

Judicial Profile

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Hon. Michael J. Davis Chief U.S. District Judge, District of Minnesota

IN 1994, PRESIDENT WILLIAM Jefferson Clinton appointed Chief Judge Michael J. Davis to the U.S. District Court for the District of Minnesota. He is the first African-American judge appointed to the district and, in 2008, he became the first African-American chief judge of the district. Chief Judge Davis' unparalleled work ethic, attention

to detail, unique background, and impressive achievements have had a profound impact on the district and the citizens of the state of Minnesota. Although Chief Judge Davis' upbringing, personal integrity, and talent for the law significantly influenced his rise in the legal profession, his sincere compassion and respect for the individual, along with his genuine resolve to accept nothing less than equal justice for all, are distinguishing characteristics of Chief Judge Davis and his remarkable career.

In 1994, then Chief Judge Diana Murphy presided over Judge Davis' investiture ceremony. She recalls being extremely pleased and proud to speak about his commitment to inclusiveness and justice as she welcomed him to the federal bench. "I was familiar with his work as a lawyer and a vigorous advocate for justice, and I knew he would make a profound impact on the federal court system."

No one can dispute that Judge Murphy was right. Chief Judge Davis is well known for being very active and engaged during the four years he has presided as chief judge of the district. According to Judge Ann Montgomery: "He has really embraced the job. He understands every detail of what happens in the courthouse and knows every member of the staff. His hands-on approach has been truly admired by the entire court staff." Rich Sletten, the district's clerk of court, characterizes the chief judge as a "tireless worker" who is interested in every aspect of managing the court, from top to bottom. "He encourages everyone to strive for excellence in what they do," says Sletten. "He is the first person here and the last to leave." Sletten notes that Chief Judge Davis has been very engaged in issues involving technology and related advances that are shaping the federal courthouse for the future.



Chief Judge Davis' commitment to the district extends far beyond his current role. For example, Minnesota has a very active chapter of the Federal Bar Association. As president of the chapter from 2004–2005, Chief Judge Davis helped contribute to making it the strong and growing organization it is today. Lora Friedemann, a recent past president of the chapter, says: "His achievements as a jurist and as a leader in this district cannot be underestimated. The programs and policies he has initiated, both in the association and in the federal court system, will have a deep and lasting impact in Minnesota."

His leadership in Minnesota is widely recognized in the legal community. The Minnesota Black Lawyers Association established a Law Student Scholarship in Chief Judge Davis' name. In 2000, the William Mitchell College of Law bestowed upon Chief Judge Davis the Distinguished Service Award, and the following year, Macalester College awarded the chief judge an Honorary Doctor of Laws degree. Chief Judge Davis has also been the commencement speaker at both schools, along with the University of Minnesota Law School. The Hennepin County Bar Association, which is based in Minneapolis, presented the Judicial Professionalism Award to Chief Judge Davis in 2004. Yet, none of these awards and honors completely captures the depth of his contributions to making

Minnesota a place where everyone has equal access to the justice system.

Justice for All: An Institutional Approach

Chief Judge Davis' focus on equal and meaningful access to the court system can be seen in every role he takes on. A prime example of this commitment is the Pro Se Project, which resulted from a collaboration between the Minnesota District Court and the Minnesota Chapter of the Federal Bar Association. Chief Judge Davis saw a need for the economically disadvantaged to have access to a skilled and qualified lawyer; he made the project a top priority of his tenure as chief judge.

Since its inception in May 2009, the Pro Se Project has had a goal of providing civil pro se litigants with free legal consultation. When a civil pro se litigant appears in Minnesota District Court, the judge or magistrate judge may refer the case to the Pro Se Project to find a volunteer lawyer to consult with the pro se litigant. The judge's referral letter to the pro se litigant contains contact information for the Pro Se Project coordinator, Tiffany Sanders, and the judge copies her on the letter with any relevant court documents. Sanders then connects the litigants with a volunteer lawyer to evaluate their case and advise them. If the case has merit, the attorney will often choose to enter an appearance on the litigant's behalf.

The Pro Se Project has had far-reaching impact. One litigant went to the hospital seeking care for his mental health issues. The hospital staff, unsure of how to handle him, called the police, who arrested the litigant and took him to the county detention center. Unfortunately, he was placed in painful restraints for hours, which exacerbated his behavior. As part of the resolution of this case, his Pro Se Project attorney got the detention center to change their policies regarding how they hold inmates with mental health issues. Sanders reports: "As a result of the skilled representation and counseling [the litigant] received, he completely turned his life around. I recently met with him at [his lawyer's] office and he looks great, is doing great, and is truly thankful to the Pro Se Project for helping him regain his life." The litigant later wrote the following letter in support of the Pro Se Project:

For nearly a year I was a very heavy burden on the Court. People who don't know what they are doing often are. Competent counsel early on would have saved much. It took extra time, effort, and patience, but fortunately the Court saw through my mistakes and mistakes it made because of me. The judge asked a Pro Se Project leader to consider this case. The first face-to-face meeting was with [two local attorneys] ... They treated me as professionally as if I had been an executive with a major company ... The expertise and kindnesses of many attorneys with already full plates have rippled through

countless lives in unimaginable ways.

Last year, the American Bar Association selected the Pro Se Project to receive the Harrison Tweed award, one of the ABA's most respected honors. Magistrate Judge Franklin L. Noel, the court's liaison to the Pro Se Project, gave credit to Chief Judge Davis, noting that it was the chief judge "who had the vision to see the need for the program."

Justice for All: An Individualized Approach

Matthew G. Tveite, a U.S. probation officer in the District of Minnesota, has worked with Chief Judge Davis for 10 years. "He is a firm believer in individual justice," says Tveite, "which is not defined by a book or mandated by a group. Chief Judge Davis is always focused on the person before him." The chief judge strongly promotes integration for those who are serious about reforming their lives. Tveite has seen the difference that this individualized attention, from someone in a position of power, can make for individuals with extreme challenges, such as addictions and multiple convictions. In one of Tveite's first cases, a robbery, the defendant had a lengthy criminal history that dated back to 1977. He was also a long-time IV drug user. "During a probation hearing, Chief Judge Davis addressed him directly," Tveite recalls. Among other things, the judge assured the defendant that he could still have a life if he really wants it, if he could use the resources offered and figure out how to change. Chief Judge Davis' words made a huge impression on the defendant, who noted that the judge "treated him like a human being." Tveite recalls that the defendant was released in 2007. "He was clean and doing well enough on probation that he was allowed to go on a fishing trip to Mexico."

Those who have worked for Chief Judge Davis universally remark on his sensitivity to those who appear before him and his demand that everyone be treated with respect, regardless of race, gender, disability, or other circumstance. Brenda Anderson was Chief Judge Davis' court reporter for many years when he was on the Hennepin County Bench and for several years after he became a federal judge. When asked, she said she could speak for hours about cases where he made a real difference in the lives of individuals. "He was all about respect—respect for those appearing before them, for their lawyers, for his staff," Anderson recalls. "Judge Davis is very sensitive to people and their unique circumstances."

Bill Manning, a lawyer in Minneapolis and long-time friend of the chief judge, remembers that on Nov. 21, 2000, President Nelson Mandela attended the NAACP annual banquet in Minneapolis. "Judge Davis and I got the opportunity to meet the president. I informed President Mandela that Judge Davis was one of the finest federal judges in this country." As Manning recalls, President Mandela looked very warmly into Chief Judge Davis' eyes, studied his face,

and said, “I can tell by his face that he is a good judge and that he makes compassionate decisions.”

A Family Man at Heart

Born in the late 1940s in Cincinnati and raised by his mother in Aurora, Ill., Michael Davis did not have the advantages that many others have. Early in his life, few may have predicted that he would one day become chief judge of one of the busiest federal districts in the country. His great-great-grandfather was a slave in Kentucky who escaped to Illinois, enlisted in the Union Army in 1863, and fought valiantly with the U.S. Colored Troops. Chief Judge Davis credits his mother, Doris Ruth Davis, with ensuring his future success through her love, care, and commitment to a good education for him and his brother. Although circumstances prevented Mrs. Davis from being able to complete her college education until she was in her 50s, she worked tirelessly to ensure her sons went to good schools and had a chance for success.

Chief Judge Davis graduated from Macalester College in St. Paul, Minn., in 1969. Influenced by the events surrounding the Civil Rights movement in the 1960s, he opted to attend law school and received a J.D. from the University of Minnesota Law School in 1972. During law school, Chief Judge Davis met his wife, Sara Wahl, who is a local attorney. The Davises have two sons: Mike, who is a community organizer; and Alex, who will be entering law school this fall.

Eliminating Bias in the Court System

Before becoming a judge, Chief Judge Davis was a criminal defense lawyer. He served as a law clerk for the Legal Rights Center from 1971–1973, and a criminal defense lawyer for the Neighborhood Justice Center in 1974. He later returned to the Legal Rights Center as an attorney for three years, before being hired at the Hennepin County Public Defender’s Office.

The Legal Rights Center is a community-driven, nonprofit law firm that specializes in adult and juvenile criminal defense and restorative justice practices and advocacy. Founded in 1970 by community leaders such as Doug Hall, leaders of the American Indian movement, and leaders of The Way (a North Minneapolis African-American youth organization), the center’s objective is to be a law firm “Of and For the People.” Chief Judge Davis’ early experience as a law clerk and attorney at the center had a profound impact on his legal career and his understanding of what meaningful access to justice for the individual entails.

“You have to understand the historical context to understand why the Legal Rights Center has been so important to the Twin Cities community,” explains Craig Boone, who worked at the center with Chief Judge Davis during its early years. As Boone tells it, there was a strong sense among the African-American and American Indian communities that they were disenfranchised from the justice system. From arrest to conviction to incarceration, racial and ethnic minorities

were surrounded by a sea of white faces. “The Legal Rights Center used advocates from these communities as liaisons between the center lawyers and their minority clients,” Boone says. “Michael Davis was deeply involved in this effort to obtain equal access to justice for the community. Mike was the best lawyer of us all. When he speaks in court, people listen.”

One of the earliest community advocates was Willie Mae Dixon. Chief Judge Davis speaks of her fondly: “She was only about four feet, 10 inches tall, but she was incredibly important to the center. She opened many doors in the African-American community. Despite her death from breast cancer at age 40, she was one of the strongest people I’ve ever known.”

Chief Judge Davis carried these early experiences into the courtroom as a lawyer and judge. In addition, from 1977–1981, he served as an attorney commissioner at the Minneapolis Civil Rights Commission. In 1990, he was appointed to the Minnesota Supreme Court Racial Bias Task Force. Hon. Rosalie Wahl, the first woman Supreme Court justice in the state of Minnesota and, incidentally, Chief Judge Davis’ mother-in-law, chaired the committee. As Editorial Committee chair, Chief Judge Davis was largely responsible for the comprehensive and influential Final Report the Task Force issued in 1993. Minnesota Supreme Court Justice Alan Page, who chaired the committee tasked with implementing the recommendations in the report, speaks very highly of Chief Judge Davis’ work: “Judge Davis and Justice Wahl were central in starting the task force and producing the final report. Many of their specific recommendations have been implemented. But the key accomplishments were to cast light on disparities in the treatment of racial minorities in Minnesota and to highlight the need for some serious focus on this problem.”

An Excellent Lawyer, An Excellent Judge

Hennepin County Judge Lyonel Norris clerked at the Public Defender’s office in the early 1980s and was assigned to Chief Judge Davis’ trial team. “He was an astonishingly good trial lawyer,” says Norris. “He made criminal defense look really easy, and then educated us about why it wasn’t easy at all.” Those who had the opportunity to see Chief Judge Davis try cases recall his strong courtroom presence. Well over six feet tall, he strikes an imposing figure. “But he was very soft-spoken, precise in his questioning, and extremely engaging in his openings and closings. He often had the jury at the edge of their seats, hanging on his every word,” Norris recalls. “And he was always prepared. He knew his cases inside out.” Later, Judge Norris served as his law clerk in both state and federal court.

This excellence carried over into his 29-year career on the bench. Judge Diana Murphy, who now sits on the Eighth Circuit Court of Appeals, states that she is continually “impressed with the quality of his opinions.”

During his 18-year tenure on the federal bench, Chief Judge Davis has made a number of important and impactful rulings. For example, in a dispute between the United States and the Mille Lacs Band of Chippewa Indians over treaty rights, Chief Judge Davis ruled that various laws and regulations would not be applied to reduce the band's share of natural resources and interfere with their exercise of hunting, fishing, and gathering rights under an 1837 treaty.¹ This decision was upheld by both the Eighth Circuit and the U.S. Supreme Court.

In 1999, a candidate for judicial office sued the state boards and offices responsible for establishing the judicial code of ethics, alleging that certain canons violated their constitutional rights. Chief Judge Davis upheld the judicial code, which included canons restricting candidates' attendance at political functions, prohibiting candidates from personally soliciting campaign contributions, and barring candidates from announcing their positions on legal and political questions that might come before them in court.² The Supreme Court reversed this decision in a 5-4 vote, which retired Justice Sandra O'Connor later regretted. In a talk at the New York University School of Law on Oct. 11, 2006, Justice O'Connor said that she wished she had voted with the minority given the decision's implications for judicial independence.

Chief Judge Davis presided over the first trial in the ongoing battle between the music industry and individuals who download music from file-sharing websites. After the defendant was initially found liable, he granted her a new trial on the grounds that violation of the exclusive distribution right requires actual dissemination.³ Two trials later, the parties' cross appeals are pending in the Eighth Circuit.

Chief Judge Davis also presided over one of the largest multidistrict litigation (MDL) cases to date, *In re: Baycol Products Litigation*. Attorneys who worked on that case are highly complimentary of the way his office handled such a large and complex MDL. Charles "Bucky" Zimmerman, who served as co-lead attorney for the Baycol Plaintiffs, recalls that Chief Judge Davis approached the case with a great amount of commitment and creativity. "He wasn't afraid to handle things outside of typical federal court protocol," Zimmerman said. "For example, he had joint hearings for related state and federal cases. He even appointed a special master as a liaison between the state and federal judges. Chief Judge Davis provided opportunities for the lawyers on both sides to meet and work things out in a civil manner—even if he had to travel all over the country." Professor Roger Haydock, the court-appointed special master in the *Baycol* MDL, said that the judge is "one of the pre-eminent judges in America. He is fair, open-minded, and courageous. Judge Davis focuses on what's fair to the parties and what produces the best civil justice."

Despite a very demanding caseload and involvement with a myriad of other community organiza-



Judge Davis and Pro Se Project volunteers accepting the ABA's Harrison Tweed award.

tions, Chief Judge Davis also served as a judge on the Foreign Intelligence Surveillance Court (FISC) from 1999–2006. Judge James C. Carr, who served with Chief Judge Davis on the FISC, recalls him as soft-spoken and insightful member of the court: "Judge Davis typically spoke less but said more than the rest of us. He did so with thoughtfulness, grace and civility, even when we were discussing very challenging and contentious issues under the Fourth Amendment and other provisions of the Constitution. It was a pleasure to serve with him."

More recently, Chief Judge Davis has traveled repeatedly to the District of Arizona to help reduce that district's case backlog. Currently, he sits on the Board of Directors of the Legal Rights Center, the University of Minnesota Foundation, as well as on the advisory board of the Jack Mason Law and Democracy Initiative, a project of Books for Africa. He is also a former national board member of Equal Justice Works.

Educator, Mentor, Friend

For more than 30 years, Chief Judge Davis has served as a trial practice instructor or adjunct professor at William Mitchell College of Law and the University of Minnesota Law School. He loves training and mentoring law students and young lawyers to become better courtroom advocates. Recently, one of his students, who participated in a mock trial, wrote him an e-mail thanking him for his time and attention to her development. She wrote:

As you know, I adore trial lawyers, probably because I know I have some natural weakness to talk in front of a lot of people, [and] to deliver a presentation. However, today, I was not nervous at all when I was standing right in front of so many jury members, judges, colleagues, and

other auditors ... I really want to overcome my weakness and now I know how to do it[:] preparation, preparation and preparation. Judge, you have been so nice to us. You might still remember the night when each of us wanted to take a picture with you at your courtroom. I recall that it was almost 11 p.m. ... however, you were so patient to let us take pictures one by one ... I was pretty touched at that moment. Everything you did was like a father ... instead of a highly prestigious Chief Judge at a Federal Court.

Chief Judge Davis was also one of the first judges to become knowledgeable in forensic DNA identification testing. This expertise led the FBI to invite him to lecture at the FBI Academy on the use of DNA evidence in the courtroom. In addition to local law schools, he has enjoyed years of service as a lecturer or instructor in trial practice and other areas at various institutions, including the Hubert H. Humphrey School of Public Affairs and Oxford University's Magdalen College. In recent years, his role as educator has taken on an international reach. Educating judges in other countries about the American legal system has led Chief Judge Davis to Egypt, Uganda, and Senegal. He recently visited the Kingdom of Saudi Arabia to assist the State Department in an effort to invite Sharia judges to visit the United States to learn, compare, and contrast their legal system with ours.

Chief Judge Davis has served as a mentor to lawyers at various stages in their legal careers. Judge Wilhelmina Wright of the Minnesota Court of Appeals met Chief Judge Davis in 1995, shortly after arriving in the Twin Cities to take a position at the U.S. Attorney's Office in Minneapolis. While appearing before him, she was struck by the manner in which he conducts legal proceedings. His seriousness of purpose and his expectation that prosecutors treat all defendants with respect, as he does, impressed her and set the tone for her practice. She also speaks highly of his balanced approach to sentencing, which involves consideration of both the punitive and rehabilitative aspects. Chief Judge Davis encouraged her to apply for a state-court judgeship and served as an important resource during her preparation for the bench. Judge Wright says that his mentorship, friendship, and counsel is not reserved for fellow lawyers and judges, but is given to children and law students who aspire to be lawyers or judges themselves.

U.S. District Judge Donovan Frank also attests to this commitment. He has worked with Chief Judge Davis for more than 22 years and considers him his best friend. Before they were nominated to the federal bench, they served together as state court judges in different districts and worked on several statewide committees, including the Racial Bias Task Force. Along with Judge Frank, Chief Judge Davis has served as a host judge of the Minnesota FBA chapter's Open Doors to Federal Courts Program, an educational

program designed to expose school-age children to the workings of the federal court system. In addition, both judges regularly invite legal and community groups to federal court for mock trials or other programs. Chief Judge Davis has frequently hosted African-American students from Just the Beginning Foundation. Judge Frank also noted: "Judge Davis can address those students and say, 'Look at me. I came from a very modest background. If I can be a federal judge, so can you. Set your dreams and goals high. Don't be discouraged by your circumstances.'"

Chief Judge Davis recognizes Justice Thurgood Marshall as the greatest lawyer of the twentieth century. Those who know the chief judge best are certainly familiar with the framed picture of Justice Marshall's July 4, 1992, challenge to America that hangs in his office, which states in part:

The legal system can force open doors, and, sometimes, even knock down walls. But it cannot build bridges. That job belongs to you and me. We can run from each other, but we cannot escape each other. We will only attain freedom if we learn to appreciate what is different and muster the courage to discover what is fundamentally the same. Take a chance, won't you? Knock down the fences that divide. Tear apart the walls that imprison. Reach out; freedom lies just on the other side."

No one I know embodies these principles more than Chief Judge Michael J. Davis.

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Endnotes

¹*Mille Lacs Band of Chippewa Indians v. Minnesota*, 952 F. Supp. 1362 (D. Minn. 1997), aff'd 124 F.3d 904 (8th Cir. 1997), aff'd 526 U.S. 172 (1999).

²*Republican Party of Minnesota v. White*, 63 F. Supp. 2d 967 (D. Minn. 1999), aff'd 247 F.3d 854 (8th Cir. 2001), rev'd and remanded, 536 U.S. 765 (2002).

³*Capitol Records v. Jammie Thomas*, Civ. No. 06-1497 (D. Minn. 2008).