. That's the nature of state secrets privilege cases."

Ware teaches classes at Golden Gate University School of Law, Lincoln Law School and Santa Clara University School of Law. An amateur magician, he's known for using his prop guillotine to illustrate the effect of summary judgment.

"I have my mouthiest student put his head in the thing, and of course it's all gimmicked out," Ware said. "First I decapitate a cantaloupe, and it really makes a mess. It's all a bunch of prestidigitation, but it makes the point that a judge can cut out parts of a case."

Ware has two additional techniques for blowing off steam. In good weather, he rides a Harley-Davidson Dyna Glide sports cruiser motorcycle, roaring up the freeway to his various classroom assignments. In 2008, he rode the bike almost 800 miles to Sun Valley, Idaho, for a 9th Circuit conference.

"The other thing you may not know about me is that I am passionate about karaoke," he said with a smile, "and I own a professional karaoke setup, complete with mike and lights."

Ware said he started out singing ballads because they were slow and easy. "But now I'm developing a fondness for hip hop and rap," he said.

Elliot E. Slotnick, a political science professor at Ohio State University who studies the federal judiciary, said Ware's former failings should not be much of a factor. "A chief district judge plays a largely administrative role that is hardly comparable to the way the chief justice, say, influences the Supreme Court. District judges are isolated actors who don't really take direction from the chief. I'm sure Judge Ware's past will be the topic of water cooler conversation, but will have little relevance to the job he'll be doing."

Here are some of Judge Ware's recent cases and the lawyers involved:

SEC v. Schroeder, 2010 U.S. Dist. Lexis 125771 (2010) - options backdating

For the plaintiff: Elena Ro and Judith L. Anderson, Securities & Exchange Commission, San Francisco

For the defendant: David A. Priebe, Shirli Fabbri Weiss and Jeffrey B. Coopersmith, DLA Piper, East Palo Alto

Red v. Unilever PLC, 2010 U.S. Dist. Lexis 100832 (2010) - false advertising

For the plaintiffs: Gregory S. Weston, The Weston Firm, San Diego

For the defense: Janelle Jad Sahouria and William L. Stern, Morrison & Foerster, San Francisco

Landes v. Intel Corp.'s Long Term Disability Plan, 2010 U.S. Dist. Lexis 94140 (2010) - benefit claims

For the plaintiff: James G. Mellen, and Timothy J. Fricker, Fricker Mellen & Associates, Oakland

For the defendant: Joseph E. Lambert, Mesa, Ariz., and Michael W. Pott, Porter Scott, Sacramento

In re: Ricoh Co. Ltd. Patent Litigation, 2010 U.S. Dist. Lexis 98265 (2010) - patent

For the plaintiffs: Erik K. Moller, Howrey & Simon, Menlo Park

For the defense: Melinda Mae Morton, Bergeson, San Jose

Facebook Inc. v. Power Ventures Inc., 2010 U.S. Dist. Lexis 93517 (2010) - copyright and trademark infringement

For the plaintiff: Indra Neel Chatterjee, Orrick Herrington & Sutcliffe, Menlo Park

For the defendant: Alan R Plutzik, Bramson Plutzik Mahler & Birkhaeuser, Walnut Creek

Judicial Profile: Ronald Whyte

COURT: Northern District of California

APPOINTED: 1991, by President George H.W. Bush

LAW SCHOOL: University of Southern California Law School

CAREER HIGHLIGHTS: Nichols, Stead, Boileau and Lamb (1967 to 1968); U.S. Navy, JAG Corps (1968 to 1971); Hoge Fenton Jones & Appel (1971 to 1989); Judge, Santa Clara County Superior Court (1989 to 1992).

AGE: 69

PLACE OF BIRTH: Pomona

POLITICAL AFFILIATION: Independent

CLE: Governmental tort liability, civil procedure, patent law and intellectual property

In trial, jurors expect to be entertained, the federal judge says.

Asa Pittman

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

A: Probably the responsibility of making decisions on issues that affect a lot of people.

Q: What do you enjoy least about being a judge?

A: The isolation. When I was lawyer and went out to lunch, I used to try to find a place to be by myself and have some private time. Now, when I go out to lunch, I have to ask around: "Is there anyone who can come with me?" I think lawyers are a little hesitant to call up a judge to go to lunch because they're afraid it'll be considered inappropriate.

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

A: I'm a little bit frustrated, but one of my law clerks will call and ask them to supply one. It's not a big deal. It's frustrating, and if it happens on a repeated basis with a particular attorney or firm, it's particularly frustrating. But I don't actually recall that occurring. If for some reason we don't get it, we just call the attorney.

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

A: I get a lot out of oral argument. I think that the attorneys generally feel better if they have an opportunity to argue orally, and I find sometimes it's helpful. Most attorneys are well prepared and pretty good at oral argument.

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

A: I tell them to calm down. That usually works depending on how bad it gets. If [the attorneys] get too angry or overzealous, sometimes I'll just let it go and not say anything. If I find it's to the point that it's inappropriate, I will ask them to relax or calm down, to help me to reason the problem through and not be so hostile.

Q: When ruling on a motion, do you issue written opinions? If only sometimes, under what circumstances are you most likely to issue a written ruling?

A: I almost always issue written opinions. I think the reason for that is the culture in the federal court. Most judges do it, so I think it's nice to provide the attorneys with some written expression of your reasoning. I sometimes think I do it too much, and therefore, it takes me a little longer to get rulings out than I would like. But the attorneys have put in a lot of work and their emotions, so it's nice to let them know what your reasoning is and why you ruled the way you did.

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: They should have a discovery plan. They should know the case. Too frequently the attorney who shows up will not be totally knowledgeable about the case. The person who appears needs to be able to make decisions about how the case is going to be handled. But probably the most important things are to be familiar with the case, be prepared to discuss a discovery plan and be able to talk about what may be able to be done to bring the case to a conclusion — can we send it to alternative dispute resolution of some sort or is there an issue that could be resolved early that would help resolve the case.

Q: Is an attempt at alternative dispute resolution required in the federal system?

A: It's required to at least consider it. That's a discussion we always have at the first case management conference. We ask ourselves, "Would alternative dispute resolution be helpful in this case? If so, when should we do it? Should we do it right away?" I think it makes the most sense to do alternative dispute resolution right away in most cases because that's before a lot of money has been spent. But oftentimes, the attorneys will say they need to have this or that discovery before alternative dispute resolution can be meaningful. That sometimes is the case, but I think that far too often that reasoning is used as an excuse or it perhaps means that the attorneys haven't sat down and thought out their cases as well as they should have.

Q: What impact has technology (computers, Internet, video animation, etc.) had on litigation, especially in jury trials?

A: I think it's had a tremendous effect. I think that most trials now are presented in kind of a multimedia presentation from videos, recreations of accidents, to showing to how a particular product works. I think that jurors expect to see some media presentation, some excitement.

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

A: Be prepared. Be willing to sit down and talk about the settlement. Be aware of the opposing party's strengths in the case. But basically, be prepared and be willing to talk and resolve the case. Sometimes things are put off until tomorrow that could be done today, and I think that it's important to do it today.

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

A: Be prepared. Try to help the judge reason through the issues presented. Be yourself.

Claudia A. Wilken
U.S. District Judge
Northern District (Oakland)

Career highlights: Nominated by President Bill Clinton to U.S. District Court, Northern District, Oct. 7, 1993; magistrate judge, U.S. District Court, Northern District, 1983-93; adjunct professor, UC Berkeley School of Law, 1978-84; attorney, Wilken & Leverett, Berkeley, 1978-84; staff attorney, Federal Public Defender's Office, Northern District, 1975-78

Law school: UC Berkeley School of Law, 1975

Age: 62

By Jill Redhage Patton

OAKLAND - U.S. District Judge Claudia A. Wilken is set to become the Northern District's chief judge in August, replacing Judge James Ware, who is retiring.

It's not an ascension that requires merit. To become chief judge, one must be the most senior active judge on the court under age 65.

"It's a question of being old enough but not too old," Wilken quipped.

But by the accounts of her fellow judges, Wilken deserves the position.

"I don't think there's a single judge that has as broad and as deep an interest in overall court governance as Judge Wilken," said Judge Phyllis J. Hamilton, Wilken's colleague in Oakland.

Judge Edward M. Chen agreed.

"She has this blend of both attention to detail and organization with a vision," Chen said. "She has a larger sense of what the court should be doing."

'I've essentially worked in this court all my professional life. I'm quite excited to try my hand at being a leader in it.'

- Judge Claudia Wilken

One of Wilken's strengths, Hamilton said, is her dedication. The two judges serve on the local rules committee - Wilken used to be its chairwoman, and now Hamilton is - and Wilken always stays until the end of the meetings, unlike other members.

"It's really nice to have someone stay until all the work it done, whatever it takes, whether it's proofreading or coming up with new ideas," Hamilton said.

Judge Susan Y. Illston, who joined the court in 1995, a year and a half after Wilken rose from a magistrate position to district judge, said communication is one of Wilken's assets as a leader.

"I think she'll take real care to keep [the judges] informed about what's going on [at] the court," Illston said.

Wilken said she's ready for the opportunity. She began work in the local federal system in 1975 as an assistant federal public defender, then joined the bench as a magistrate in 1983 after a few years in private practice. In 1993, she was nominated to an Article III position, joining the district judge ranks.

"I've essentially worked in this court all my professional life," Wilken said. "I'm quite excited to try my hand at being a leader in it."

Her responsibilities will be largely administrative in nature. She'll be the Northern District's liaison to the Administrative Office of the U.S. Courts in Washington, D.C., and to the 9th U.S. Circuit Court of Appeals. She'll be in charge of the court's committees, such as local rules, security, information technology and media, and she'll serve as point person for court initiatives, including the cameras in the courtroom project and the patent pilot project, through which some judges are experimenting with specializing in intellectual property suits. She plans to spend one or two days a week in San Francisco and the rest of the time in Oakland, where she'll continue to conduct trials and hearings.

Over the past 10 years, Wilken has handled a number of cases notable for their high profile nature, novel claims or simply enormous size.

Just last week she granted summary judgment to a class of gay state employees seeking long-term care insurance for their spouses and domestic partners. In her ruling, she found that the Defense of Marriage Act, which denies same-sex partners those health benefits, violates the Constitution's equal protection clause and a section of the tax code. *Dragovich v. U.S. Department of the Treasury*, 10-CV-1564 (N.D. Cal., April 13, 2010).

"There's an example of a federal judge who's willing to take on tough issues with great intellectual reasoning," said Joseph W. Cotchett of Cotchett, Pitre & McCarthy LLP, who has appeared before Wilken many times.

Among other cases, Cotchett was counsel to the direct purchasers in a massive price-fixing class action against the major manufacturers of Static Random Access Memory (SRAM).

"When you walk out of her courtroom, whether you win or lose, you've got a solid decision," Cotchett said. "You know exactly what it says, unlike other courtrooms where you get decisions where you wonder what to do next."

Barry Portman, the recently retired federal public defender, who worked with Wilken in the 1970s, agreed.

"She takes some bold steps, but she does it on very careful grounds and in as limited a fashion as possible," Portman said.

Several lawyers commented on Wilken's efficiency and organizational skills.

"Judge Wilken could give a master class in case management," Kelly M. Dermody of Loeff Cabraser Heimann & Bernstein LLP wrote in an email. "Parties would be well advised to come to her courtroom with a game plan for their cases, because she will expect to hear where the case is going."

Dermody is plaintiffs' counsel in a labor class action in Wilken's court against India-based Tata Consultancy Services Ltd., a company that places foreign technology workers in jobs for U.S. clients. Her clients claim TCS wrongfully made about 12,000 workers sign over their tax refunds to the company. *Vedachalam v. Tata America International Corp. et al.*, 06-CV-963 (N.D. Cal., Feb. 14, 2006).

Cotchett said her efficiency involves grouping and categorizing initial motions and sticking to the dates she sets.

"When you get a trial date set in her courtroom, that's the trial date," he said.

Wilken is also handling one of the major civil rights lawsuits filed by prisoners in the Northern District. In that case, she has ordered state prison officials to make penitentiaries more accessible for disabled inmates. *Armstrong v. Schwarzenegger*, 94-cv-02307 (N.D. Cal., filed June 29, 1994).

Michael P. Lehmann of Hausfeld LLP said Wilken doesn't sit back and listen to argument. She actively engages in the issues, takes control of the conversation and guides the discussion.

"You can't necessarily predict how she'll reach an outcome because she'll reach it based of her own independent research and grasp of the law," Lehmann said.

Lehmann is on the plaintiffs' side in an antitrust case against the National Collegiate Athletic Association, the Collegiate Licensing Co. and video game maker Electronic Arts Inc. Lehmann's clients, a group of former college athletes, allege the NCAA and the licensing company conspired with the game maker to use their names and likenesses in video games without their consent or compensating them. Defense lawyers had asked Wilken to dismiss the suit, claiming fair use of the athletes' images under the First Amendment. But a few weeks ago Wilken declined to do so. *In re: NCAA Student-Athlete Names & Likenesses Litigation*, 12-MC-80020 (N.D. Cal., filed Jan. 26, 2012).

"They're all tightly reasoned opinions and clearly the product of her own work," Lehmann said.

Going forward, Wilken said she wants to support the court's pro se help desk, which assists self-represented litigants in connecting with pro bono counsel or other resources to help them file suit, and its alternative dispute resolution unit, which has recently focused on assisting litigants affected by home foreclosures.

She has also resigned herself to mitigating problems caused by a threatened court budget and a sizeable vacancy rate.

"The bottom line is we're down four out of 14 [judges], with no particular end in sight, so that's going to be a real problem for us," Wilken said.

Here are some of Wilken's recent cases and the lawyers involved:

Electronic Frontier Foundation v. U.S. Department of Transportation, 12-CV-00164 - Freedom of Information Act

For the plaintiff: Jennifer A. Lynch, Electronic Frontier Foundation, San Francisco

For the defendant: Jennie L. Kneedler, Department of Justice, Washington, D.C.

Jaegel v. County of Alameda, 09-cv-03181 - civil rights (jail strip searches)

For the plaintiff: John R. Cogorno and Michel F. Mills, Westminster

For the defendant: Gregory J. Rockwell, Boornazian, Jensen & Garthe PC, Oakland

Dragovich v. U.S. Department of the Treasury, 10-CV-1564 - Defense of Marriage Act

For the plaintiffs: Claudia Center, Elizabeth Kristen and William C. McNeill III, Legal Aid Society - Employment Law Center, San Francisco

For the defendant: Paul D. Clement and Conor B. Dugan, Bancroft PLLC, Washington, D.C.

Vedachalam v. Tata America International Corp., 06-CV-963 - labor class action

For the plaintiff: Kelly M. Dermody, Lief Cabraser Heimann & Bernstein LLP

For the defendant: William A. Escobar, Kelley Drye & Warren LLP, New York; Michelle La Mar, Loeb & Loeb LLP, Los Angeles

In re: NCAA Student-Athlete Names & Likenesses Litigation, 12-MC-80020 - publicity rights, antitrust

For the plaintiffs: Michael D. Hausfeld and Jon T. King, Hausfeld LLP, San Francisco; Steve W. Berman, Hagens Berman Sobol Shapiro LLP, Berkeley

For defendant NCAA: Gregory L. Curtner and Robert J. Wierenga, Schiff Hardin LLP, Ann Arbor, Mich.

For defendant Electronic Arts Inc.: R. James Slaughter, Kecker & Van Nest LLP, San Francisco

For defendant Collegiate Licensing Co.: Peter M. Boyle, Kilpatrick Townsend & Stockton LLP,
Washington, D.C.

CALIFORNIA FEDERAL MAGISTRATE JUDGES

Paul L. Abrams
U.S. Magistrate Judge
Central District of California (Los Angeles)

Career highlights: U.S. magistrate judge, 2001-present; supervising deputy public defender, federal public defender's office, Los Angeles, 2001; deputy public defender, federal public defender's office, Los Angeles, 1987-2001; attorney, Bet Tzedek Legal Services, 1985-87; associate, Jeffer Mangels & Butler, Los Angeles, 1983-85

Law School: UC Berkeley School of Law, 1983

Age: 54

By Gabe Friedman

U.S. Magistrate Judge Paul Abrams spends his time refereeing some of the most staunch advocates: overzealous parents of soccer players who yell, cheer and complain from the sidelines.

Abrams, who volunteers as a referee for a youth soccer league on the weekends, said that experience helps him rein in any overzealous lawyers who appear in his federal courtroom in downtown Los Angeles.

As a magistrate judge, he handles a diverse caseload of discovery disputes, bail reviews, misdemeanor prosecutions, habeas corpus petitions and civil trials when all parties consent.

"There's little [that] lawyers can do that fazes me," Abrams said.

The judge said he is serious about weeding out unbecoming conduct among the lawyers who appear before him.

"There are some folks that believe litigation is battle," Abrams said. "And to some extent it is. But when you're fighting for your client, it can be done in a way that brings honor to the profession or a way that brings shame."

'When you're fighting for your client, it can be done in a way that brings honor to the profession or a way that brings shame.'

- Paul L. Abrams

The judge said he deplores seeing lawyers engage in name calling during arguments or in their briefs and that he's a stickler for the local rules. Parties that bring a discovery dispute to him may

find themselves in extra meet-and-confer sessions if it appears they are putting up hurdles merely for the sake of making their adversary's job harder.

Despite his serious-sounding approach, lawyers said Abrams runs a friendly courtroom.

"He's not overly formal in his proceedings," said David Kaloyanides, a sole practitioner in criminal law who has appeared before him on misdemeanor cases, as well as bail review evidentiary hearings. "He'll freely ask questions, which I like, because then you get a sense of what he's thinking."

Kaloyanides said he represented a client who put Guns N' Roses' latest album, "Chinese Democracy," on the Web for streaming without permission and was charged with criminal copyright infringement. The parties negotiated the felony down to a misdemeanor, but then Abrams was left to impose sentence: Prosecutors wanted custody, while Kaloyanides argued for probation.

The judge wound up giving two months home detention and a year of probation.

"It was a little bit of a slap," Kaloyanides said. "I thought it was more than was necessary, but it was of little impact because he worked from home and was taking care of an infant."

Such discretion might surprise defense lawyers, since Abrams spent 14 years as a federal public defender - a job he said drew his attention because it provided an opportunity to give back. Abrams said he set his mind on obtaining a law degree starting in high school.

After graduating from UC Berkeley, he spent a year working in a bookstore in Jerusalem, where he'd studied to connect with his Jewish heritage. Abrams returned to Northern California a year later to attend UC Berkeley School of Law. After graduating in 1983, he moved back to Los Angeles, where he grew up, and took a position at the firm then known as Jeffer Mangels & Butler, doing business litigation.

Two years later, he took a job at Bet Tzedek Legal Services in the San Fernando Valley, providing pro bono services to people who faced eviction and other problems. Then he moved on as a trial attorney in the federal public defender's office.

As a kid, Abrams said his mother would take him to walk precincts before elections as part of her work for the League of Women Voters. Both his parents were very involved in their synagogue and in helping the less fortunate, and Abrams said he felt compelled to practice law that served a public interest.

Now that he's behind the bench, he said he occasionally misses the trial work he did as a federal public defender. Although he's had a few civil rights trials, generally his work involves mediations and discovery battles.

"Unfortunately, I don't get to do a lot of criminal," Abrams said. "It's the one part of the job that I miss."

Cory Brente, supervising assistant city attorney in the police litigation unit, said he's tried a case in front of Abrams.

"If you just asked somebody in the dark, they might say that a public defender wouldn't be good for police officers," Brente said. "But in my experience, he was completely neutral and unbiased, smart and had a really good judicial temperament. I think he's got all the right things."

His demeanor has also helped him succeed in mediating cases.

Jeff Westerman of Milberg LLP said U.S. District Judge Dale Fischer handed the discovery disputes in one of her cases to Abrams, who has been holding informal periodic status conferences.

"It's been very useful in keeping the discovery moving," Westerman said. "I think he's been very helpful."

The judge said he has mediated nearly every type of civil dispute, from patents and other intellectual property cases to securities cases.

"It's really been fascinating to learn all these different areas."

Here are some of Judge Abrams' recent cases and the lawyers involved:

P.C. v. Los Angeles, 07-3413 - civil rights: excessive force

For the plaintiffs: Dale Galipo, Law Offices of Dale Galipo, Woodland Hills

For the defendant: Denise Mills, city attorney's office, Los Angeles

Southern California Housing Rights Center v. Krug, 06-1420 - civil rights: accommodations

For the plaintiffs: Connie Y. Chung Joe, Korean American Family Service Center, Los Angeles

For the defendants: Craig Mordoh, Law Offices of Craig Mordoh, Santa Monica

Keltner v. Grady, 08-6967 - mediation

For the plaintiffs: Arthur J. Behar, Law Offices of Arthur J. Behar, Thousand Oaks

For the defendants: Kristine J. Exton, McCune & Harber LLP, Los Angeles

Hughes v. McEwen, CV 11-373 - habeas corpus petition

For the petitioner: Dean R. Gits, federal public defender's office, Los Angeles

For the respondent: Michael C Keller, state attorney general's office, Los Angeles

USA v. Cogill, 08-02089 - misdemeanor copyright infringement

For the prosecution: Craig Missakian, Westland Industries, Long Beach

For the defendant: David J. P. Kaloyanides, Law Offices of David Kaloyanides, Los Angeles

Gary S. Austin
Magistrate Judge
U.S. District Court (Fresno)

Career highlights: Appointed magistrate judge for the Eastern District, Oct. 12, 2007; Fresno County Superior Court judge, 1988-2007; Fresno County Municipal Court judge, 1986-88; district attorney's office, 1977-86; federal public defender's office, 1977

Law school: San Joaquin School of Law, 1976

Age: 61

By Jill Redhage

FRESNO - U.S. Magistrate Judge Gary S. Austin has doppelgangers in Hollywood. One lawyer suggests he's like the ever-youthful Dorian Gray but without the black heart, referencing the movie of the same name with a protagonist who doesn't age. Others say Austin looks like Clark Kent and that his nickname, among some friends and lawyers, is Superman.

But Austin's vernal visage belies his experience. The 61-year-old jurist, who grew up in Fresno, began his judicial career in 1986 on the Fresno County Municipal Court. Two years later he was elevated to the Superior Court, where he served for nearly 20 years until his appointment to the Eastern District bench on Oct. 21, 2007.

Early in his career, Austin clerked for U.S. District Judge M.D. Crocker of Fresno and then worked as a deputy federal public defender. He describes his return to the federal system as a homecoming to old colleagues and familiar work.

"I started my legal career in the federal system," Austin said. "In a manner of speaking, I completed the circle of my judicial career."

The state courts are known for their overwhelming case loads, and some superior court judges joke that moving to a federal magistrate position is like "semi-retirement." But not in the Eastern District. Via assignments and referrals, Austin is handling roughly 450 cases.

A large part of his load is Social Security appeals and prisoner civil rights suits. As of December, the Fresno division counted 1,555 prisoner filings, with 1,750 in Sacramento. Austin said that's because 19 of California's 33 state and federal prisons are in the Eastern District.

'It takes a long time to do it right. It doesn't take a long time to do it wrong.'
- Jeffrey T. Hammerschmidt

"That's a large part of our weekly diet," Austin said.

Despite his job's challenges, Austin's personality can be described as buoyant - not bubbly, but unfailingly upbeat.

"He's consistently prepared and his demeanor is always friendly and interested in the proceedings," said Jeffrey T. Hammerschmidt, a Fresno criminal defense lawyer. "You know what you're going to get in his court."

Prosecutors describe Austin as a complete package.

"The Fresno U.S. Attorney's Office has always found Judge Austin to be knowledgeable, fair to all parties at court proceedings, prepared and courteous to the litigants," Mark E. Cullers, chief assistant U.S. attorney in the Fresno office, wrote in an email.

Fresno lawyer Katherine L. Hart said that judges sometimes have their "moods noir."

"Gary has not a scintilla of the dark mood," she said.

Austin's stable disposition was his hallmark on the Superior Court as well.

"He was particularly known for having a very even-tempered demeanor," said Fresno County Superior Court Judge Jonathan B. Conklin, who considers Austin a mentor.

But just as juvenescence may hide age, so can an even keel mask drive.

Hart, who has known Austin since law school at San Joaquin College of Law, said his competitive personality was best displayed when he was a deputy district attorney in the early 1980s.

"He did not like to lose," Hart said, which meant he always prepared fastidiously for his cases.

That fire seems to have mellowed since he took the bench.

"All of a sudden it's life in a fishbowl," Austin said, noting how important it is to be on your best behavior as an officer of the court. "You have a sense that you've taken on an office that commands respect, but with that respect and that authority that you're given comes a lot of responsibility."

The competitive part of his personality now finds its home on a different court. In recent years Austin has doubled down on his tennis, traveling frequently with his wife to professional tournaments - both to compete and to watch.

"From playing tennis with him I can tell you that he's very competitive," said Hammerschmidt, who played that sport in college. He and Austin have met for about a dozen matches. "He works very hard at improving at tennis, and he has improved very much."

Unlike many players his age, Austin will often practice alone with the ball machine, Hammerschmidt said.

On the bench, his drive translates to diligence, sometimes beyond what others view as necessary. Hart said his dedication to correctness can sometimes surpass the parties' patience.

"He was one of the most precise, punctilious judges when it came to jury instructions," she said, remembering one trial in which revising the instructions took three days.

She quoted "The Love Song of J. Alfred Prufrock," by T.S. Eliot, in honor of that moment: "And time yet for a hundred indecisions, and for a hundred visions and revisions, before the taking of a toast and tea."

Others defend Austin's attention to detail. Hammerschmidt said he sees a lot of sloppiness when jury instructions are written, which can cause a verdict to be reversed.

"It takes a long time to do it right," he said. "It doesn't take a long time to do it wrong."

Austin said he hopes lawyers will be prepared and professional when they come to court but that he hasn't used his sanction powers yet.

"I'm not one who hammers on people," Austin said. "That's not my style. My style is to show that I'm disappointed, and I'll generally ask for supplemental briefing if I don't think that their briefing is current, accurate or on point. I'll send them back with pointed questions."

Here are some of Judge Austin's recent cases and the lawyers involved:

Cansler v. Arch Chemicals Inc., 12-CV-23 - employment discrimination

For the plaintiff: Eric P. Oren, Fresno

For the defendant: Laura B. Staley and Randall S. Thompson, Husch Blackwell LLP, St. Louis, Mo., and Theodore W. Hoppe, Fresno

Fachner v. Villarreal, 12-CV-365 - personal injury

For the plaintiffs: Mark S. Nelson, Modesto

For the defendants: Jeffrey F. Oneal, LaMore, Brazier, Riddle & Giampaoli PLC, San Jose

Melchor v. Foster Poultry Farms Inc., 12-CV-339 - labor litigation

For the plaintiff: Kitty K. Y. Szeto, R. Rex Parris Law Firm, Lancaster

For the defendants: Michael L. Resch, Mayer Brown LLP, Los Angeles, and Alfred L. Sanderson Jr., Seyfarth Shaw LLP, Sacramento

Moore v. Central Valley Group Inc., 12-CV-307 - Americans with Disabilities Act

For the plaintiff: Tanya E. Moore, Moore Law Firm PC, San Jose

For the defendants: Kurt A. Franklin, Hanson Bridgett LLP, San Francisco

Olney v. Jefferson Capital Systems LLC, 12-CV-314 - consumer credit

For the plaintiff: Todd M. Friedman, Beverly Hills

For the defendant: Susan L. Germaise, McGuire Woods LLP, Los Angeles

Judicial Profile: Laurel D. Beeler

COURT: Northern District of California, U.S. Magistrate Judge

APPOINTED: 2009

LAW SCHOOL: University of Washington School of Law, 1989

CAREER HIGHLIGHTS: Appointed U.S. magistrate judge by the district judges of the Northern District, 2009; assistant U.S. attorney, Northern District, 1995-2009; clerk, 9th U.S. Circuit Judge Cecil F. Poole, 1992-94; staff attorney, 9th U.S. Circuit Court of Appeals, 1989-92

By Rebecca Beyer

OAKLAND - In the fall of 2008, then-Assistant U.S. Attorney Laurel D. Beeler was the lead attorney for the government in a criminal stock options backdating case against Kent H. Roberts, the former general counsel of McAfee Inc.

It was a high-profile case - one of the few criminal backdating matters to go to trial. Long story short, the government lost.

According to Stephen C. Neal, the chairman of Cooley Godward Kronish and lead defense counsel for Roberts, one reason the government lost is because Beeler was such a great prosecutor.

If that sounds counter-intuitive, read on.

Part of Neal's theory in the case was that the special committee investigating stock options at McAfee intentionally misled prosecutors about what happened at the company by offering Roberts as a scapegoat to cover up the misdeeds of other executives. That theory got a boost when, on the night before opening statements, McAfee suddenly produced a series of highly relevant e-mails. Both Beeler and Neal agreed the documents should have been produced in response to prosecutors' subpoenas as early as 2006. McAfee maintained the late production was inadvertent.

Neal said Beeler was "quite open" to drafting a stipulation he could read to the jury about the company's failure to produce the documents.

"She embraced the notion that no stone ought to be unturned in figuring out how this happened," he said. "She engaged in no dirty tricks. She was always careful to err sort of fully on the proper side of the line."

'She was extremely prescient in terms of recognizing ethical dilemmas and where the lines could be drawn or should be drawn.'

Jeffrey L. Bornstein
partner at K&L Gates

Neal said that came across to jurors, allowing him to argue that the prosecution had been hoodwinked exactly as he claimed Roberts had been.

"From my perspective, I couldn't underestimate the value of being able to say to the jury, 'Laurel Beeler's been victimized by the company as much as we have,'" he said. "I had to believe any juror watching Laurel Beeler and hearing her would like her."

Ultimately, Roberts was acquitted of two counts of mail fraud and, after the jury hung on a second theory of mail fraud and a count of falsifying company books, the government dropped those charges.

"Like a lot of other cases, [the Roberts case] confirmed to me the value in always analyzing everything critically," said Beeler, who is now a magistrate judge for the Northern District of California. "When you think there might be more, keep looking because, in my experience, when things don't quite add up, there's a reason for that. And the point of an investigation is to figure out what the reason is."

A veteran prosecutor who took the bench last fall, Beeler is a familiar face around the district. There isn't a committee she hasn't served on, and she also teaches criminal procedure at UC Hastings College of the Law and a civics class for juvenile offenders.

Beeler said she always was interested in public interest work. Growing up in upstate New York and Maine, she considered medicine, journalism, public policy and engineering before deciding on law while at Bowdoin College, where she studied philosophy and economics.

"I ultimately decided if I was going to make any contribution, law was the way to do it," she said.

Beeler headed west to attend the University of Washington School of Law. After graduating in 1989, she took a job as a staff attorney at the 9th U.S. Circuit Court of Appeals. Eventually, she landed a clerkship with Circuit Judge Cecil F. Poole, which, in retrospect, was one of the turning points in Beeler's career.

Beeler said she learned a lot about being an advocate from Poole, who died in 1997. She said he consistently did the right thing - even when it was the hard thing. When she joined the U.S. attorney's office in 1995, Beeler carried those lessons with her. She eventually became a supervisor there, heading the major crimes unit and serving as deputy chief of the criminal division.

"One of the things I used to say was, 'It's important to do things for the right reasons,'" she said. "Being a decent person, as it turns out, is a terrific way of advocating for your perspective."

People who have worked with and against Beeler over the years say she puts that theory into practice every day.

Jeffrey L. Bornstein, a former prosecutor and now a partner at K&L Gates, helped hire Beeler and supervised her for a time in the U.S. attorney's office. He said he used to use her as a resource for her "knowledge of 9th Circuit precedent and her ability to spot issues and know procedure inside and out."

Another thing that stood out about her, he said, was her "ethical antennae."

"She was extremely prescient in terms of recognizing ethical dilemmas and where the lines could be drawn or should be drawn," he said. "Laurel always, always was trying to figure out how - even before [then-Attorney General] Janet Reno said it - to do the right thing. That was her mantra. That's how she practiced."

Beeler said she learned from other prosecutors, including Bornstein and former U.S. Attorney and current FBI Director Robert S. Mueller III.

"Our job as prosecutors is to see all sides of the story," she said. "Good advocacy requires you to know the whole picture. Good lawyers don't get pulled into a facet of the picture."

One of the cases Beeler worked on as a prosecutor involved the manipulation of California's energy market by Enron Corp. San Francisco attorney Edwin K. Prather defended one of the Enron energy traders who pleaded guilty. Prather also has appeared in front of Beeler since she took the bench. He said she is "brilliant."

"There are people who can dig in and do the research and sort of understand," he said. "But she is so smart that she's able to understand on several different levels."

On a recent Thursday, Beeler handled a probation violation case, taking the time to explain to the defendant what was happening. Then, she turned to the lawyers, laying out how she saw the case, waving her hands from one side to the other to indicate whose argument she was trying to sum up. When she finished, she let both sides speak, cupping her chin in her hands to listen. Then, she recapped the arguments again to make sure she'd gotten them right.

That kind of attention to detail is classic Beeler, attorneys said.

"She sees the issues very deeply," said Nanci L. Clarence, of Clarence & Dyer, who knows Beeler personally and has worked against and in front of her.

"Anybody expecting a lightning-speed docket is going to be disappointed, but anybody who cares about the quality of the experience of showing up in our federal court is going to be very comfortable in Judge Beeler's courtroom," she said.

Bornstein agreed.

"I think in the long run, you're going to end up with decisions that are more well-reasoned and, therefore, not just based on a snap judgment," he said.

Beeler recently helped settle a patent infringement case involving wafer probe cards, which are used to test semiconductors. Foley & Lardner Los Angeles partner William J. Robinson represented FormFactor Inc., the plaintiff.

"I thought she did an absolutely superb job," he said. "She got to know the technology very quickly. The point is, the parties were relatively far apart, and she really managed to bring people together."

Beeler said she embraces her new position as judge. She said she loved being a prosecutor but was ready to serve the court in a new way. Still, even though she wears a black robe, she said she feels her new role is very similar to the one she played before.

"In many ways, I already wore the 'objective' hat," she said, explaining that as a prosecutor her job was to be a "truth-seeker" and make decisions about what to do in a case. "I think if you're going to do something dispositive - whether it's charging someone or deciding a case - it's important to have a process where people can be heard. I like that part of our justice system."

Prather said he could see Beeler becoming a district-level or even 9th Circuit judge.

"The sky's the limit for Laurel," he said.

Clarence agreed.

"I'm predicting she'll have a long, illustrious career," Clarence said.

Here are some of Judge Beeler's recent cases and the lawyers involved:

FormFactor Inc. v. Micronics Japan Co. Ltd., 06-7159 - patent infringement

For the plaintiff: William J. Robinson, Foley & Lardner, Los Angeles

For the defendant: Tamara D. Fraizer, Fish & Richardson, Redwood City

Overbo v. Loews California Theatres, 07-5368 - Americans With Disabilities Act

For the plaintiff: Ann M. Winterman, Oakland

For the defendant: M. Brett Burns, Hunton & Williams, San Francisco

Murthil v. City and County of San Francisco, 10-0702 - employment discrimination

For the plaintiff: Michael S. Sorgen, San Francisco

For the defendant: Margaret W. Baumgartner, San Francisco city attorney's office

N.B. Industries Inc. v. Wells Fargo & Company, 10-3203 - Junk Fax Prevention Act

For the plaintiff: C. Darryl Cordero, Payne & Fears, Los Angeles

For the defendant: Randall T. Kim, Brune & Richard, San Francisco

USA v. Sebastian Sbona, 09-0549 - embezzlement

For the prosecution: Chinhayi Coleman Cadet, U.S. attorney's office

For the defendant: Jerome E. Matthews, federal public defender's office

Judicial Profile: David T. Bristow

COURT: Central District of California, U.S. Magistrate Judge

APPOINTED: 2009

LAW SCHOOL: University of the Pacific, McGeorge School of Law, 1993

CAREER HIGHLIGHTS: U.S. magistrate judge, Central District of California, Riverside, 2009-present; shareholder, Reid & Hellyer APC, Riverside, 2003-09; senior associate, Akin Gump Strauss Hauer & Feld LLP, Riverside, 1999-2003; associate, Burke, Williams & Sorenson LLP (formerly Thomas, Mort, Prosser & Knudsen LLP), Riverside, 1997-99; deputy public defender, San Bernardino County, 1996-97; deputy district attorney, San Bernardino County, 1994-96; associate, Fidler, Bell, Orrock & Watase Inc., Riverside, 1993-94

Age: 49

By Ciaran McEvoy

RIVERSIDE - Working as a lawyer in a region that has one of the most severe judge shortages in the state, David T. Bristow tried to help solve the problem by applying to be a U.S. magistrate judge.

As president of the Riverside County Bar Association from 2006 to 2007, one of Bristow's roles was to persuade lawyers to join the ranks of the Inland Empire's overworked judiciary.

"It was in that process when one of them essentially turned the question on me," Bristow recalled. "It sort of hit home that what's good for the goose is good for the gander."

Riverside and San Bernardino counties' growth in population has far exceeded the number of judges allotted for the area. At the federal level, one district judge and three magistrate judges currently serve 4.2 million people in those two counties alone.

He also wasn't afraid to step on toes to bring attention to the Inland Empire's judicial budget shortages.

Bristow was publicly critical of the policies of then-Riverside County District Attorney Rod Pacheco, who was voted out of office in 2010. Bristow and other critics said Pacheco's hard bargaining was forcing too many cases to trial, delaying civil trials by as much as five years.

Michael J. Marlatt of Thompson & Colgate LLP recalled that Bristow was seeking a judgeship while publicly criticizing an incumbent district attorney.

"It took some intestinal fortitude, especially for someone who had involvement in the bar and was heading towards a judicial position," Marlatt said.

Pacheco declined to comment for this article.

The Central District judges selected Bristow for the bench in 2009.

Handling criminal and civil cases, habeas petitions and settlement conferences, Bristow said being a federal judge draws upon all the knowledge, abilities and talents he learned from 16 years of practicing law, a career he admits he misses.

"To me, the greatest thing in the world is to be a lawyer," he said, stressing lawyers' roles to advocate for their clients and to effect change in society.

"Judges aren't powerful," he said. "Lawyers are powerful."

Lawyers who have worked with Bristow noted his efficiency and work ethic.

"He often invites the parties to go ahead and give him a call with a discovery dispute before filing any motion work," said Jamie C. Chanin of Seyfarth Shaw LLP. "It usually results in a resolution of the dispute."

Leo J. Terrell, a Beverly Hills-based attorney, said Bristow works informally to settle cases.

"He makes his courtroom available by picking up the phone," Terrell said. "He will get online and help resolve discovery matters in a matter of minutes."

Added James O. Heiting of Heiting & Irwin, "He isn't a stuffed shirt."

"He listens well. He is thoughtful. He is smart," Heiting said. "Those are the qualities I hope to get in a judge - someone who listens and thinks about what he is doing."

The fourth of five children, Bristow was born on March Air Force Base in Riverside in 1962. His parents met at officer candidate school for the U.S. Air Force.

Raised in Riverside, Bristow graduated from La Sierra High School. Due to a medical ailment in his legs while a child, Bristow avoided contact sports, instead preferring track, literature, newspapers and music.

After graduating from California State University, San Bernardino, in 1985, Bristow worked full time at the San Bernardino Sun newspaper as a sports writer, a job that sent him to Los Angeles to cover its professional sports teams and figures, including Magic Johnson and Wayne Gretzky.

By 1990, journalism had lost its appeal with Bristow, who didn't want to move around the country to advance his career. So that year Bristow enrolled at McGeorge School of Law at the University of the Pacific. He said legal writing is "not really so different" from journalism.

"The great thing about a case and an opinion is it tells a story," he said. "Every opinion tells a story about some aspect of our society, whether it's an antitrust case or a probate case or a family law case, there's always some interesting element of human behavior in that case.

"Oftentimes, it's very bad human behavior, which is always interesting."

Upon receiving his law degree in 1993, Bristow worked as a civil litigator at Fidler, Bell, Orrock & Watase Inc. for one year. Desiring more trial work, he joined the San Bernardino County district attorney's office.

In 1996, Bristow quit his prosecutor's job after a dispute with the district attorney at the time, Dennis L. Stout.

Bristow said he refused to work on a "three strikes" prosecution, seeking 25 years to life imprisonment for a man on felony probation who was arrested driving his sister's car, which had one-tenth of a gram of cocaine in it.

Bristow then worked as a deputy public defender for San Bernardino County for the following year.

He said being a criminal defense attorney "forces you to confront realities of our system, which is that everyone presumes your client is guilty rather than the converse.

"It is a difficult professional position because you must confront so many rules and challenges in order to perform your job."

Desiring to move back to Riverside and establish a broader practice in civil law, Bristow joined Thomas, Mort, Prosser & Knudsen LLP, which later merged with Burke, Williams & Sorenson LLP. In 1999, he joined Akin Gump Strauss Hauer & Feld LLP's Riverside office, then located at the Mission Inn.

In search of a better work-life balance, Bristow joined Reid & Hellyer APC in 2003, calling his six years there, "professionally ... some of the most enjoyable times I've had."

Citing the late attorney Donald F. Powell as a mentor, Bristow said he learned how to properly evaluate a case from both the plaintiff and defense side in business litigation. He also was a shareholder in the firm and became the president of its executive committee.

Here are some of Judge Bristow's recent cases and the attorneys involved:

U.S. v. Diab, CR 06-00095-VAP - possession with intent to distribute methamphetamine

For the plaintiff: Antoine F. Raphael, U.S. attorney's office

For the defense: Angela C.C. Viramontes, federal public defender

Hamdi v. U.S. Citizenship and Immigration Service, CV 10-00894-VAP-DTB - application for naturalization hearing

For the plaintiff: Jennifer L. Pasquarella, ACLU Foundation of Southern California, Los Angeles

For the defense: Jeffrey M. Bauer, U.S. Department of Justice, Washington, D.C.

U.S. v. Cross, CR 09-00128-VAP - mail fraud

For the plaintiff: Abigail W. Evans, U.S. attorney's office

For the defense: John Yzurdiaga, Los Angeles

Bullock v. Astrue, CV 09-1556-DTB - denial of Social Security benefits

For the plaintiff: Bill LaTour, Bill LaTour Law Offices, Colton

For the defense: Carolyn B. Chen, Social Security Administration, San Francisco

Eidem v. Target Corp., CV 10-01000-VAP-DTB - personal injury

For the plaintiff: Walter R. Huff, Walter R. Huff & Associates APLC, Rancho Cucamonga

For the defense: Benjamin R. Trachtman, Trachtman & Trachtman, Mission Viejo

Nathanael Cousins

U.S. District Court for the Northern District of California

Technology in the courtroom can be great, but it's good to have a backup in case something doesn't work, advises the U.S. magistrate judge.

Teresa Wall-Cyb

2012-05-07 02:27:10 PM

COURT: U.S. District Court for the Northern District of California

ASSIGNMENT: Magistrate judge

APPOINTED: 2011 by the U.S. District Court for the Northern District of California

LAW SCHOOL: UC-Hastings

PREVIOUS EMPLOYMENT: Greenberg Glusker Fields Claman & Machtinger, associate (1995 to 1996); law clerk for Chief Judge F.A. Little Jr., U.S. District Court for the Western District of Louisiana (1996 to 1997); Kirkland & Ellis, of counsel (1997 to 2003); U.S. Department of Justice, Antitrust Division (2003 to 2008); special assistant to U.S. attorney, Northern District of California (2006 to 2007); Assistant U.S. attorney, Northern District of California (2008 to 2011)

AGE: 42

PLACE OF BIRTH: Palo Alto

POLITICAL AFFILIATION: Democrat

CLE: Mediation, patent law

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

A: I enjoy many things about it. I think the thing I enjoy the most is having different adventures every day. New things to learn every day. It's a job where you can get better, through experience. And it's a challenging job, so whether it's moving from criminal to civil, or different things within civil. It's very inspiring and motivating to have new topics to come up every day.

Q: Is there anything that you like least?

A: I don't think I've done it long enough to have anything that I like least. I still really enjoy the attorneys and I enjoy working with them. I know some judges have been doing this for a long time and get frustrated by seeing some of the same lawyer tricks over and over again. I've not

reached that point yet and I hope that I won't reach it for a long time. But I very much enjoy the litigation still, seeing lawyers advocate for their clients. To me that's a fun, positive part of the job rather than a turn off, at this point.

Q: What kind of lawyer tricks have you seen?

A: I don't want to say anything too bad. There's just, lawyers do advocate for their clients — fight about deadlines and where the deposition should take place. Things like that, that I think to people who have not been involved in civil litigation before can seem petty. But I know from having done civil litigation, sometimes those seemingly small fights end up being an essential part of the eventual outcome of the case. So I understand.

Q: If they're fighting over deadlines and depositions, do you experience a lot of hostility between the advocates in the courtroom?

A: I don't think I've had much open hostility in court. I think usually where you can see it is if you get a hold of the emails. The email traffic between the parties, which at least initially was not intended for the court, that's where people can be their most cantankerous. Usually parties are filtering by the time they present something to the court. But sometimes they might put the other party's emails in there in an effort to make the other side look bad. I guess my expectation is that the parties work with each other first to see if they can work out their problems. They can't always, but [they should] make sure that they've consulted with the other side first before they come to court.

Q: If they come to court and are hostile in the courtroom, how would you handle that?

A: If they're hostile toward me — and that hasn't happened — then that would be a different matter, but between the parties, I view one of the principal functions [of a judge] as being a communication role and encouraging in the first instance parties to communicate with each other. Sometimes it's as simple as getting them to talk face to face if that hasn't occurred. Most of the time, just getting face to face with your opposing counsel permits the parties to work it out. So I encourage them to do that and make sure that they are speaking to each other. Inherently, that can work out most things. But if they are really being abusive throughout that process and one party is still taking advantage of the other, then we have tools — blunter instruments for the court to utilize — but that's rarely necessary.

Q: Have you sanctioned yet?

A: I have. Not frequently, but in a context where someone made a misrepresentation to the court. Where they'd been warned. That was the situation where I did.

Q: How can attorneys help the court promote settlement?

A: As magistrates, we participate in settlement conferences ourselves and that's a great part of the job, something I enjoy immensely. And it's not new information that getting parties together here at the court facilitates settlement greatly. And it's not because the judges have some

particularly brilliant insight, but forcing parties in a compressed manner to come into court and take the communication process seriously helps facilitate the settlement of cases. I have direct involvement in that process. I'm in the middle of a settlement conference right now.

And then we have an interest as judges presiding over cases in getting the parties to settle as well. I think in both roles, I view it very much as the facilitating and communication role of finding a way to get the attorneys and clients to think about the other side's perspective, evaluate it, both their strengths and weaknesses — not just the strengths of their case — and to have candid discussions with the other side about strengths and weaknesses. Usually that gets the case settled.

Q: Do you see any common mistakes that experienced attorneys make, either during the settlement process or in court?

A: I see things which I perceive as might be mistakes. They may not be. They may be tactics or strategies that are useful for some other purpose than I know of. I don't want to be overconfident that everything that's going on is to make me happy. It can be a technique to make the judge unhappy in front of a client. I know that sometimes lawyers do things with different purposes in mind.

But one thing I think is not effective if you're trying to get a case to settle, many lawyers have an approach of being overconfident in front of their clients or posturing for their clients to get their clients to believe in them that they're going to win the case, that they're going to hit a home run, that there's no chance they're going to lose. And in communicating that extreme confidence to their client, they are at the same time indicating to the judge and to the other side that there's no way case will settle because I think I have a 110 percent chance of winning. And if both sides think they have a 110 percent chance of winning and are not receptive to hearing, no, there's only a 99 percent chance of winning, it's unlikely the case will settle. One thing I do see as a hurdle to cases settling early is a bit of overconfidence being communicated by attorneys. I think with more candidness they would say and objectively know that they don't have a 110 percent chance of winning, but they feel like — for purposes of convincing their client that they're the right person for the job — they have to put on this external armor that's going to march them through to trial and that can be effective client retention, but I'm not sure it's always in the client's best interest to hear their attorney exaggerate the strengths of their own case.

Q: How do you view technology in the courtroom? Is it helpful? Do you wish there were more of it?

A: Certainly one of the great things about this district is the court is up to speed. I'm on the court's technology committee so I have insight into these things. The judges have iPads and we've started using them for various functions in court. That's a helpful tool to manage what we are doing. And as far as technology in the courtroom, I haven't seen much impact from it yet given the shortness of time I've been on the bench as far as trial, or court. For most criminal proceedings there's not much need for high-tech gadgetry. So I think it's a helpful assisting device, but I've never participated in a trial as a lawyer where something didn't go wrong with

the audiovisual equipment. So I think from my own experience, not as a judge but as a litigator, I know that you always have to have a backup plan.

That's certainly the approach I would have as a judge as well, is that it's a great thing, but always have a backup plan.

Q: When that happened to you, what did you do?

A: Tried to act like it wasn't a surprise and rolled with whatever was going on. I think that the juries pick up more on the reaction of the judge and attorneys to something going wrong, than they do to that something going wrong. So if all the attorneys start sweating and swearing and looking like they lost their favorite dog, the jury realizes that there's something exciting and interesting going on and they start to pay attention. So just pretend like this is not a big deal, a lot of jurors don't even notice that there's something unusual going on. That's something I learned, through disasters happening, is how to expect that something bad might occur and plan. Then if something bad does happen, you are going to just continue as if everything is going great.

Q: Do you tend to make decisions based solely on the briefs or do you also like to hear oral argument?

A: I've done it both ways, and it really depends if there's questions we have from the briefs that need to be answered. And any party that thinks that the briefs are not important and that they can save the whole thing at oral argument is not well-informed. The briefs are the most important part. But I do sometimes issue a tentative ruling from the briefs and then have oral argument to address the question that I've raised. I've found that to be most helpful. So my usual practice is either to have a tentative ruling in writing ahead of time or at the beginning of the hearing tell the parties what my thinking is so they can target their analysis to those issues. It's not helpful to me to have the parties recite everything that was in their briefs out loud because I've read what's in the brief before I get there. I view oral argument as being a supplement to what's in the record rather than a repeat.

Q: Do you tend to write a lot of opinions or do more ruling from the bench?

A: Very rarely do I rule on anything just from the bench. It's not always a lengthy written order. It might be that I give my opinions from the bench, but then have a short summary of it. But I think it's helpful for the parties, to digest what you've said on the bench, to get it in writing. It also provides guidance to the other participants to the process, the other judges that might review the order and other litigants who are not before you who might be interested in how you view particular issues to have a written ruling.

Q: Do you have a dress code?

A: Clothing is required. I don't have a standing order for dressing attire. I have not noticed anyone violating my norms.

Q: What's your procedure for choosing a law clerk?

A: It's of course a new procedure and I've only started to do it. I have taken applications through all methods. I'm on the OSCAR system, which is the court's automated program, but many students and attorneys apply by dropping off materials or sending emails and I take applications through all methods. My clerkships so far have been one-year terms. I have clerks through 2013 and I very much rely upon recommendations from people I trust in evaluating the law clerks. So that's probably the most important part of the process.

Q: Is there a particular strength that you are looking for?

A: It's primarily a writing job. So excellence is research and writing is the most important thing. Working well with other people in a small environment, very important. Hard work. It's a job that has a lot of output required, writing. And professionalism. Being able to work in an environment where you're dealing with lawyers, judges. We do a lot of the settlement conferences here in chambers so people are coming and going all the time. So those are some of the qualities that are important.

And that's certainly a part of the job, I didn't mention at the beginning, that I enjoy, too. My law clerks are outstanding and getting to work with them makes it a very fun job.

Q: What are your tips for new attorneys?

A: I'm repackaging advice I got when I was a new attorney and selling it like it's my own, but I think it's good advice. Now, people electronically file things so they don't sign anything, but before you sign something, before you submit it to the court, every document you submit to the court has your credibility riding on it. Even if it's a small document — you don't think it's important — your credibility gets established very early in your career and you don't get a second chance for a first impression. Even if you are in a rush, someone is telling you to do something, if you submit something to the court with your name on it, it's got your reputation riding on it. And I think that's an important thing to recognize at the very beginning, because there's a lot of pressure over the course of your career to cut corners here or do this or do that. Ultimately, when the judges, your opposing counsel and your client see your name on it, it should mean something. That you are fully supporting what it is that you are submitting to the court.

Q: Are you involved in any community activities?

A: I am. The first thing I do is teach. That's the thing I did before becoming a judge that I very much enjoy. It's different from being a lawyer or being a judge and I really enjoy working with law students and feeling like I'm making a difference in their development. I have enjoyed staying in touch with my former students and seeing their careers blossom. I also coach basketball and soccer. I used to do a lot of refereeing as well. I haven't done a lot of that recently, but that's what I do in my spare time.

Paul Singh Grewal
U.S. Magistrate Judge
San Jose

Career highlights: U.S. magistrate judge, Northern District of California, San Jose, December 2010-present; Howrey LLP, partner, 2009- 10, East Palo Alto; Day Casebeer Madrid & Batchelder LLP, partner, 2003- 09; associate 2000- 03, Cupertino; clerk, U.S. Court of Appeals for the Federal Circuit 1999-2000, Washington D.C.; Pillsbury Madison & Sutro LLP, associate, San Francisco, 1998- 99.

Law school: University of Chicago Law School, 1996

Age: 40

By Craig Anderson

SAN JOSE - U.S. Magistrate Judge Paul S. Grewal has been on the bench only since December 2010 and already makes a lot of headlines, while drawing effusive praise from attorneys for his intelligence, demeanor and willingness to tackle tough issues.

As an intellectual property attorney and former clerk at the U.S. Court of Appeals for the Federal Circuit, which handles all patent appeals, Grewal is well-suited to the task of handling complex IP litigation in the Northern District and the San Jose court in particular, lawyers say. He is dealing with plenty of it already, including several of the most-watched intellectual property lawsuits in the nation.

Earlier this month, Grewal sanctioned Samsung Electronics Co. Ltd. in an evidentiary ruling that if upheld could hamper the company's defense against Apple Inc.'s patent infringement claims. The sanction came because it failed to meet his deadline for turning over source code.

And he handled settlement talks over Oracle Corp.'s patent and infringement claims against Google Inc. over its use of elements of the Java programming language in the Android operating system. He concluded in April, two weeks before trial, that the companies had reached an "irreconcilable difference" in their attempts to resolve the case.

The work as a settlement judge is "a big part of my job" and has earned him plaudits from lawyers who have appeared before him, but Grewal said his philosophy is evolving.

"One element is that not every case has to settle," the judge said. "I'm not here to shove a settlement down [parties'] throats, even if I could."

'I cut my teeth in places like the District of Delaware and the Eastern District of Texas. It was a culture that exalted the trial above all else, and [judges] were very good at distilling a case down to its essence.'

Grewal, whose parents immigrated to the United States from India before he was born, is viewed as such a rising star that he was considered this year for a quick promotion by the Obama administration to be an Article III judge. But that will not be happening this year, as Grewal's name was recently dropped.

Edward R. Reines, a Redwood Shores-based partner at Weil, Gotshal & Manges LLP, said his understanding is that Grewal's status as a registered Republican was the main reason.

"It's at least an issue for 2012," said Reines, who also is a Republican. "That he was so seriously considered speaks to how respected he is across the spectrum. His career future is quite bright."

Grewal declined to comment on his would-be nomination.

"Judge Grewal hit the ground running and inspired confidence in the bar," Reines said. "He has become a nationally sought-after speaker on IP issues during his short time on the bench."

Grewal enthusiastically asks patent attorneys to allow their cases to be handled by magistrate judges, as is encouraged under the Northern District's rules adopting a pilot program Congress passed last year aimed at steering the complicated lawsuits to judges eager to deal with them.

The magistrate has been successful in getting parties' consent in more than 10 cases, Reines said, including one in which he represents a client that was among more than a dozen that needed to agree - a difficult task when a single objection would get the case referred to a district court judge.

"They all agreed, because Judge Grewal inspires such confidence," Reines said.

While Grewal's work on intellectual property issues has drawn the most attention, he recently made headlines in an immigration case. He ruled last fall that the U.S. Citizenship and Immigration Service routinely violates Freedom of Information Act requests by individuals whose citizenship requests were denied.

"In sum, the experiences of plaintiffs establishes a pattern or practice of violations," Grewal wrote in his ruling. "Defendants have not offered evidence to the contrary, pointed out inconsistencies in the record that would suggest a genuine issue of fact for trial, or come forward with even assertions that the [immigration service] is in compliance."

Grewal granted a permanent injunction May 7 requiring the government to provide a requestor's alien registration file under FOIA within 20 days. The Justice Department has appealed that decision to the 9th U.S. Circuit Court of Appeals. *Hajro v. United States Citizenship and Immigration Services*, 08-1350 (N.D. Cal., filed March 10, 2008).

Kip Evan Steinberg, a San Rafael immigration attorney who represents one of the plaintiffs, said Grewal made his ruling solely on the papers. While pleased with the outcome, he also said he was impressed by the "thoroughness and scholarship of the decision."

Other attorneys say Grewal is an outstanding settlement judge.

M. Van Smith, a San Jose attorney who represents plaintiffs in employment discrimination and retaliation cases, said Grewal helped resolve two matters last year and demonstrated an excellent command of the law.

"He's very bright," Smith said. "He has a very nice personality but at the same time gets right to the issue."

In one case, Smith said the judge "opened my eyes to something I hadn't seen before," leading to a settlement.

Vincent P. Hurley, an Aptos attorney who represented the city of Salinas in a civil rights claim of unlawful search and arrest, was impressed with Grewal's ability to grasp the key issues in a case that had nothing to do with intellectual property and to persuade both sides to settle.

"Our clients are frequently reticent to accept magistrate referrals," Hurley said. "This is someone I would recommend to my clients. He's not defense-oriented but is somebody we know is going to understand the issues."

Grewal's parents emigrated to a suburban town in the northeastern part of Ohio, where his father worked as an engineer and his mother was one of the first women to practice psychiatry in the state.

The Ohio town was not particularly diverse, and Grewal remembers having his "share of unpleasant experiences" as a result but said he is proud of his roots there. He graduated with an engineering degree from the Massachusetts Institute of Technology in 1993 and from the University of Chicago Law School three years later.

Grewal served as a clerk to U.S. District Judge Samuel H. Bell in the Northern District of Ohio, then moved to California in 1998 and was hired as an associate at Pillsbury Madison & Sutro LLP.

He wrote Circuit Judge Arthur J. Gajarsa a letter inquiring about serving as a clerk at the Federal Circuit, got a return letter and subsequently the job in 1999. "I thought it was interesting and something I would enjoy a lot," he said.

He returned to California in 2000 to join Cupertino IP boutique Day Casebeer Madrid & Batchelder LLP and became a partner three years later. He played a supporting role in representing Sun Microsystems Inc. in its antitrust lawsuit against Microsoft Corp. and handled a number of intellectual property lawsuits in popular patent venues across the nation.

"I cut my teeth in places like the District of Delaware and the Eastern District of Texas," Grewal said. "It was a culture that exalted the trial above all else, and [judges] were very good at distilling a case down to its essence."

Grewal was president of the South Asian Bar Association of Northern California in 2003 and of the Northern American South Asian Bar Association four years later.

He joined Howrey LLP in 2009 after the firm acquired Day Casebeer, then was picked a magistrate the following year.

Grewal has been married for 15 years and has two young children. His wife, Gowri, is a product manager at Symantec Corp.

Last fall, Grewal issued an order adopting Federal Circuit model rules aimed at cutting down on the amount of electronic discovery in patent cases, a goal emphasized repeatedly by Randall R. Rader, chief judge of the Federal Circuit, in speeches to judges across the nation. *DCG Systems Inc. v. Checkpoint Technologies LLC*, 11-3792 (N.D. Cal., filed Aug. 2, 2011).

John V. Picone III, a San Jose-based attorney at Hopkins & Carley who represents Checkpoint and made the motion, said he believed it was one of the first times the rule was used in the Northern District, although it has been adopted in other jurisdictions.

"I am buying into Judge Rader and the Federal Circuit's perspective, because trial courts ought to take their cue from appellate courts," Grewal said. "My dream is to see the courts strike the right balance, to cut down on the costs of discovery and also on wasteful discovery. It's about efficiency."

Here is a list of cases handled recently by U.S. Magistrate Judge Grewal:

Rodriguez v. City of Salinas, 09-2454; civil rights violations

For the plaintiff: Kathleen E. Wells, Santa Cruz

For the defense: Vincent P. Hurley, Aptos

Apple Inc. v. Samsung Electronics Co. Ltd., 11-1846; patent infringement

For the plaintiff: Harold J. McElhinny, Morrison & Foerster LLP, San Francisco

For the defense: Charles K. Verhoeven, Quinn Emanuel Urquhart & Sullivan LLP, San Francisco

Rodriguez v. Wal-Mart Stores Inc., 10-5659; employment discrimination

For the plaintiff: M. Van Smith, San Jose

For the defense: Scott G. Lawson, Greenberg Traurig LLP, San Francisco

DCG Systems Inc. v. Checkpoint Technologies LLC, 11-3792; patent infringement

For the plaintiff: Mark E. Miller, O'Melveny & Myers LLP, San Francisco

For the defense: John V. Picone III, Hopkins & Carley, San Jose

Genentech Inc. v. Trustees of the University of Pennsylvania, 10-2037; patent infringement

For the plaintiff: M. Patricia Thayer, Sidley Austin LLP, San Francisco

For the defense: Gary N. Frischling, Irell & Manella LLP, Los Angeles

Judicial Profile: Elizabeth Laporte

COURT: Northern District of California, U.S. Magistrate Judge

APPOINTED: 1998

LAW SCHOOL: Yale Law School

PREVIOUS EMPLOYMENT: Clerked for U.S. District Judge Marilyn Hall Patel in the Northern District (1982 to 1983); Turner and Brorby (1983 to 1991); administrative law judge for the California Department of Insurance (1991 to 1996); chief of special litigation for the San Francisco city attorney's office (1996 to 1998).

AGE: 58

PLACE OF BIRTH: New York City

POLITICAL AFFILIATION: Declined to state

CLE: Patent litigation, jury trials, e-discovery, employment law and settlement

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

A: I enjoy the tremendous variety of the job. There's always new issues, different issues, changes in the law, new factual patterns and so that always keeps it very interesting. I enjoy being able to be as fair and do as much justice as I possibly can without having to have any ax to grind, but just trying to be objective and do the right thing within the law and sometimes being able to affect people's lives positively, and that could be ... through some kind of ruling. Or in a case that matters to individuals, it could be in a decision; it could be a settlement conference.

Q: What do you like least about being a judge?

A: Well, I mostly like the job very much, but there are occasions — fortunately not by any means the majority — where it seems as if the litigants get stuck dwelling on peripheral issues and fighting over them seemingly unnecessarily or being unduly hostile to each other or combative when it's really not advancing the merits of the case.

Q: When they are hostile with each other, what do you do?

A: Well, generally if that occurs in my presence, in the courtroom, just a word to remind whoever might be showing undue hostility that this is not the place for it and that I insist on professionalism and courtesy is sufficient.

Q: If they were hostile towards you, what would you do?

A: That is pretty rare, at least in my presence. What people say outside my presence, I don't know. In the rare occasion where that would happen, somebody might be losing their temper. Again, usually just a gentle reminder is sufficient and once in a rare while, I would just take a recess to let everyone's tempers cool down.

Q: Do you decide a motion based solely on the briefs or do you also like to hear oral argument?

A: Some of both. On many motions I would hear oral argument, but if I think that it's very straightforward and I don't have any questions and there's no need for the parties to spend the time and money coming in, then I might take it off calendar and just rule on the papers.

Q: How often do you do that?

A: I don't know. I think it is less than the majority of the motions.

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

A: Usually. Almost always. Some of them are longer than others.

Q: When would be a time when you wouldn't issue a written opinion?

A: Well if something is very simple and straightforward and doesn't really need any explanation, then I'd rule from the bench.

Q: To make case management conferences run smoothly, what should attorneys have with them in the courtroom?

A: Or course they are required to and should have had a serious meet-and-confer effort — and not what some people call a "drive-by" — where they've really talked about the case and come up with a plan that's tailored to the particular case. If it's a simple case that doesn't merit a lot of expense, they should think about ways to streamline it, concentrate only on discovery that, for example, is going to be the most cost effective. And perhaps posture it for settlement, if that's something they think is appropriate. If it's a more complex case, they may look at phases of the case. They should look at whether there is a motion that can be brought relatively early that will have either decisive or important impact on the case, narrowing any issues. Things of that nature. So there's no one-size-fits-all. I want the attorneys to think through the case, to be cooperative. It's not the same as giving in to the other side, but being cooperative about how best and most cost-effectively to get to the merits of the case.

Q: To make settlement conferences run more smoothly, how can an attorney assist the court?

A: The attorneys should, again, be prepared and have prepared their clients. Make sure that the real decision makers be participants, be present, be up to speed on where things stand, and be creative about resolutions. If there is, for example in a business dispute, a possibility that there could be some kind of business resolution, then you have to involve the business people, and not just the legal department. Making sure that the client does not have unrealistic expectations is important as well.

Q: What is your opinion on technology in litigation?

A: Well I think technology, obviously, is very important in today's world. There's no reason to think that's going to become any less so. Technology can help, for example, in discovery — most data is kept in digital form, whether it is produced that way or not. On the one hand, the proliferation of data that's so easily stored and the number of sources, number of times it can be repeated and exchanged presents a challenge. But on the other hand, technology can actually help sort through the huge amounts of information to cull down to what is relevant and reasonable. So it can be part of the solution as well. And of course in presenting information to the court, and if it goes to a jury trial to the jury, technology can be very helpful. I was for many years a member of the Ninth Circuit's jury trial improvement committee and there we learned a lot about how different people process information differently. Some people can learn things very well from hearing it. Others are more visual and many can really benefit from some kind of technology. Whether it's a reconstruction or, for example, with a complex technology issue, some kind of tutorial, showing the product and how it works. Various ways demonstrations can be very useful. Obviously, they need to be accurate.

Q: In your own courtroom, you obviously instruct the jury against that, but how is it enforced?

A: Well, I think like many things we ask jurors to do, we have to rely on their good faith and their willingness to participate in the process. I think that jurors who actually serve on juries and get picked generally — I saw this at the Ninth Circuit jury trial improvement committee and the research we were presented, but also anecdotally in my own trials — find jury service very meaningful and they want to do a good job. So I think in general, that's the case. On the other hand, certainly when using Blackberrys and Twitter and who-knows-what becomes second nature, it's almost hard for perhaps some people, at least in the future, to stop doing that.

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

A: I would advise new attorneys to find good role models or a good role model and even if that's not a person who the new attorney can have a personal relationship with, go watch them in court. Read their briefs. Learn from practitioners who are deservedly regarded as top notch. Another piece of advice that I think all judges say, that's because it's so true, is be aware even as you start that your credibility and reputation for being trustworthy and reliable is your most important asset and you can't afford to ever let that down. So if you cite a case, make sure you are citing it properly. If you represent a fact to be true, make sure you know that that's right. Things of that nature. And try to get along with your adversaries. It really doesn't benefit you or anybody else in the long run to engage in unnecessary squabbling. And I would say become involved with the broader legal community, whether it's through bar association activities or, in terms of litigation practice, pro bono activities. Because that may be a way, not only to do something positive for the community, but also to hone your skills.

Q: What are the most common mistakes you see an experienced attorney make?

A: I don't see experienced attorneys necessarily making a lot of mistakes. But I think on occasion perhaps, very senior attorneys on the top of various litigation teams may not always stay in touch completely with what's going on with all the members of the team, and sometimes perhaps, some

of the associates on the team might pursue all sorts of less important disputes, or being afraid of not leaving any stone unturned, and that may not really be the best way to litigate the case, and [the associates] may need more guidance from the experienced attorneys. And perhaps sometimes, particularly the attorneys who practice more in state court, aren't as aware of and careful to comply with the various federal rules, which, for example, require a lot of disclosure in advance, both at the beginning of the case and as you approach trial.

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

A: I rarely sanction. Certainly, it's not the first resort. I would follow something that another judge has called "progressive discipline," which is you try the lowest possible approach to get the results of compliance. Such as, just a word to the wise and certainly don't leap to serious sanctions quickly. I would say the reason I or any other judge ever impose serious sanctions, [is] there's usually been a pattern of noncompliance. Often, actual misrepresentations to the court as well as opposing counsel, and either out of recklessness or worse. In other words if somebody makes a mistake, doesn't recall or perhaps hasn't been as diligent as he or she should have been, but then quickly corrects it, that's one thing. And that's not the kind of behavior that's generally going to result in sanctions. It's usually something much more serious and a deep-seated pattern.

Q: What is your procedure for selecting a law clerk?

A: Well I have one long-term law clerk [Kristy Topham], so I don't have to do much selecting. And then currently the other law clerk [Sarah Abbott] is limited to a term of four years. So generally I wouldn't be looking very often, but I would ask for applications, and I would check references, and I would interview the person.

Q: Is there a particular strength that jumps out at you that you'd want in a law clerk?

A: Well I think, ideally, you'd want a combination of strengths. Obviously somebody who is very good at research and writing. Preferably somebody with good judgment. What's important. What isn't. What's reasonable. What isn't. And of course efficient in getting the work done because we do have a lot of work. And pleasant to be around. Somebody who, to the extent that they interact with the Bar and the public, will be professional and pleasant.

Judicial Profile: Margaret A. Nagle

COURT: Central District of California, U.S. Magistrate Judge

APPOINTED: 1997

LAW SCHOOL: Columbia Law School, 1975

CAREER HIGHLIGHTS: Appointed U.S. magistrate judge by judges of the Central District, 1997; partner, Stroock & Stroock & Lavan LLP, 1984-97; associate, Stroock & Stroock & Lavan LLP, 1978-83; associate, Goodwin, Procter & Hoar LLP, 1975-78

Age: 60

By Gabe Friedman

LOS ANGELES - Settlement conferences with U.S. Magistrate Judge Margaret A. Nagle are known to be thorough. One especially grueling meeting ran so late that by the time one lawyer emerged from the Roybal Federal Courthouse in downtown Los Angeles, his car had been stolen.

That shows the persistence and patience the judge brings to her matters, according to the unfortunate lawyer, Gary Casselman.

"I have gone to her, even when she wasn't the assigned magistrate judge," Casselman said. "She gets right down to it and tells you what she thinks of your case."

Casselmann represented an arrestee who alleged guards at the county jail abused him while in custody. Casselman had claimed to have a video that showed guards at the jail parroting Nazi salutes, but the defense attorney at the time brushed it off as nonsense. Nagle, who was trying to settle the case, disagreed, Casselman noted.

"She told them the jury is going to come unglued when they see this Nazi-like behavior," he said.

As a magistrate judge in the busy Central District, she oversees discovery disputes, settlement conferences and a range of issues that arise in civil cases.

Eton Z. Lorant, who represents law enforcement authorities in civil rights cases, said Nagle has the ability to handle more than the discovery and preliminary matters. He even agreed to allow the magistrate judge to preside at trial over one of his cases - part of a pilot program in the Central District to ease trial calendars. (The case ultimately settled during pretrial mediation.)

"She listens to both sides equally," Lorant said. "And she'll spend as much time as it takes so the parties feel comfortable."

Nagle, who hails from Boston, describes herself as the daughter of parents who were children of the Great Depression. Her mother dropped out of high school in England at 15, and her father dropped out in Boston at 16. Her father worked one job with the U.S. Postal Service and held down a second job to make ends meet.

Having a strong work ethic was of utmost importance in her family, she said. Her father liked to say the Ten Commandments could be summed up by the golden rule: Do unto others as you would like others to do unto you.

Her law career was almost incidental, though not for lack of hard work. As an undergraduate, she rode a full scholarship through Boston College, where she earned a double degree in math and economics while sometimes pulling nearly full-time hours in a job at a pharmacy. She still graduated Phi Beta Kappa in 1972.

Nagle's plan had been to major in mathematics until she decided pure math was too abstract, and she switched to economics, applying to law school as a default option.

Columbia Law School accepted her right away, and that sealed her fate. There she met her husband, Rex Heinke, now a partner at Akin Gump Strauss Hauer & Feld LLP.

She spent three years as an associate at Goodwin Procter LLP's Boston office before following her husband to Los Angeles in 1978, joining Stroock & Stroock & Lavan LLP. She practiced employment law, insurance defense, trademark and copyright infringement and business litigation.

"I really had a rare opportunity to be a generalist," Nagle said.

She made partner in 1983, staying with the firm until her appointment to the bench in July 1997.

As a magistrate judge, Nagle has presided over high-stakes cases, including a class action seeking tens of millions of dollars in compensation from the National Collegiate Athletic Association for expenses incurred by thousands of college-level football and basketball players.

The plaintiffs' attorney in the case, Steven G. Sklaver of Susman Godfrey LLP, recalled that for one particularly important hearing on whether the NCAA could compel depositions of absent class members - which would have included two Heisman trophy winners - Nagle was extremely well-prepared.

"She not only read all the exhibits to the briefs, she read all the correspondences between counsel," Sklaver said. "And she came right out of the gate and said so."

Nagle said she places a high value on eliminating unnecessary fights between parties. If one party files an ex parte motion out of the blue and around a holiday, and it looks like an attempt to squeeze the other side, the judge is likely to convene a telephonic conference right away.

"I attempt early and often to make sure the parties understand that I expect them to work together in a civil manner," she said. "I try and nip in the bud any pointless squabbling."

Nagle was the magistrate judge in a complicated dispute involving class actions that alleged sexual harassment, race and national-origin discrimination claims against Landwin Management, which operated the Hilton hotel in San Gabriel. There were several cases, one of which

ultimately settled for \$500,000. Defense attorney Lisa K. Garner of Gordon & Rees LLP remembers many appearances and much time spent with the judge.

Garner said she had the judge's direct-dial chambers, home and cell phone numbers. Nagle spent considerable effort on the case, including persuading a Superior Court judge to transfer two related cases that were consolidated.

"She will work until midnight and expect you to stay that late," Garner said. "She just doesn't give up, even after the mediation, she kept calling. To be honest, even the people you pay don't do that."

Here are some of Judge Nagle's recent cases and the lawyers involved:

Headley V. Church of Scientology, 09-03986 - labor

For the plaintiffs: Kathryn Ann Darnell, Metzger Law Group, Long Beach

For the defendant: Bert H. Deixler, Kendall Brill & Klieger LLP, Century City

Ginsberg v. Unum Life Insurance, 10-05086 - ERISA

For the plaintiffs: Charles J. Fleishman, Fleishman Law Firm, Woodland Hills

For the defendant: Nicole Y. Pomerantz, Wilson Elser Moskowitz Edelman & Dicker LLP, Los Angeles

Shaw v. Berman, 97-07425 - copyright

For the plaintiff: Thomas A. Brackey II, Freund & Brackey LLP, Beverly Hills

For the defendant: Bridget Berman, in pro se

White v. NCAA, 06-00999 - antitrust

For the plaintiffs: Steven G. Sklaver, Susman Godfrey LLP, Century City

For the defendant: Frank M. Hinman, Bingham McCutchen LLP, East Palo Alto

Bennigson v. One Oil Painting, "Femme En Blanc," by Pablo Picasso, 04-08333 - civil forfeiture

For the plaintiffs: E. Randol Schoenberg, Burriss, Schoenberg & Walden LLP, West Los Angeles

For the defendant: David M. Rownd, Thomson Coburn LLP, Chicago, Ill.

Sheila K. Oberto
Magistrate Judge
U.S. District Court (Fresno)

Career highlights: Sworn in as a magistrate judge for the Eastern District, March 30, 2010; assistant U.S. attorney, Eastern District, 1990-2010; Baker Manock & Jensen PC, Fresno, 1988-89; Irell & Manella LLP, Los Angeles, 1986-87

Law school: USC Gould School of Law, 1985

Age: 55

By Jill Redhage

FRESNO - Iranian-born U.S. Magistrate Judge Sheila K. Oberto is the consummate patriot.

She has devoted most of her career to public service, including 20 years at the Fresno U.S. attorney's office and now nearly two years on the Eastern District bench. One of her favorite parts of the job is handling naturalization proceedings, during which she talks to immigrants about "what a great country we live in."

"It's a land of many opportunities for all of us, and I say I know that personally, because I became a naturalized citizen almost 30 years ago," Oberto said. "I tell them about my background for two reasons: first of all, to let them know what a wide range of opportunities are available to people who become naturalized citizens in this country, and also to stress the importance of giving back."

After attending high school in Switzerland, Oberto moved to the U.S. for college at the encouragement of her parents, who thought she'd have better opportunities here as a woman. She said it wasn't easy leaving home at age 14, but that it gave her the independence she needed to make the transition.

"I wouldn't trade my background for anything in the world," she said. "You can take for granted the opportunities we have here if you haven't traveled to other countries where women don't have the [same] opportunities."

Oberto took an indirect path to law. A natural with mathematics and computers, she studied business and statistics as an undergraduate at USC and earned a master's degree from UCLA in operations research. She worked for a couple years as a systems analyst before realizing she needed a job that melded problem solving with more people interaction.

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She attended USC Gould School of Law and clerked for Associate Justice Armand Arabian, then of the 2nd District Court of Appeal, before beginning her legal career at Irell & Manella LLP in

Los Angeles, where she worked on real estate transactions. She then practiced briefly at Baker Manock & Jensen PC in Fresno until a former colleague convinced her to apply to the Fresno U.S. attorney's office.

She got the job and spent 10 years litigating civil cases, then another 10 years in the criminal division, ultimately as unit chief of the office's white-collar crime group. She joined the bench in April 2010.

"I wasn't necessarily thinking about being a judge, and when I started my legal career I wasn't driven to be a judge," Oberto said. "But ... a couple of my colleagues said, 'Why don't you apply? You have the perfect background.'"

Ultimately she decided the move was a "natural progression" for her career.

Oberto said the logical reasoning skills she developed in school and as a systems analyst have helped her enormously over the years. As a prosecutor, those abilities enabled her to distill a case to its essence. In an identity theft case, she remembers receiving compliments on her closing arguments from several jurors, who said they wished they could have heard her presentation at the outset instead.

"As a judge, too, you need to develop logical reasoning skills in your writing and oral skills," Oberto said.

Attorneys who have appeared in her court have noticed those same qualities.

"It doesn't take long to realize that she's a very bright person," said James H. Wilkins of Wilkins, Drolshagen & Czeshinski LLP in Fresno. "She's capable of grasping complex issues really quickly and getting to the meat of what's at issue."

The judge's load of nearly 400 cases ranges from habeas corpus and prisoner civil rights suits to social security and general civil matters. For two weeks every two months she handles non-dispositive criminal matters, such as arraignments, initial appearances and detention hearings.

Last year, attorneys were impressed with the way she handled a complicated contract dispute between a registered bull provider and a company offering livestock boarding and insemination services.

The plaintiff, JLG Enterprises Inc., accused defendant Excalibur Sires Inc. of failing to pay for the services JLG provided to its bulls. Oberto ultimately entered a judgment in JLG's favor.

"We had a number of opportunities to argue two law and motion matters before her, and she was very thorough," said JLG attorney Eric J. Sousa of Damrell, Nelson, Schrimp, Pallios, Pacher & Silva PC in Modesto. "I thought both rulings were very good rulings for my client and well thought out."

Excaliber Sires' lawyer, Gregory L. Myers, said some of the complexity came with the fact that the bulls in question appeared to be jointly owned.

"The judge had to come up with a way to make sure that the owners were notified and had the opportunity to identify their bulls and satisfy any charges that were identified with those bulls," Myers said.

In another complication, Myers' client severed all contact with him mid-case.

"She was sensitive not only to the issues associated with the owners of the bull, but she was also sensitive to my situation," he said.

Their experiences line up with Oberto's judicial philosophy.

"My goal as a judge is to be fair, efficient and prepared so that I can assist the litigants in resolving their disputes in a fair and efficient manner," she said.

In addition to naturalization proceedings, Oberto said trials and settlement conferences are her favorite parts of the job. Her trial responsibilities recently included two prisoner civil rights cases in which the plaintiffs accused detention officers of using excessive force. Both jury trials were completed in a single day and ended in defense verdicts.

Outside of her caseload, she volunteers at mock trial events and serves on the Ninth Circuit Pro Se Litigants Committee responsible for certain prisoner litigation issues.

"Not only is she a good magistrate judge," Myers said. "She is one of the few magistrate judges that I think would be a good trial judge as well."

She might one day have that chance. The Eastern District recently saw Judge Oliver W. Wanger retire, and it is now facing the impending transition of Chief Judge Anthony W. Ishii to senior status, a move which will open up a district court slot. Oberto deflected a question about whether she's interested in the job.

"I'm not going to rule that out, but I'm really enjoying what I'm doing right now, too," she said.

Here are some of Oberto's recent cases and the lawyers involved:

Hartford Casualty Insurance Co. v. American Dairy and Food Consulting Laboratories Inc., 09-CV-914 - insurance coverage

For the plaintiff: Joseph Decker, Mendes & Mount LLP, Los Angeles

For the defendant: James H. Wilkins, Wilkins, Drolshagen & Czeshinski LLP, Fresno

Gong-Chun v. Aetna Life Insurance Co., 09-CV-1995 - wage and hour

For the plaintiff: Alexandria M. Witte, Initiative Legal Group APC, Los Angeles

For the defendant: Leslie L. Abbott, Paul Hastings LLP, Los Angeles

Medrano v. Hamlin, 10-CV-1555 - employment discrimination

For the plaintiff: Dean B. Gordon, Fresno, and Larry H. Shapazian, Tomassian, Pimentel & Shapazian, Fresno

For the defendant: Matthew J. Mason and Michael J. Burns, Seyfarth Shaw LLP, San Francisco

Schiller v. David's Bridal Inc., 10-CV-616 - wage and hour

For the plaintiff: Sue J. Kim, Initiative Legal Group LLP, Los Angeles

For the defendant: Cary G. Palmer and Erika B. Pickles, Jackson Lewis LLP, Sacramento

JLG Enterprises Inc. v. Excalibur Sires Inc., 10-CV-2138 - breach of contract

For the plaintiff: Eric J. Sousa, Damrell, Nelson, Schrimp, Pallios, Pacher & Silva PC in Modesto

For the defendant: Gregory L. Myers, Fresno

Oswald Parada
U.S. Magistrate Judge
Central District of California (Riverside)

Career highlights: U.S. Magistrate Judge, Central District of California, Riverside, 2006-present; directing attorney, Riverside branch of federal public defender's office, 1995-2006; deputy federal public defender, 1991-95; staff attorney, El Rescate Legal Services Inc., Los Angeles, 1991

Law school: Loyola Law School, 1990

Age: 49

By Jason W. Armstrong

RIVERSIDE - In a recent interview, U.S. Magistrate Judge Oswald Parada was reluctant to discuss his family in too much detail. He has to be cautious, he said, because of an unsettling experience that cast a bright light on the dangers that can accompany decisions on the bench.

In 2006, after Parada dismissed a lawsuit filed by a man named Terry Lee Steward, the plaintiff filed an amended complaint containing threats against Parada as well as against U.S. District Judge A. Howard Matz, who made a ruling in a related suit that Steward didn't like.

In court papers, Steward made references to "killing and death." He said Matz, in the case he presided over, had "lost his soul" and that "if a man loses his soul, the body will not live too much longer."

Of Parada, Steward wrote, "If you dismiss this case again, you will lose your soul as well." According to court documents, Steward also wrote, "People kill themselves when they don't listen to God," and continued, "Magistrate Judge Oswald Parada, don't kill yourself or Judge Matz."

After legal wrangling over Steward's sanity, in which he was committed for several years, he was found competent to stand trial and convicted in 2010 of several charges, including threatening a federal officer. He was sentenced to more than three years in prison, but received credit for time served and is being supervised by the U.S. probation office.

"Because of that situation, I've always tried to keep references to my family as vague as possible," said Parada, a jurist for six years. "It was a disturbing situation."

'I viewed my position in the public defender's office as an opportunity to help someone in trouble.'

- U.S. Magistrate Judge Oswald Parada

Matz declined to comment.

But Parada said the experience hasn't sullied his outlook on his job.

"It's very rewarding," he said of his work presiding over criminal misdemeanors and felony arraignments, habeas petitions, bail hearings and a range of mostly pre-trial civil matters, including discovery issues and settlement conferences, as well as appeals of Social Security claims decisions and prisoner civil rights actions. "I like the variety of cases we do."

Parada, former directing attorney of the Riverside branch of the federal public defender's office, is one of three magistrate and one district court jurists at the Riverside division of the federal court's Central District of California. The court's coverage area, encompassing four-million-resident Riverside and San Bernardino counties, has one of the most severe judge shortages in the state.

However, the judge said that while the court needs more bench officers, the case loads aren't crushing because the system evenly distributes cases among jurists.

Lawyers who have appeared before Parada said the judge deftly juggles civil and criminal matters, and they praised his settlement techniques.

In a mediation this month in a suit in which a student sued a school district, accusing officials of failing to accommodate her disability, attorney Michael J. Marlatt, who represented the district, said Parada asked lawyers probing questions "that made you squirm a little bit."

"Even if you're prepared, you have to think quickly on your feet in providing responses to his questions," said the attorney, a partner with Thompson & Colegate LLP.

Marlatt declined to discuss the settlement result but said Parada helped forge an agreement by "accentuating questionable aspects" of the plaintiffs' and defendants' arguments.

"He made each side rethink their positions to bridge the gap."

In criminal misdemeanor matters, Parada brings "a lot of common sense to his decisions," said Assistant U.S. Attorney Antoine "Tony" Raphael, chief of the Riverside division of the U.S. attorney's office.

"Because of his background as a public defender, he's seen it all. He's able to talk to defendants and explain things to them, not in legalese but in terms they can understand," the prosecutor said. "It's also not uncommon for him to reach out from the bench to [defendants'] family members and explain what will happen next."

Parada, a New York native who has an older brother, grew up in the San Gabriel and San Fernando valleys. His father owned a service station, and his mother was a homemaker.

The judge, who loves animals and grew up with a menagerie of chickens, rabbits and gerbils, initially wanted to be a veterinarian and briefly studied the field at California State Polytechnic

University in Pomona. But he eventually decided to pursue a law career and in 1987 graduated from California State University, Fullerton, with a criminal justice degree.

He said his passion for a legal career - specifically defense work - ignited while working as a bartender between his college studies, when he befriended a bouncer who had a "rough upbringing and had been in trouble with the law."

Later, while Parada was studying at Loyola Law School, the bouncer was charged with murder and pleaded no contest to involuntary manslaughter.

"He wasn't a bad person but had gotten himself in a lot of trouble and needed help," the judge said. "I couldn't help him at the time because I was still in law school."

During his last year at Loyola, Parada interned at El Rescate Legal Services in Los Angeles, a nonprofit focusing on Central American refugees' political asylum claims. After earning his law degree in 1990, he briefly worked there as a staff attorney before joining the federal public defender's office in Los Angeles. He worked there until 1995, when he moved to the Riverside branch.

People would ask him why he wanted to defend criminals, he said. "I viewed my position in the public defender's office as an opportunity to help someone in trouble."

The Central District judges selected Parada for the bench in 2006. As a judge, he said he tends to lean "a little bit towards the informal side."

"I think the fact that [people] are in court is stressful enough," he said.

But he doesn't like it when lawyers "point fingers and take potshots" at one another.

"Opposing counsel is your adversary - not your enemy," he said.

Off the bench, Parada spends most of his time with his family, including taking his young children to soccer, football and softball practice and helping them with their homework.

Here are some of Judge Parada's recent cases and the attorneys involved:

Hernandez v. Ascencio, EDCV08-1776-ERW - civil rights

For the plaintiff: Arnoldo Casillas, Moreno Becerra & Casillas LLP, Montebello

For the defendant: Jason K. Axe, U.S. attorney's office

Narcisse v. United States of America, EDCV10-1331-VAP - Federal Tort Claims Act

For the plaintiff: Keith A. Adesko, Professional Lawyers Group, San Bernardino

For the defendant: Alarice M. Medrano, U.S. attorney's office

Y.G. v. Riverside Unified School District, EDCV10-1002-CAS - Individuals with Disabilities Education Act

For the plaintiff: Heather D. McGunigle, Disability Rights Legal Center, Ontario

For the defendant: Jack B. Clarke Jr. and John H. Holloway, Best Best & Krieger LLP, Riverside

S.K. v. Alvord Unified School District, EDCV11-360-VAP - civil rights

For the plaintiff: Jeffrey L. Le Pere, Mission Viejo

For the defendant: Michael J. Marlatt and Maxine M. Morisaki, Thompson & Colegate LLP, Riverside

U.S. v. Robles, ED11-324-M - competency hearing

For the prosecution: Antoine F. "Tony" Raphael, U.S. attorney's office

For the defense: Kay K. Otani, U.S. public defender's office

Judicial Profile: Donna M. Ryu

COURT: Northern District of California, U.S. Magistrate Judge

APPOINTED: 2010

LAW SCHOOL: UC Berkeley Boalt School of Law, 1986

CAREER HIGHLIGHTS: Appointed a magistrate judge to the Northern District, 2010; professor, Civil Justice Clinic, UC Hastings College of the Law, 2002-10; professor and associate director of the Women's Employment Rights Clinic, Golden Gate University School of Law, 1998-2002; partner, Ryu, Dickey & Larkin, 1994-97; sole practitioner, 1993-94 and 1997-98; associate, Saperstein, Mayeda, Larkin & Goldstein, 1988-93; associate, McCutchen, Doyle, Brown & Enersen, 1986-88

Age: 50

By Rebecca Beyer

OAKLAND - When Donna M. Ryu decided in 2009 to apply to become a magistrate judge, all her friends thought she was crazy.

Not because they weren't sure how she'd do on the bench, but because taking the bench would mean leaving a job she thoroughly enjoyed.

"But you love your job," Ryu remembers them saying.

Ryu, then a clinical professor at UC Hastings College of the Law, couldn't argue with her friends: She does love teaching. But as magistrate positions began opening up on the Northern District bench, and as the Bay Area legal community buzzed about a need for increased diversity among judges, Ryu, an openly gay Korean American, was inspired to apply. Ryu's long-time partner is attorney Barbara Dickey.

"It's so important for me to have meaning in my job - to come in every day and feel like I'm contributing," she said. "That is the No. 1 thing I need in my work."

Judging meets that need, she said.

Ryu took the bench in March 2010, filling the spot that opened up when Richard Seeborg was elevated by President Barack Obama to a district judgeship.

'It's so important for me to have meaning in my job - to come in every day and feel like I'm contributing. That is the No. 1 thing I need in my work.'

"I feel like I have the privilege of having people's disputes placed in my hands to work over, work through, analyze and decide," the 50-year-old said as she sat one day recently in her chambers in Oakland.

As a magistrate, Ryu handles discovery matters and settlement conferences in cases proceeding before district judges, certain non-felony criminal matters and any civil cases in which the parties consent to appear before Ryu instead of a district judge.

Attorneys who have appeared before Ryu, and past colleagues, say she is well suited for the bench, with an even-handed approach and a knack for understanding complex issues quickly.

"She's a quick study," said James M. Barrett, a Mountain View sole practitioner who settled a patent case recently after a day-long conference with Ryu.

Barrett said Ryu was assigned the case one night right before trial. She called the attorneys the next day at 7:30 a.m. to start the settlement process.

"I was very impressed," Barrett said, adding that he would request her if he could on a future case.

Before Ryu wore the robe, she had two prior lives as an attorney. First, she was a litigator, working on high-impact civil rights and employment discrimination litigation, including a landmark sex discrimination case against Lucky Stores that resulted in a \$107 million settlement in 1994. *Stender v. Lucky*, 88-1647. Then, she was a professor-litigator, guiding students in their first attempts at advocacy for clients. One of those attempts went all the way to the state Supreme Court, leading to a ruling that employers are accountable for up to four years of missed meal and rest breaks. *Murphy v. Kenneth Cole*, 2007 DJDAR 4981.

As a judge, Ryu is able to draw upon all that experience.

"It's always helpful to have litigation experience to understand what the parties are going through," she said. "And I think my teaching experience was really powerful and important."

She said the transition from advocate to judge is not difficult "when you have to be the same teacher to everyone no matter who they are or what their politics are."

Ryu did not always know she wanted to be an attorney. But she and her four brothers - three doctors and one financial adviser - were taught to "aim for something bigger" than themselves, she said. Ryu's parents immigrated to the United States from South Korea in the 1940s, eventually settling in Monterey, where they taught at the Defense Language Institute Foreign Language Center and owned motels, which their children helped run. Ryu's first job was making beds. As a teenager, she laundered sheets.

"We all grew up being the help," she said. "Like so many people, what you have is your sweat equity."

Ryu went on to Yale University, where she majored in American studies with an emphasis in literature, sang in a cappella groups and played volleyball. After graduating in 1982, she was admitted to UC Berkeley School of Law but took a year off to save enough money working as a bank clerk to travel in Europe.

At Berkeley, Ryu helped start the Journal of Gender, Law and Justice, copies of which she keeps in her chambers in Oakland.

In 1986, Ryu graduated from law school and took her first job as an associate at the firm then known as McCutchen, Doyle, Brown & Enersen, where she worked two years in the appellate division.

"I learned so much there," she said. "But I kind of knew I wanted to do something different."

Ryu left to join an Oakland civil rights firm that eventually became Goldstein, Demchak, Baller, Borgen & Dardarian. There, she worked on the Lucky Stores case, which was tried in front of Marilyn H. Patel of the Northern District.

Brad S. Seligman, who worked with Ryu at the firm and on the case, said she had "a different style than the traditional, expected style of a litigator."

"There wasn't a lot of screaming or drama," said Seligman, now senior counsel at the public interest litigation-oriented Impact Fund in Berkeley. "She was always very calm, very reasonable, very focused but very effective. No one has ever questioned her incredible fairness and evenhandedness."

In 1993, Ryu left the firm to start a solo practice with an eye toward building a partnership, which she did in 1994 with Dickey and Jocelyn Larkin. Ryu, Dickey & Larkin focused on class actions and individual cases. In 1998, Ryu began her teaching career at Golden Gate University School of Law, where she became associate director of the Women's Employment Rights Clinic.

"I love teaching," Ryu said. "It's just this amazing opportunity to work with lawyers-to-be."

Clinical teaching - where professors work with students on actual cases - was perfect for Ryu because it allowed her to keep "a foot in the courtroom."

In 2002, Ryu left Golden Gate to take a new job at Hastings' Civil Justice Clinic. There, she helped guide a group of students, led at the trial court by second-year student Sarah C. Beard (who now is one of Ryu's law clerks), in a case on behalf of John Paul Murphy, a former retail store manager for Kenneth Cole Productions Inc. who sued the company claiming he wasn't given proper breaks. The case ultimately went to the state Supreme Court on the question of whether back pay is a "penalty," which carries a one-year statute of limitations, or "compensation," which goes back three years. Plaintiffs suing under California law can add an additional year as well. The high court ruled in Murphy's favor, extending the statute of limitations in such cases.

Ryu said the most rewarding part of the case was involving different members of the employment and civil rights community as amici curiae.

"By happenstance, it's your case that's going to be heard," she said. "It's only right that everyone have input."

Seligman said Ryu made sure "everyone felt like they had a share of that case."

"And then she went on and gave a brilliant oral argument and won," he said.

Shauna I. Marshall, who taught alongside Ryu and then oversaw her as academic dean at Hastings, said Ryu "brings life to teaching."

"She was just superb," she said.

As a judge, Ryu found another niche. Andrew K. Jacobson, founder of Bay Oak Law in Oakland, opposed Barrett in the patent case Ryu helped settle. Jacobson said he was "really impressed by how well she got up to speed" on such short notice.

On top of that, he said, "she was very insistent - and I mean that in a good way."

"She kept pushing toward the goal," he said.

Ryu said she is honored to sit on the Northern District bench. As she took classes to prepare to become a judge, she said, someone told her, "Your job every day is to do the right thing."

"That's a pretty phenomenal job description," she said.

Marshall said she hopes Ryu will rejoin the Hastings faculty at some point.

Ryu said she would love to do that - but not quite yet, as she is only just approaching her year anniversary on the bench.

"I feel like I have to ride the bike before I can pop a wheelie," she said.

Here are some of Judge Ryu's recent cases and the lawyers involved:

Doe v. Willits Unified School District, 09-3655 - civil rights

For the plaintiff: J. David Nick, San Francisco

For the defendant: Marina B. Pitts, Stubbs & Leone, Walnut Creek

Swingless Golf Club Corp. v. Taylor, 08-5574 - patent infringement

For the plaintiff: Andrew K. Jacobson, Bay Oak Law, Oakland

For the defendant: James M. Barrett, Mountain View

T.M. v. San Francisco Unified School District, 09-1463 - administrative law

For the plaintiff: Jean M. Adams, Adams ESQ., Oakland

For the defendant: Douglas N. Freifeld, Fagen Friedman & Fulfroost, Oakland

Vieste v. Hill Redwood Development, 09-4024 - fraud

For the plaintiff: Patricia L. Peden, Emeryville

For the defendant: Jason A. Geller, Long & Levit, San Francisco

USA v. Quintanilla, 09-1188 - immigration

For the prosecution: Joseph Audal, U.S. attorney's office

For the defense: Joyce Leavitt, federal public defender's office

Richard Seeborg



COURT: NORTHERN DISTRICT OF CALIFORNIA

AGE: 56

CONFIRMED: DECEMBER 2009

APPOINTED BY: OBAMA

Since Judge Richard Seeborg took charge of his San Francisco courtroom in January 2010, he's had a docket as eclectic as California. Earlier this year he presided over a relatively rare federal murder trial for Christopher Bryan "Stoney" Ablett, a member of the Modesto chapter of the Mongols motorcycle gang, who was accused of stabbing and shooting Mark "Papa" Guardado, the president of the San Francisco chapter of the Hells Angels. A jury found Ablett guilty in May, and Seeborg sentenced him to life in prison.

Observers say that it was typical of Seeborg to respond in a cool and calm way to a case full of heat and anger. "He is a reasonable man who resolves issues without histrionics," says Judge Charles Breyer, a colleague on the Northern District of California bench. Rory Little, a professor at University of California Hastings College of Law, has a similar assessment of Seeborg: "His signature is that he prevents a lot of cases from becoming headline cases."

Given his proximity to Silicon Valley, Seeborg has heard his fair share of tech company cases. In particular, he has become something of a go-to judge for disputes involving Facebook Inc. The first was in 2007 when Seeborg, then a U.S. magistrate judge, heard one of the two suits between Facebook and ConnectU, the social networking site started by Tyler and Cameron Winklevoss, the famed rivals of Mark Zuckerberg. (That litigation ended in a settlement.) Since then, Seeborg has heard claims brought on behalf of Facebook's users over the service's Beacon, Friend Finder, and Sponsored Stories features.

One characteristic that Seeborg has displayed in these cases: a skepticism that the lawyers who appear before him are worth what they say they are. In the Friend Finder suit, he turned down a \$700,000 fee request from Facebook's lawyers at [Cooley](#), ruling that they only won dismissal of the case because the plaintiffs filed in the wrong venue. And this past August, Seeborg rejected a settlement in the Sponsored Stories case, in part because he didn't think the parties had provided enough justification for the \$10 million in legal fees that Facebook was proposing to pay to the plaintiffs attorneys.

After graduating from Columbia Law School in 1981, Seeborg joined [Morrison & Foerster](#) as an associate. In 1991 he became an assistant in the U.S. attorney's office in San Jose, where he handled cases involving tax evasion, money laundering, and Ponzi schemes. Seven years later he rejoined Morrison as a partner, then left the firm again in 2001 to become a magistrate judge.

Michael R. Wilner
U.S. Magistrate Judge
Central District (Los Angeles)

Career highlights: Appointed magistrate judge, Central District, 2011; deputy chief, major frauds, U.S. attorney's office, Los Angeles, 2009-11; assistant U.S. attorney, Los Angeles, 2000-11; senior counsel, enforcement division, U.S. Securities and Exchange Commission, Los Angeles, 1995-2002; associate, Proskauer Rose Goetz & Mendelsohn (now Proskauer Rose LLP), Los Angeles, 1991-94.

Law school: University of Pennsylvania School of Law, 1991

Age: 46

By Ben Adlin

LOS ANGELES - Some federal judges, presumably occupied with the gravity of their charge, can come across as reserved, even aloof. But recent arrival U.S. Magistrate Judge Michael R. Wilner can be downright gregarious.

"I love finding out about people," said Wilner, 46, during a recent interview in his chambers. "This morning, I found out that someone who works here, the guy's a fitness fanatic. He's in his mid-50s, but we walked up nine flights of stairs today - after he'd already done a boot camp workout."

It's innate curiosity, he said, that leads him to query those around him - sometimes total strangers - about their work, hobbies and passions.

"It drives my kids nuts," he said.

But it's also an effort in part to better understand his own place in the mix.

Since his appointment to the bench in April 2011, Wilner has employed the strategy regularly.

'I want people to know that there's no agenda.'
- U.S. Magistrate Judge Michael R. Wilner

"I want to know how our clerk's office works, how our pretrial services office works," he said. "I'm constantly picking up the phone and calling people so I can understand how they're doing their job in the court."

In furtherance of that effort, he has launched an informal program that colleagues said is uniquely Wilner. Every month or so, he invites a federal prosecutor and federal public defender to lunch, literally bringing both sides to the table.

As Wilner describes it, the meals are yet another opportunity for learning.

"It's in everybody's interest for [assistant U.S. attorneys] and public defenders to be able to speak frankly with each other and to know about the method by which each other does business," he said.

Those who've attended generally echo that statement. Deputy Federal Public Defender Firdaus F. Dordi, who went to one of those lunches soon after Wilner took the bench, welcomed the opportunity to connect in a more casual environment.

"There's no real resolution at these things," he said, "but it at least creates an open dialogue and allows us over the course of the meal to have insight into the other side and give them insight into our way of thinking."

Others who've gone to the lunches see the program as something deeper. Sharing a meal with the other side, they said, warms what can sometimes be a chilly relationship between members of the two camps.

"I think Judge Wilner recognizes that there have been contentious relationships," said Deputy Federal Public Defender Richard D. Goldman. "The lunches are just a wonderful attempt to try to bring people together outside the adversarial relationship with the idea that if you get to know each other better on a personal level and understand the concerns of the respective offices, it will make for better professional relationships."

Wilner is careful to explain he's not asking arch enemies to break bread. On the contrary, he usually asks one attorney to pick someone from the other side, which he said helps set a productive tone.

"If I bring people who are predisposed, they've got a case in common, maybe they've got a bit of personal history," he said, "I think that leads to kind of a relaxed atmosphere. I want people to know that there's no agenda. I'm not here to sanction anybody."

Senior U.S. District Judge A. Howard Matz said he admires the program.

"I'm not aware of anyone else ever doing this," he said. "I learned about it and told Mike Wilner that I thought it was great."

Wilner has long tried to strengthen relationships between various groups. At 20, he took a term off from Dartmouth College after being chosen for a Peace Corps externship in Belize. It was there, he said, that his budding interest in public service blossomed.

His two supervisors were both Harvard-trained lawyers. One was a Republican, the other a Democrat, he said, but their commitment to doing good helped them see past the party divide.

"It wasn't a question of being liberal or conservative, big government or little government," Wilner said. "It was an issue of putting your brain power to it and helping the community. And that just opened my eyes."

After graduating from Dartmouth, where he studied English and psychology, Wilner enrolled at University of Pennsylvania School of Law. He graduated in 1991 and set off for Los Angeles, where he'd accepted an associate position at Proskauer Rose Goetz & Mendelsohn (now Proskauer Rose LLP).

In 1995, he was hired by the Securities and Exchange Commission, where he rose to senior counsel in the agency's enforcement division. In 2000, the SEC loaned him to the U.S. attorney's office as part of a program to strengthen ties between the groups.

Fluent in the dialects of both offices, Wilner became a liaison between them, helping direct traffic and shuttle information.

In 2002, he joined the U.S. attorney's office full time. Fellow prosecutors said they appreciated his skill following a paper trail, a practice he'd honed during his time at the SEC. He handled mostly white-collar cases and eventually became deputy chief of the office's major frauds section.

"He was someone who was incredibly efficient and never lost sight of the big picture in terms of what the right thing to do was," said Beong-Soo Kim, whose office was once next-door to Wilner's. Kim later headed major frauds until he joined Jones Day in June.

As a judge, Wilner seems to approach his role on the bench with an earnest, eager altruism, something he attributes to both his innate curiosity and a deep reverence for the rule of law. In federal court, he recognizes he stands on the shoulders of giants.

"This court is an important place," he said. "It's not a perfect system, but it is far better than any other system that exists in the world or has ever existed in time."

The court functions best, Wilner said, when it renders decisions quickly and fairly. To that end, he expects lawyers to be prepared and conduct themselves professionally.

"I'm working really hard to do the people's business, and I want them to do it, as well," he said. "I want them to come away that when they come to federal court, they bring their A game, because that's what I'm doing."

Matz said Wilner "does have a reverence for the court, but it goes beyond that. He has a profound allegiance to the system of law generally."

While he sets a high bar, Wilner also tries to be flexible. He's happy to entertain litigants' requests to settle discovery disputes informally, for example, and said it "bothers" him when procedural hurdles bog down proceedings.

"I want to know the challenges [parties] have in filing records, in getting to court and showing up, so I can take away the distractions that are part of it and get to what's really at issue," he said.

Lawyers who've appeared before him describe Wilner as direct, efficient and "scrupulously fair," despite his background as a prosecutor.

"He made clear early in his tenure that he's not going to be beholden to the U.S. attorney's office," said a former federal prosecutor who spoke on condition of anonymity, "and that's exactly the way it should be. He calls things the way he sees it."

Wilner said he wasn't sure what exactly the prosecutor was referring to. But when the government has come to him with requests for search warrants or requests for criminal defendants to be detained, he said, "I have not uniformly gone the government's way."

He recalled retired U.S. District Judge Gary L. Taylor in Santa Ana. As a litigant, Wilner had a summary judgment motion before him.

"He ruled against my side but extraordinarily graciously and extremely professionally," Wilner said. "And at the end, he said, 'I assume I'll be appealed, and I look forward to hearing what my colleagues on the 9th Circuit think.'"

"And I thought, 'What a wonderful attitude.'"

Taylor was reversed on appeal, Wilner said.

"And he was equally as gracious," he said. "That's how people have confidence in the system - if they believe they've been treated fairly."

Here are some of Judge Wilner's cases and the lawyers involved:

United States v. Baquias, CR11-436 - hiring illegal aliens

For the prosecution: Michael H. Dore and James M. Left, U.S. attorney's office

For the defense: Gregory Nicholaysen, Valencia, and George L. Steele, Pasadena

Anagnostellis v. Pitney Bowes Inc., CV12-239 - invasion of privacy

For the plaintiff: Paul R. Kiesel, Kiesel, Boucher & Larson LLP, Beverly Hills

For the defendant: Joel D. Siegel, SNR Denton US LLP, Los Angeles

Essex Partners Ltd., v. Merchants Cash and Capital LLC, CV11-3366 - usury and unfair competition

For the plaintiff: Zach P. Dostart, Dostart Clapp & Coveney LLP, San Diego

For the defendant: Scott H. Jacobs, Reed Smith LLP, Los Angeles, and Catherine M. Foti, Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer PC, New York

Nousvo Inc. v. Nguyen, CV11-10287 - trademark

For the plaintiff: Travis J. Burch, Burch Dallmann LLP, Irvine

For the defendant: Benjamin P. Pugh, Enterprise Counsel Group ALC, Irvine

HHS Construction Inc. v. U.S., CV11-7239 - refund of employment tax

For the plaintiff: Arthur v. Pearson, Murphy Pearson Bradley & Feeney, San Francisco

For the defendant: Gavin L. Greene, U.S. attorney's office, Los Angeles

Judicial Profile: Ralph Zarefsky

COURT: Central District of California, U.S. Magistrate Judge

APPOINTED: 1997

LAW SCHOOL: Stanford Law School, 1976

CAREER HIGHLIGHTS: Chief magistrate judge, Central District of California, 2006-07; appointed magistrate judge by the judges of the Central District , 1997; partner, Baker & Hostetler LLP, 1990-97; partner and associate, McCutchen, Black, Verleger & Shea, 1978-90; clerk, U.S. District Judge Lawrence Lydick, 1976-78

Age: 60

By Gabe Friedman

LOS ANGELES - U.S. Magistrate Judge Ralph Zarefsky was still listening to the lawyers' introductions, but he already had traces of a smile on his face.

"I don't think I've had a case where I've had Texans on both sides," Zarefsky told the lawyers in front of him at a recent hearing. "And I'm a native of Texas, so welcome."

Those warm remarks, followed promptly by a brass-tacks hearing, are Zarefsky's standard, according to colleagues and lawyers.

The Texas attorneys were there on behalf of El Segundo-based Internet Brands and a Texas entrepreneur involved in a lawsuit pending in the Eastern District of Texas. The entrepreneur had alleged defamation by Internet Brands, which runs roughly 100 websites, and sent subpoenas to Internet Brands' in-house attorneys, as well as its chief technology officer.

After two rounds of oral argument on each side, Zarefsky stopped them and issued a complicated ruling that granted part of the motion to quash, but denied other parts and awarded partial sanctions to the plaintiffs.

Attorneys who know the magistrate judge said Zarefsky, who meticulously studies papers before hearing oral arguments, often rules from the bench, even on complicated matters.

Assistant U.S. Attorney Cedina Kim has appeared in front of the judge on hundreds of cases and said he is detail-oriented and hunts for logical gaps in the arguments laid out in briefs.

'No matter how prepared you think you are, he can pose a question that can catch you off guard.'
- Cedina Kim

"No matter how prepared you think you are, he can pose a question that can catch you off guard," said Kim. "I've seen many people left tongue-tied."

In an interview, Zarefsky explained that written arguments are generally more crucial to his decision-making because he can take time and dwell on the nuances.

"Good oral argument is not necessarily eloquent," Zarefsky said. "It takes an ability to read the judge, get inside the judge's head and read what the judge is thinking about and might need help on.

"It's more of a conversation with the court and about trying to answer the questions on the court's mind."

Raised in Houston by two social workers, Zarefsky majored in American history at Northwestern University, taking a special interest in U.S. foreign policy, the history of ideas and race relations. After graduating, he taught history at a private school outside of Chicago for two years.

His parents both had advanced degrees, and Zarefsky was uncertain whether to pursue journalism or law. He wound up at Stanford Law School. Upon graduation in 1976, he spent two years clerking for U.S. District Judge Lawrence T. Lydick.

After his clerkship, Zarefsky stayed in Los Angeles, starting at McCutchen, Black, Verleger & Shea in 1978, making partner in 1984. It was here that he met his future wife, Rabbi Carole Meyers, who became the first woman to head a congregation in Southern California, according to the Jewish Journal. Meyers died of cancer in 2007.

In 1990, Baker & Hostetler LLP acquired the firm, and Zarefsky continued to practice there as a commercial litigator until being selected as a magistrate judge in 1997.

Having spent close to 15 years on the bench, Zarefsky said his comfort level as a judge has grown as the learning curve flattened. He has issued some high-profile decisions in recent years, including his 2006 report and recommendation when convicted murderer Bruce Lisker made a petition for writ of habeas corpus.

Zarefsky reviewed evidence from Lisker's 1985 trial for charges he murdered his mother, and the judge found he had credible claims of innocence. The state attorney general's office had moved to dismiss the petition because the statute of limitations had expired. But after holding extensive evidentiary hearings, the judge refused to do so.

"This court retains no confidence in the verdict achieved through the presentation of evidence at petitioner's trial because none of the evidence from that trial, upon which the conviction rested, withstands scrutiny in light of the newly presented evidence here," Zarefsky wrote in the 58-page report and recommendation. The judge found it would be a miscarriage of justice to dismiss the petition for untimeliness. U.S. District Judge Virginia Phillips ultimately adopted his report and recommendation, which led to Lisker's release in 2009 after 24 years in prison.

"It's a cut above what one might expect - the detail, the tone," said U.S. Magistrate Judge Stephen J. Hillman of the judge's writing. "It's a very compelling, yet appropriate legal style with a certain panache."

Lisker's lawyer, William Genego of Nasatir, Hirsch, Podberesky, Khero & Genego PLC, praised Zarefsky.

"I think that he is an incredibly dedicated, hard-working and fair judge and that his decision in the Lisker case typifies who he is - not because of the result, but because of the process he used to arrive at the result," Genego said. "He did not take the case with the idea of wanting to make law. He was someone who had a case assigned to him and confronted the issues as they were presented."

Zarefsky said he enjoys being a judge because it enables him to do "the right thing" as outlined by the law.

"You enter into this job and you realize it's not about you," Zarefsky explained. "I do not look at a case and say, 'Here's where I want to come out; let me find a way.'"

The judge continues to impress the litigants who appear in front of him with his ability to act quickly and fairly.

Evan Jenness, a Santa Monica sole practitioner, said she's conducted several bail hearings in his courtroom and was impressed by how level-headed and calm he remained. Recently, officials in Italy tried to extradite one of Jenness' clients who was accused of offenses connected to organized crime. The mess fell to Zarefsky and his attention to detail.

"It was a complicated extradition matter," Jenness said. "He was ahead of the parties at every turn."

Here are some of Judge Zarefsky's recent cases and the lawyers involved:

In the matter of subpoenas served on Internet Brands' attorneys and chief technology officer, 11-00751 - civil discovery

For the plaintiff: Jennifer A. Truso, Sheppard Mullin Richter & Hampton LLP, Costa Mesa

For the defense: Patrick A. Fraoili Jr., Ervin Cohen & Jessup LLP, Beverly Hills

USA v. Abergil, 08-01033 - RICO

For the prosecution: Mark Childs, U.S. attorney's office, Los Angeles

For the defense: Anthony P. Brooklier, Marks & Brooklier, Century City

U.S. Auto Parts Network Inc. v. Parts Geek LLC, 09-04609 - trade secrets

For the plaintiff: Michael Simon, Perkins Coie, Portland, Ore.

For the defense: Daniel E. Sobelsohn, The Sobelsohn Law Firm, Encino

Lisker v. Knowles, 04-02687 - petition for writ of habeas corpus

For the petitioner: William J. Genego Jr., Nasatir, Hirsch, Podberesky, Khero & Genego PLC,
Santa Monica

For the respondent: Robert D. Breton, state attorney general's office, Los Angeles

USA v. Hamedany, 11-00075 - mail fraud and honest-services fraud

For the prosecution: Angela Joy Davis, U.S. attorney's office, Los Angeles

For the defense: Gerson S. Horn, Los Angeles

CALIFORNIA FEDERAL BANKRUPTCY JUDGES

Judicial Profile: Scott C. Clarkson

COURT: Central District of California, U.S. Bankruptcy Judge

APPOINTED: 2011

LAW SCHOOL: George Mason University School of Law, 1982

CAREER HIGHLIGHTS: Appointed to the U.S. Bankruptcy Court, Central District of California, 2011; partner, Clarkson, Gore & Marsella, Torrance, 1993-2011; partner, Finer, Kim, Clarkson & Sterns, Torrance, 1989-92; sole practitioner, Los Angeles, 1989; Legislative affairs associate, Waste Management Inc., Washington, D.C., 1982-88

Age: 57

By Don J. DeBenedictis

SANTA ANA - When he was 22 and still a few units shy of finishing college, Scott C. Clarkson was tasked with participating in a major rewrite of the nation's bankruptcy laws.

In January 1977, Clarkson, who was something of a political prodigy, had signed on as a legislative assistant to Harold L. Volkmer, a newly elected member of Congress from Missouri. One of his responsibilities for Volkmer was working on issues before the House Judiciary Committee, where two young lawyers had been given the task of creating a new bankruptcy code.

"Wanna help?" they asked him.

The result was the first significant revamping of bankruptcy law since the 1930s. The statute, signed by President Jimmy Carter in November 1978, created the structure of Chapters 7, 11 and 13 and other basics of modern bankruptcy law, the judge said.

"All the underpinnings of the Bankruptcy Code and how it is supposed to work, I was involved in at 22 and 23," Clarkson said.

That background helped him during 20 years of "a high-end bankruptcy practice" representing debtors and creditors' committees in Chapter 7s and Chapter 11s. "If you understand why the statute reads the way it reads, you can basically predict the outcome" of any issue, he said.

'He's interested in the intellectual stuff behind a case. He asks a lot of questions. He doesn't go by rote. He's very interested in being a bankruptcy judge.'

- Helen R. Frazer

So when Clarkson was appointed to the bench by the 9th U.S. Circuit Court of Appeals in January last year, he was ready.

"I'm up to speed already. There are very few bankruptcy issues we haven't seen," he said.

The "we" in this case includes his former law partner, Eve A. Marsella, who joined the bankruptcy court as Clarkson's permanent clerk.

His deep background in the field is obvious to lawyers. "He's interested in the intellectual stuff behind a case. He asks a lot of questions. He doesn't go by rote," said Helen R. Frazer of Atkinson, Andelson, Loya, Ruud & Romo. "He's very interested in being a bankruptcy judge."

David B. Lally said the judge is smart and well prepared in court. "He reads everything, has a good judicial temperament and gives well-reasoned decisions," said Lally, who has known Clarkson for 20 years.

But lawyers also said that Clarkson insists that attorneys read and follow all procedural rules, including local rules. "Procedurally, he's tough," Frazer said.

The judge "freely dispenses sanctions" when attorneys don't follow those rules, according to Stephen R. Wade. For instance, a lawyer who fails to file a status report in time before a hearing might be sanctioned \$100 to \$200, he said.

"He'll still proceed with the hearing, and he'll remind you it's important to read the rules and abide by them," said Wade, who practices primarily in the Riverside court.

Another Riverside-area lawyer, who requested anonymity, called Clarkson a perfectionist who can be "a little rough and gruff."

"I feel sometimes he's made up his mind, and no matter what you say, you're not going to change his mind," the lawyer said.

Clarkson said the rules are important because they make court processes more efficient and more fair.

"I want to treat the lawyers that come before me with respect," he said, noting he almost always allows them continuances to address problems. But when attorneys are doing business before the court, "they need to do it right ... because of their clients," he said.

Although his courtroom is in Santa Ana, Clarkson primarily handles cases originating in the Riverside court, holding most of his hearings by video and phone. He doesn't take any Riverside Chapter 13 cases, in which most debtors are ordinary consumers without lawyers, but he does get a double portion of Chapter 7 and Chapter 11 cases.

Additionally, he has volunteered to take over some cases from Santa Ana judges. Among those is the Chapter 11 of Pacific Monarch Resorts Inc. Last month, the judge oversaw an asset sale for more than \$175 million.

In another large Santa Ana case, Clarkson has been mediating between the owner of a mobile home park in San Juan Capistrano and tenants who are trying to buy the development out of bankruptcy.

The park's attorney, Richard A. Marshack, said the judge is doing an excellent job in his first mediation since taking the bench.

Marshack and Frazer also said Clarkson showed unexpected courage when he issued an opinion declaring that decisions from the 9th Circuit Bankruptcy Appellate Panel are not binding on bankruptcy judges in later cases. *In re: Rinard*, 6-10-bk-50349 (CA C.B., filed Dec. 12, 2010).

"That's pretty radical for a new judge," Frazer said.

Clarkson said he merely followed decade-old precedent from the 9th U.S. Circuit Court of Appeals itself.

Clarkson, 57, was born in Houston, where his father - a former Chicago Bears linebacker - was a high school football coach. His father died when Clarkson was 3 years old.

He grew up near St. Louis, where his mother was a teacher and his step-father was an electrical engineer who had helped develop radar.

In 1972, while still in high school, Clarkson managed a gubernatorial campaign in his county. The candidate came in fourth in the state but beat his opponents 2-to-1 in Clarkson's county. His career in politics was off and running.

In 1976, turning down an offer to join Carter's presidential campaign in Missouri, he helped run Volkmer's congressional bid. By the following January, while still a student at the University of Indiana, he was a congressional staffer.

He stayed with the congressman through 1982. That same year, he graduated from George Mason University School of Law.

Clarkson next worked as a government affairs associate in Washington for Waste Management Inc. Then in 1988, he started practicing law in the South Bay area of Los Angeles, including a brief stint working with Carmen A. Trutanich, who is now the Los Angeles city attorney.

Opening his own office in 1989, he used the skills he'd honed in politics to build his practice. He set out to meet every lawyer he could from West Los Angeles to Orange County. "In two months, I took 200 lawyers to lunch," he said.

However, he soon moved to an existing firm to lead its bankruptcy practice. Then, in 1992, he left what had become Finer, Kim, Clarkson & Sterns to form Clarkson, Gore & Marsella.

In one large case, he represented debtor MTI Technology Inc. and managed to work out a plan that paid creditors nearly \$20 million. In another, he represented creditors of ARG Enterprises Inc., the owner of the Black Angus chain. He stayed with the firm until he took the bench last year.

Off the bench, Clarkson is an accomplished documentary photographer, a hobby he learned from his step-father. He has published one book of his photos taken in Vietnam, and he has prepared, but not published, books from Pakistan, Afghanistan and Kashmir.

As a judge, he has had to give up one long-time interest: politics. While in practice, he had served on the state Democratic Central Committee. This year, he is dropping the ACLU membership he began when he was 17.

"Politics has nothing to do with my life now," he said.

Here are some of Judge Clarkson's recent cases and the lawyers involved:

In re: Capistrano Terrace Ltd., 8-11-bk-19767 - mediation in Chapter 11

For the debtor: Richard A. Marshack, Marshack Hays LLP, Irvine

For the unsecured creditors committee: James Andrew Hinds Jr., Torrance, and Lisa Torres, Gates, O'Doherty, Gonter & Guy LLP, San Diego

In re: Rinard, 6-10-bk-50349 - Chapter 11

For the debtor: D. Edward Hays, Marshack Hays LLP, Irvine

For the trustee: Helen R. Frazer, Atkinson, Andelson, Loya, Ruud & Romo, Cerritos, and Kelly L. Morrison, Los Angeles

In re: Pacific Monarch Resorts, 8:11-bk-24720 - Chapter 1

For the debtor: H. Alexander Fisch, Michael S. Neumeister and Scott H. Yun, Stutman Treister & Glatt, Los Angeles

For the trustee: Frank Cadigan, Santa Ana

In re: Mine Reclamation LLC, 6:11-bk-43596 - Chapter 11

For the debtor: Mike D. Neue, The Lobel Firm LLP, Newport Beach, and Sharon Z. Weiss, Bryan Cave LLP, Los Angeles

For the trustee: Everett L. Green, Riverside

In re: Energy and Power Solutions Inc., 8:11-bk-23362 - Chapter 11

For the debtor: Garrick A. Hollander, Winthrop Couchot, Newport Beach

For the trustee: Nancy S. Goldenberg, Santa Ana

For the unsecured creditors committee: Bradley D. Blakeley, Blakeley & Blakeley LLP, Irvine

Judicial Profile: Alan Jaroslovsky

COURT: Northern District of California, U.S. Bankruptcy Judge

APPOINTED: 1987

LAW SCHOOL: Golden Gate university Law School, 1977

PREVIOUS JUDICIAL EXPERIENCE: None

CAREER HIGHLIGHTS: Appointed by 9th Circuit Court of Appeals to Northern District Bankruptcy Court, 1987; solo practitioner, 1978-87.

Age: 63

By Emily Green

SANTA ROSA - Judge Alan Jaroslovsky described himself as a "pussycat" during the first half of a recent morning calendar. But after the morning recess, his patience had largely expired.

When the judge asked an attorney whether he'd sent out a disclosure statement not approved by the court and the lawyer waffled, Jaroslovsky jumped in. "To be frank with you counsel, it doesn't sound like you have a clue."

Another lawyer who suggested the judge didn't have jurisdiction over his case received a similar earful. "It is incredible to me that you would say I don't have jurisdiction over the case. The idea - first of all, it's wrong. I'm just trying to figure out why on earth you raise it."

Jaroslovsky, chief bankruptcy judge of the Northern District, acknowledged in an interview in his chambers that he can be brusque. With a record number of cases before him - a caseload he called "crushing" - he has little patience for unprepared attorneys or those who don't fully understand bankruptcy law.

"I'm really pretty easygoing. I don't like to give people a hard time," he said. "But at the end of the long calendar, if I'm dealing with attorneys who are not the best in the world, then yeah, I do tend to be candid at that point."

"He does not suffer unpreparedness well," said David Chandler, a bankruptcy attorney in Santa Rosa who has appeared before Jaroslovsky since he took the bench nearly 25 years ago and who tried cases with him - and against him - before that.

Jaroslovsky is "very consistent," Chandler said. "If he rules one way today, he'll rule that way three months from now."

'Alan is by far the smartest and most knowledgeable person in his courtroom at any point.'
- Lawrence Bernheim

The judge has been candid beyond the walls of his courtroom.

In 2009, Jaroslovsky posted a memo on the court's website criticizing the "spate of individual Chapter 11 cases filed by attorneys who have neither the experience nor the education to venture into Chapter 11." He wrote that he saw "rampant errors" in Chapter 11 cases, and that he personally noted on the record frequent instances of attorney malpractice.

"Forget about trying to fix your compensation," he added. "You will be paid what I allow, period."

Jaroslovsky explained that he wrote the memo in response to an attorney who appeared before him in a Chapter 11 case after attending a handful of bankruptcy lectures given by Jaroslovsky - an educational experience that in no way qualified him to take on a Chapter 11 case, the judge said.

Still, he added, "I think I would have stated it in a little softer terms if I realized it was going to go viral."

"Alan is by far the smartest and most knowledgeable person in his courtroom at any point," said Lawrence Bernheim, who has known the judge for years. "If you are going to urge him to look at a case differently than he would normally look at it, you better have a really strong, clear argument, because he just cuts to the chase."

Even for experienced attorneys, Jaroslovsky has his do's and don'ts. Debtors' attorneys, he said, need to have empathy for their clients. Don't distance yourself from them in court by saying things like "the debtor's position is ..." Just tell him what the law requires.

He also likes to be called "your honor" - not judge - and avoid, at all costs, using the term "with all due respect."

"No judge wants that," Jaroslovsky said. "'Cause we all know exactly what 'with all due respect' means. Which means, 'Judge, you're an idiot, but I can't tell you that to your face, so I'm couching it in terms that won't get me sanctioned.'"

A car aficionado and amateur astronomer, Jaroslovsky grew up in Santa Rosa, one of four brothers. He was the first in his family to attend college, earning his undergraduate degree from UCLA before serving for three years in the Navy during the Vietnam War. In 1977, he graduated from Golden Gate Law School, after which he immediately opened his own practice. He also taught at Empire College School of Law and in 1987 was elected president of the Sonoma County Bar Association. That same year, the 9th U.S. Circuit Court of Appeals appointed him to the bench.

"When I was first starting out in practice, my predecessor didn't know me from Adam, didn't care who I was, and was just interested in how good a lawyer I was and how well I understood the law and my case," Jaroslovsky said.

"And I would like to pass that on to the new lawyers. That is to say, I would like them to feel that they can come to my court, and if they know the law and they know their case and they argue well that they are likely to come out with a victory, and I don't care who they are."

Here are some of Judge Jaroslovsky's recent cases and some of the lawyers involved: En re: True Spirits, LLC, 08-12710 - Chapter 11

Representing the creditor - Mikel D. Bryan, Santa Rosa

Representing the debtor David N. Chandler, Santa Rosa

En re: Joseph Masnack, 08-10586 - Chapter 7

For the debtor - Paul M. Jamond, Santa Rosa

For the creditor - Alice Whitten, AmeriCredit Financial Services, Inc., Arlington, TX

En re: Gerald Lee Bybee, 10-11099 - Chapter 11

For the creditor - David N. Chandler, Santa Rosa

For the debtor - Steven M. Olson, Santa Rosa

For the trustee - Patricia A. Cutler, Office of the U.S. Trustee, San Francisco

En re: Gregory G. Monardo, 10-12168 - Chapter 11

For the creditor - Stephen D. Finestone, San Francisco

For the debtor - Joel K. Belway, San Francisco

For the trustee - Jean Barnier, MacConaghy and Barnier, PLC, Sonoma

En re: Blayney Lisa White, 11-13561 - Chapter 13

For the creditor - John Acierno, Pite Duncan, LLP, San Diego

For the debtor - Michael C. Fallon, Santa Rosa

Judicial Profile: Charles D. Novack

COURT: Northern District of California, U.S. Bankruptcy Judge

APPOINTED: 2010

LAW SCHOOL: UC Hastings College of the Law, 1983

CAREER HIGHLIGHTS: Appointed by the 9th U.S. Circuit Court of Appeals to U.S. Bankruptcy Court, 2010; sole practitioner, Oakland, 2005-2010; partner, Kornfield, Paul & Nyberg PC, Oakland, 2002-05; associate, Kornfield, Paul & Nyberg, Oakland, 1994-2002; clerk, U.S. Bankruptcy Judge Randall J. Newsome, 1991-93; associate, Pillsbury Madison & Sutro LLP, 1987-91

Age: 53

By Craig Anderson

SAN JOSE - Charles D. Novack's work as a bankruptcy attorney, and now a judge, started with a suggestion from his girlfriend at the beginning of his career.

He was working in general civil litigation at what was then Pillsbury Madison & Sutro LLP when Maureen C. Dellinger, whom he later married and with whom he has two daughters, said he should give bankruptcy law a try.

"I had done a little bankruptcy work at Pillsbury and it seemed interesting," Novack said in a recent interview in his San Jose chambers. "I didn't want to be a lifetime litigator."

Novack took Dellinger's advice.

"She probably thinks I should do that more often," he joked.

Novack applied for a clerkship in 1991, and spent the next two years working for U.S. Bankruptcy Judge Randall J. Newsome before taking a job in the practice area as an attorney in Oakland.

"I had a steep learning curve," he said.

'The real art is making the losing party feel they have been treated well. My experience with Judge Novack is that he does that.'

- John W. Murray

But the future judge said a clerkship is an excellent way to learn bankruptcy law.

"You literally see everything," he said. "It's a great introduction."

Novack has been having another introduction during the past year and a half - to life as a judge on the Northern District bankruptcy bench after a career spent as an attorney in the East Bay. The

9th U.S. Circuit Court of Appeals appointed him as a bankruptcy court judge in 2010. He replaced U.S. Bankruptcy Judge Marilyn Morgan, who retired.

The judge said his relative lack of familiarity with bankruptcy attorneys in the South Bay made the transition easier because he could start with a "clean slate" and no expectations.

"I had no relationship with the vast majority of these attorneys," he said.

Novack said he relishes the opportunity to consider legal arguments in bankruptcy law as a judge instead of an attorney.

"Without the pressure of being an advocate, that makes looking at the law easier and more enjoyable," he said. "There are a lot of nooks and crannies in bankruptcy law you get to explore."

Bankruptcy attorneys describe Novack as smart, up to speed on the latest developments in the law, and a stickler for detail.

"He's a hard-working guy and he reads everything," said Salinas attorney Christopher Alliotts, who represents debtors.

But Alliotts and some other attorneys said Novack requires more work than they're used to.

"Additional papers have to be prepared," such as declarations to support a Chapter 13 consumer bankruptcy, Alliotts said.

"He does seem to put a lot of burden on the debtors' attorneys," Alliotts added.

Several attorneys, including John W. Murray, a partner at Murray & Murray in Cupertino, also said Novack takes a hard look at attorney fee requests.

"He looks at those fee requests very closely, and is by no means a pushover," Murray said.

Still, Alliotts said Novack has a "fairly easygoing demeanor on the bench" and that attorneys are adjusting to him.

Murray noted Novack's ability to handle complex and challenging bankruptcy cases.

"I am impressed with his level of expertise," said Murray, who has handled Chapter 11 commercial bankruptcies before the judge. "He is strong on the intellectual side of bankruptcy law."

Further, Novack does a good job allowing every objector to be heard, Murray said. In a recent case involving the bankruptcy of the Pasadera Country Club, one club member objected to the plan.

"He let her speak at length," Murray said. "The real art is making the losing party feel they have been treated well. My experience with Judge Novack is that he does that."

A native of Manhattan, Novack grew up in New Jersey and had never been west of Pennsylvania until he attended UC Hastings College of the Law, where he graduated in 1983. He moved back to New York and practiced there for a few years before returning to California to join several friends at Pillsbury Madison & Sutro.

He remained there until his clerkship, then in 1994 joined the Oakland bankruptcy boutique that became Kornfield, Paul & Nyberg PC.. Novack became a partner there in 2002, then left to start his own practice in 2005.

"The great thing about Kornfield is that they literally did everything," he said, citing consumer bankruptcy and creditor work. "If you want to do good debtor work, it helps to do creditor work."

Sunnyvale attorney Wayne A. Silver, who is currently representing a creditor in a Chapter 11 case before Novack, said the judge was an excellent attorney, "a straight shooter and reasonably easy to get along with."

"He was very interested in what was happening with the law, and that translates well to his work on the bench," Silver said.

Some attorneys, especially those who handle Chapter 13 consumer bankruptcies, said they are sometimes frustrated by Novack's tendency to raise his own objections to some proposals by debtors' attorneys.

"It puts you in a bind where you are arguing with the judge," said T. Kevin Dougherty, a Salinas bankruptcy attorney who handles debtor cases.

But others described Novack as an "intellectual," with a penchant for asking lots of questions. Novack agrees with the assessment and says it is a trait common to new judges.

Silver praises Novack's curiosity. "You have to be ready to talk about [the case]," he said. "You can engage and have a good conversation."

Novack, who commutes by train each morning from Piedmont to San Jose, is a self-described "art deco fanatic" who enjoys attending auctions.

"We are always looking for bargains," he said.

Judicial Profile: Deborah J. Saltzman

COURT: Central District of California, U.S. Bankruptcy Judge

APPOINTED: 2010

LAW SCHOOL: University of Virginia School of Law, 1996

CAREER HIGHLIGHTS: Appointed by 9th U.S. Circuit Court of Appeals, March 2010; partner, DLA Piper LLP, 2008-2010; partner Hennigan, Bennett & Dorman LLP, 2006-08; attorney, O'Melveny & Myers, LLP, 2001-06; attorney, Klee, Tuchin, Bogdanoff & Stern LLP, 2000-01; attorney O'Melveny & Myers, LLP, 1996-2000

Age: 40

By Don J. DeBenedictis

RIVERSIDE - U.S. Bankruptcy Judge Deborah J. Saltzman initially applied for a post on the Central District of California bankruptcy bench because she "just got tired of fighting with people" as a lawyer.

After all, part of what had attracted her to bankruptcy as a new attorney was that the practice focuses on fixing troubled companies rather than fighting individual cases, like litigation, or striking individual deals, like transactional work.

"It's a different perspective," she said, "a broader, more holistic approach," which works best with cooperation among all sides.

But in 2009, after 14 years in practice at a total of four different firms, she decided she should stop trying to find the right firm and just do something different. The 9th U.S. Circuit Court of Appeals appointed her to the bankruptcy bench in March last year.

Assigned to the court in Riverside, she gets relatively few opportunities to fix troubled companies and many more to work with consumers struggling to keep their homes. Only about a quarter of her cases are Chapter 11 business reorganizations, while most are individual Chapter 7s and 13s.

"Chapter 13s were completely unknown to me," she said. "But it's the same code, the same principles. It's been a much smoother transition than I expected."

And these days, with recurrent battles over foreclosures, the consumer cases present a welter of interesting issues. "Every week, you see something challenging," she said.

'It's been a much smoother transition than I expected.'

- U.S. Bankruptcy Judge Deborah J. Saltzman

Saltzman even wrote a published opinion in a consumer case as a visiting member of the 9th Circuit's Bankruptcy Appellate Panel. She held that the controversial 2005 bankruptcy reform

law broadly limits the protection debtors can receive when they file Chapter 13 a second time in a year. *In re: Reswick*, 446 B.R. 362 (9th Cir. BAP, filed Feb. 4, 2011).

One lawyer who regularly represents debtors in the Riverside bankruptcy court said Saltzman's knowledge of the law in consumer cases already "is very deep, very thorough."

William P. Jenkins also said the judge "is particularly willing to really spend time with an issue" and put a lot of thought into her decisions.

Another consumer attorney, who requested anonymity, said Saltzman handles her calendar well and allows parties time to speak but is "too rigid in her interpretation of the law."

The judge said she seldom can prevent banks from foreclosing on homeowners in default.

But she does insist that they comply precisely with procedural rules.

"I'm a real stickler for things like notice," the judge said. "Lenders are represented and should be able to do everything right."

Further, Saltzman said that while she usually cannot stop a foreclosure altogether, she has begun delaying foreclosures until the lender makes a final decision about any pending mortgage modification.

Lawyers handling business bankruptcies also said Saltzman is doing a good job on the bench.

"She's practical, fair, cuts to the chase," said Robert P. Goe of Goe & Forsythe LLP in Irvine.

For James C. Bastian Jr. of Schulman, Hodges & Bastian LLP in Los Angeles, an important fact about Saltzman is that, unlike some new judges, she makes decisions and issues orders promptly.

"She's definitely brought some good energy to the bench out there," Bastian said.

Saltzman, 40, grew up in Buffalo, N.Y., where her father is a medical school professor.

After graduating from Amherst College in 1991, she spent two years learning about business as an investment banking analyst for Goldman Sachs.

"It was a great experience ... working on Wall Street when it was Wall Street," she said. "You really felt a sense of pride working there."

She went to law school at the University of Virginia, which has a strong law and economics program.

One year, on a whim, she decided to try California for a summer. She took a clerkship at O'Melveny & Myers in Los Angeles, where her supervisor somewhat apologetically gave her a bankruptcy project.

"I immediately thought, this is great," Saltzman said.

She returned to O'Melveny's bankruptcy department as a lawyer in 1996. She moved to top bankruptcy boutique Klee, Tuchin, Bogdanoff & Stern LLP in 2000 but returned to O'Melveny the following year.

She left again in 2006. "O'Melveny hadn't made a West Coast bankruptcy partner since the first year I was there, and they still haven't," she said.

Saltzman moved to litigation and patent firm Hennigan, Bennett & Dorman LLP and then to DLA Piper LLP in 2008.

Along the way, she worked on cases all over the country, such as that of a failed coal company in Kentucky and an aluminum company in Ohio.

In one unusual case, Saltzman helped represent LaFace Records in singer Toni Braxton's 1998 bankruptcy in a dispute over how bankruptcy affects personal services contracts.

A "huge music fan" - her chambers are covered with pop music posters, including one from a Nirvana concert she attended while at Goldman Sachs - she also worked on two bankruptcies for retailer Warehouse Entertainment Inc. and on that of rapper Carl Terrell Mitchell, better known as Twista.

Even with those sorts of cases, Saltzman said that for years as an attorney, "I thought what I did in bankruptcy really wasn't related to the news."

That view changed when she moved to DLA Piper in 2008 and became involved in "all the big financial disaster cases," including the \$600 billion bankruptcy of Lehman Brothers Holdings Inc., in which she represented a group of European banks as creditors.

These days, with so many of her cases spawned by the mortgage crisis, her work still reflects current events. Though they come from the opposite end of the economic scale, she finds them fascinating, nonetheless.

"When I applied [for the bench], I thought it was the right job for me," Saltzman said, "and I love it so much more than I thought I would."

Here are some of Judge Saltzman's recent cases and the lawyers involved:

In re: Duck House, 6:11-bk-13072 - Chapter 11

For the debtor: James C Bastian Jr., Schulman, Hodges & Bastian LLP, Los Angeles

For the lender: Michael G Fletcher, Frandzel Robins Bloom & Csato LC, Los Angeles

In re: Reswick, 446 B.R. 362 - Chapter 13 appeal

For the debtor and appellant: Gary R. Brenner, La Honda

For the creditor and appellee: Vi K. Tran, San Jose

In re: Henderson, 6:10-bk-32108 - Chapter 13

For the debtor: Dale Parham, Winterbotham Parhap Teeple APC, Riverside

For junior secured creditor: Martin W. Phillips, Lane & Phillips, Anaheim

In re: Zuckerman, 6-09-bk-22943 - Chapter 7

For the debtor: George Hanover, Palm Desert

For the trustee: Angie Lee, Levinson Arshonsky & Kurtz LLP, Sherman Oaks

In re: The Maturin Group Inc., 6:11-bk-10547 - Chapter 11

For the debtor: Eric J. Fromme, Rutan & Tucker LLP, Costa Mesa

For a creditor: Tom Roddy Normandin, Prenovost, Normandin, Bergh & Dawe PC, Santa Ana

Judicial Profile: Ronald H. Sargis

COURT: Eastern District of California, U.S. Bankruptcy Judge

APPOINTED: 2009

LAW SCHOOL: University of the Pacific, McGeorge School of Law, 1982

CAREER HIGHLIGHTS: Appointed to the U.S. Bankruptcy Court, Eastern District, September 2009; partner, Hefner, Stark & Marois LLP, 1989-2009; managing partner, Hefner, Stark & Marois LLP, 1997-98; associate, Hefner, Stark & Marois LLP, 1983-89

Age: 53

Drawn to all of the disparate matters that figure into bankruptcy law, Judge Ronald H. Sargis helps people understand the complex process used to tally their assets.



By Rebecca Beyer

SACRAMENTO - In the summers leading up to law school, Ronald H. Sargis worked for the California State Fair.

He was the only applicant to show up for his interview in a three-piece suit and - after the manager insisted on seeing "the boy in the suit" - got a job working as a cashier and later in a ticket booth next to the "Killer Ants" display. All day long, he listened to the hawkers shout: "See the killer ants ... they'll strip a man live!"

Eventually, Sargis was chosen to manage the carnival area of the fair. He drove a golf cart around the grounds and dealt with problems as they arose. It was, he recalls, an excellent way to learn how to communicate effectively.

"You couldn't figure out if you went on the log ride you were going to get wet?" Sargis said, remembering with a chuckle some of the things he had to talk with people about.

Now a bankruptcy judge for the Eastern District of California, Sargis, 53, is still communicating with people. But not about amusement park rides. His repertoire runs along the lines of helping people understand the process by which their assets are tallied up and paid out - or not paid out - to creditors.

Attorneys who appear in front of Sargis say the judge is evenhanded, taking care to explain what is happening or what should be happening and why, even as his docket is piled high with people facing foreclosure in the aftermath of the mortgage crisis.

"The best word I can use is he's very diplomatic," said Steven S. Altman, a Modesto sole practitioner who appears in front of Sargis regularly and used to handle cases against him when Sargis was a practicing attorney. "Even when he's dishing out criticism from the bench to counsel or debtors (representing themselves), he does it in a way that's diplomatic, yet he gets his point across."

'He can see through the baloney, which I think is probably just as good for a judge as for a lobbyist.'

- Gail K. Hillebrand

On a recent Tuesday, as Sargis was hearing motions to dismiss, the judge expressed his frustration with debtors' attorneys waiting until the last minute to file certain documents. But he took care to explain to the attorney standing before him that he was not singling her out.

"You're just lucky enough to be standing there while I'm popping off," he said.

Peter G. Macaluso, a sole practitioner in Sacramento who regularly appears in front of Sargis, said the judge was "lowering the boom" that day.

"He's taken the time to give us warnings that he wanted our practice to be better," Macaluso said.

For his part, Sargis said he tries to help attorneys keep things simple.

"One of the things I brought from my practice to the bench is that we're all wrestling with - me and the attorneys - trying to follow the rules," he said. "I have to apply the rules equally."

Sargis spent more than 25 years as a practicing attorney handling bankruptcy matters and serving as general counsel to the California Association of Collectors Inc. Attorneys say that experience has proven a valuable asset on the bench as people facing foreclosure swarm into his court.

Sargis' entry into the area of law he now presides over almost didn't happen. The judge didn't like the one bankruptcy class he took in law school, but a clerkship in 1982 with U.S. Bankruptcy Judge Loren S. Dahl changed his mind.

"Through my own dumb luck, I ended up getting this great mentoring," he said, explaining that he took the job just to work with Dahl, who died in 2003.

As a clerk, Sargis got "face time" with the attorneys appearing before Dahl.

"I learned that the 'good job' attorneys made hard issues look like easy issues," he said.

Sargis was born in Merced, but moved to Sacramento with his mother in sixth grade after his father died. When it came time for college, he remembered what his dad, who had great respect for his Stanford University-graduate doctor, always told him: "Go wherever you want ... as long as it's Stanford."

Sargis went to Stanford. He studied political science and economics, graduating in 1979. At University of Pacific, McGeorge School of Law, he took a liking to tax law. When he graduated in 1982, his professors encouraged him to get a master's degree in it at New York University School of Law, but on a whim, Sargis applied for the Dahl clerkship posted on a job board.

"Once I began clerking and saw what bankruptcy was and how it tied together, I discovered it was interesting," he said. "What you really get to do is pull together law from almost every other area. Bankruptcy became the vessel you put it all in."

Sargis followed in Dahl's footsteps to Hefner, Stark & Marois LLP, counsel to the California Association of Collectors. In addition to serving as the association's general counsel and developing his bankruptcy practice, which also covered real estate law, Sargis helped draft legislation relating to debt collection, including laws about identify theft, child support and hospital debt collection practices.

Gail K. Hillebrand, a senior attorney at Consumers Union, worked with Sargis on legislation.

"I always found him sensible, reasonable and willing to try to solve a problem," she said, adding that Sargis was "willing to try to negotiate a result that would work for both his client" and hers.

"He can see through the baloney, which I think is probably just as good for a judge as for a lobbyist," Hillebrand said.

Sargis said he learned early that he had to be "constructive" as "collectors aren't the most liked people."

Like other bankruptcy judges, Sargis is facing a flood of filings related to the mortgage crisis. In one case attorneys point to as significant, he ruled that a pair of debtors didn't have to repay a second deed of trust on their home because the amount of the first was more than the house was worth. The debtors filed a so-called "Chapter 20." First, they had their debts discharged under a Chapter 7 filing. Then they filed a Chapter 13 to enter into a repayment plan and prevent foreclosure. The holder of the second title argued the debtors were acting in bad faith. Sargis disagreed, finding that there was no value in the property to secure the second deed.

"The debtors in this case are not merely filing a perfunctory Chapter 13 Plan where no creditors are paid or arrearage cured," he wrote in the January decision. "The court finds that the plan has been proposed in good faith, and not by any means forbidden by law." *In re: Frazier*, 09-48595.

The ruling is on appeal.

The attorney for the creditor holding the second deed, Cassandra J. Richey, an associate at Prober & Raphael in Woodland Hills, declined to comment on the *Frazier* case, but said she thinks Sargis is doing a "fine job" on the bench.

Sargis, who has two grown children with his wife, said much of the "groundwork" on issues related to the mortgage crisis will be "sorted out" in courts like his, "in large part because consumers are driven to bankruptcy."

"At times, it's tough to look out at people and say, 'Here's why you lose,'" he said. "I try to clearly articulate why."

Macaluso said Sargis' knowledge of real estate and collection law has been helpful in wading through cases like *Frazier*.

"All of that revolves around things he's acutely known," he said.

Here are some of Judge Sargis' recent cases and the lawyers involved:

In re: Lazrovich, 10-50196 - objection to confirmation

For the debtor: Scott A. CoBen, CoBen & Associates, Sacramento

For the creditor: Dave M. McGraw, Walnut Creek

In re: Pierce, 10-24750 - motion to value secured claim

For the debtor: Mark Shmorgon, Allaye Chan Law, Sacramento

For the creditor: John D. Mendonza, Moore, Brewer, Jones, Tyler & North, Pleasanton

In re: Frazier, 09-48595 - motion to value secured claim-objection to confirmation

For the debtor: Scott A. CoBen, CoBen & Associates, Sacramento

For the creditor: Cassandra J. Richey, Prober & Raphael, Woodland Hills

In re: Russell, 10-20818 - motion to value secured claim/objection to confirmation

For the debtor: Mark A. Wolff, Elk Grove

For the creditor: Austin P. Nagel, San Ramon

In re: Worley, 10-25365 - objection to proof of claim

For the debtor: Michael O. Hays, Chico

For the creditor: Rami N. Haddad, McCarthy & Holthus LLP, San Diego

Judicial Profile: Mark S. Wallace

COURT: Central District of California, U.S. Bankruptcy Judge

APPOINTED: 2011

LAW SCHOOL: Columbia University School of Law, 1977

CAREER HIGHLIGHTS: Of counsel, Stutman, Treister & Glatt PC, Los Angeles, 1991-2010; shareholder, Meyer, Hendricks, Victor, Osborn & Maledon, Phoenix, 1979-91

Age: 58

By Don J. DeBenedictis

SANTA ANA - Like many bankruptcy judges, Mark S. Wallace writes tentative rulings in almost all the cases he will be hearing each day, posting them in advance on the court's website.

What lawyers seem to like about those rulings is that they truly are tentative.

"You can change his tentatives," said Sunita N. Sood, who represents debtors in personal bankruptcies.

Michael B. Reynolds, a bankruptcy partner at Snell & Wilmer, agreed.

'He is willing to be persuaded.'

- Michael B. Reynolds

"He is willing to be persuaded," he said. "He listens intently to argument ... and is willing to adjust the tentative as appropriate."

Before one of his first trials, Wallace issued tentative rulings on pretrial evidence issues, listened to arguments and then allowed further briefing on some of the issues, according to Robert P. Goe.

The tentatives "were really helpful, really framed the issues," Goe said.

Wallace apparently has always liked intellectual debate. He said he decided to go to law school because he thought it would call for the same type of thinking he enjoyed in his college philosophy classes.

The son of a crane operator from Patterson, N.J., Wallace attended Princeton University and Columbia University School of Law on a joint program that allowed him to switch to law school after only three years of college. He graduated from Princeton, with honors, in 1976 and from Columbia in 1977.

Then, he landed a judicial clerkship with U.S. District Judge William B. Enright in San Diego.

"I'd had it with New Jersey," he said. "I just had a burning desire to move West."

After two years, Wallace joined Phoenix, Ariz. law firm Meyer Hendricks Victor Osborn & Maledon as a tax lawyer, handling corporate, partnership, individual and foreign tax issues.

But when the economy turned bad in the late 1980s, Wallace began getting a number of tax issues for clients in bankruptcy.

His most interesting case during his dozen years in Phoenix did not involve either bankruptcy or tax. Wallace was part of a team of lawyers from the firm, now known as Osborn Maledon, that freed John Henry Knapp from death row on charges Knapp had murdered his son and daughter.

"I am 100 percent convinced that that man is innocent," Wallace said.

At one point, after hours of interrogation, Knapp had confessed to pouring gasoline on the sleeping children and lighting them on fire. He was sentenced to death in 1974.

Wallace said he believes the children accidentally started the fire themselves by trying to get warm using a camp stove, the poor family's only source of heat.

When new evidence was discovered, a judge ordered Knapp retried. Wallace's job was to comb through the transcripts of two previous trials and prepare a detailed summary.

"I was just one cog in the wheel," he said.

But he and his wife visited Knapp in prison.

"I was like his buddy," he said. "I've always felt a sense of loyalty to my clients."

At the third trial, the jury hung, and Knapp agreed to plead no contest for a sentence of time served. The case has been described in a book called "Triple Jeopardy."

Before the case ended, Wallace had left Arizona for the top Los Angeles bankruptcy firm of Stutman, Treister & Glatt.

"I made the pitch that [Stutman Triester] ought to have a bankruptcy tax lawyer on board, and they agreed," he said about his 1991 move.

In one of his larger matters at Stutman, he represented Japanese developer Azabu Buildings Co. Ltd. in its \$8 billion bankruptcy, filed in both Hawaii and Japan. Wallace created a plan to sell the company's only significant asset, the Hyatt Regency Waikiki Resort & Spa, in a so-called "step-transaction" in a way that preserved tax benefits for the company.

In Orange County, he represented subprime lender Fremont General Corp. in its \$643 million Chapter 11 bankruptcy. The case was unusual because Fremont had significant carryover net operating losses, which made the company very attractive. At one time, five different potential

purchasers plus the company itself had submitted reorganization plans. *In re: Fremont General Corp.*, 8:08-bk-13421 (CA CB, filed June 8, 2008).

So Wallace decided he "wanted to spend more time in the courtroom and less in the conference room," and to do more bankruptcy and less tax work. So he applied for the bankruptcy bench.

He was appointed in January 2011 and was assigned to the Orange County courthouse to hear a split caseload. Half his cases come from the wide mix filed in Santa Ana, but the other half are non-Chapter 13 cases filed in Riverside. He hears those cases primarily via closed-circuit television.

About 90 percent of his cases are consumer bankruptcies, a big change from Stutman Triester.

But even in those, he has made a little law. The Bankruptcy Appellate Panel, in an unpublished ruling last month, affirmed his decision to dismiss a case in which a creditor's attorney had twice failed to appear at hearings seeking to enforce a judgment against the debtor, an accused robber. *Gayer v. Vidales*, CC-11-1140 (9th BAP, op'n filed Dec. 9, 2011).

He also wrote an opinion blocking a company from taking a home in foreclosure because the company didn't have either the legal or equitable right to purchase it at the time of the foreclosure sale. *In re: Gonzalez*, 6:11-bk-15665 (CA CB, op'n filed Aug. 1, 2011).

Wallace, 58, does have some strict rules for people in his court. For one, they should be on time.

He himself hits the bench at 9 a.m. sharp every morning, having gotten to work at 6:15 or 6:30 to review the files and tentative rulings for all his cases that day.

"I start on time," the judge said. "If I have a calendar at 9 a.m., I'm out there at 9 a.m. I'm not out there at five after."

In Chapter 13 cases, Wallace allows debtors only one continuance to prepare their plan except in unusual circumstances, according to two consumer lawyers.

"If you're ready to go, that's great," Michael Franco said. "If not, then it's going to be dismissed and you're going to have to start again."

Franco and other lawyers also praised the judge's demeanor, describing him as calm, friendly and willing to listen.

Outside work, Wallace likes to get outside. He has been an avid mountaineer for years - one reason he wanted to move west from New Jersey. Among other peaks, he has climbed Mount Rainier, Grand Teton and Mount Meru in the Himalayas.

Here are some of Judge Wallace's recent cases and the lawyers involved:

In re: Central Occupational Medicine Providers, 6:11-bk-14524 - Chapter 11

For the debtor: Robert B. Rosenstein, Rosenstein & Hitzeman, Temecula

For the trustee: Everett L. Green, Riverside

Romero General Construction Corp. v. Lubanko, 6:10-ap-1568 - Chapter 11 adversary proceeding

For the debtor and plaintiff: Stuard D. Hirsch, Escondido

For the defendant: Robert P, Goe, Goe & Forsyth, Irvine

In re: Gonzalez, 6:11-bk-15665 - Chapter 7

For the debtor: Raul Gonzalez, in pro se

For creditor/purchaser in foreclosure: Robert A. Krasney, San Bernardino, Barry L. O'Connor, Riverside

In re: Capistrano Terrace Ltd., 8-11-bk-19767 - Chapter 11

For the debtor: Richard A. Marshack, Marshack Hays, Irvine

For the unsecured creditors committee: James Andrew Hinds Jr., Torrance, and Lisa Torres, Gates, O'Doherty, Gonter & Guy LLP, San Diego

In re: BHG El Paso Joe Battle LP, 8:11-bk-22501 - Chapter 11

For the debtor: Stuart J. Wald, Murrieta

For a creditor: Michael B. Reynolds, Snell & Wilmer LLP, Costa Mesa