

Judicial Profile

EMILY JUDGE

Hon. Edward C. Prado U.S. Circuit Judge, U.S. Court of Appeals for the Fifth Circuit

HON. EDWARD C. PRADO, a judge on the Fifth Circuit Court of Appeals, celebrated his 25th anniversary on the federal bench on March 30, 2009.

Many might consider Judge Prado's first court appearance to have been an unlikely start toward his remarkable career in the federal judiciary. As an eighth-grader, he accompanied his father to small claims court to watch him testify as an expert witness in a case involving allegedly faulty upholstery. Although Mr. Prado had not graduated from high school, his son was impressed to see his father's opinion as a skilled upholsterer have an impact on a legal proceeding. Naturally, the young Judge Prado must have been proud to watch his father's performance on the witness stand, but beyond that, the court itself appealed to the youngster as an open and impartial forum, where each person is entitled to present his or her case and seek justice. This memorable day appears to have set the tone for the judge's career on the bench as a moderate renowned for fairness and impartiality.

Judge Prado's next appearance in court left him with a different impression. As a law student, the judge persuaded some high school friends, many of whom were soon bound for Vietnam, to visit federal court with him. Unfortunately, the visit ended quickly, when the marshal asked the casually dressed group to leave because they had violated the court's dress code. To this day, the judge's friends find some humor in this turn of events. Although Judge Prado couldn't have known that this trip would provide his friends with a glimpse of his future, anyone who has met him must suspect that, as a judge, he is somewhat more forgiving about the particulars of courtroom dress. In fact, the judge believes that the courts belong to the people whose taxes fund them, and he strives to make those who visit his courtroom comfortable. He finds that well-chosen humor can be a valuable tool to relax litigants, jurors, and even lawyers.

Judge Prado credits the support of his family and teachers for setting him on the path toward a legal career. His parents communicated the value of education to their son and made sacrifices to ensure that he had the educational opportunities they had missed. Despite the fact that fewer than a quarter of his classmates obtained higher education degrees, teachers encouraged the judge to attend college. He was in-



spired by the success of others from his low-income, predominately Hispanic neighborhood: the husband of a high school English teacher shared the story of his path—from newspaper delivery boy to attorney—and encouraged Judge Prado to pursue similar goals. Simultaneously, seeing the injustice and inequality around him motivated Judge Prado to seek a career that would enable him to work through the legal system to help people and improve the world.

Judge Prado acknowledges, however, that his background also presented certain obstacles to his education and career. School—especially reading in English—was initially challenging. In college, he found that he was not as well prepared as students who had been raised and educated with more privileges. In addition, after attending a high school whose student body was more than 90 percent Hispanic, he also found himself part of a racial minority at college. He worked hard to adjust to this new environment and channeled any insecurity he felt into motivation for his studies.

After graduating from the University of Texas School of Law in 1972, the judge planned to join the Judge Advocate General's Corps and expected to go to Vietnam. While he was in the process of passing his bar exam, he started an internship with the district attorney's office in Bexar County, Texas. After a few months, he was offered the job of assistant district attorney. Because the Vietnam War was winding down, the Army allowed him to join the Reserves and he could therefore accept the assistant district attorney position.

In that position, Judge Prado gained trial experience and self-confidence in court. He also gained satisfaction from his sense that he was helping to protect the community from crime. This position was the beginning of a varied legal career, which Judge Prado's friends credit for providing him with the perspective to empathize with both the prosecution and the defense and to fully understand the federal as well as state legal systems.

In 1976, after four years of prosecuting crime at the state level, Judge Prado sought to join the newly formed Federal Public Defender's Office for the Western District of Texas. He viewed this as an opportunity for a more rounded career, and the results of this decision are evident today in Judge Prado's moderate positions and respect for prosecutors and defendants alike. As an assistant federal public defender, Judge Prado learned that there is good in even the most hardened criminals. He realized that many criminals have grown up in difficult circumstances, which, unfortunately, cultivates criminal behavior. He learned to present his flawed clients in the best possible light and to appreciate small victories such as sentence reductions.

In 1980, Judge Prado was appointed to serve the remainder of an unexpired term as a judge for the 187th Judicial District Court in Bexar County, Texas. After eight months on the bench, the judge ran unsuccessfully for re-election. However, the timing was fortuitous, and Judge Prado found himself moving back into the federal sphere when the newly elected President of the United States, Ronald Reagan, appointed him to be the U.S. attorney for the Western District of Texas. During Judge Prado's four years in this position, he broadened his experience even further as he defended the government, investigated fraud, and learned to manage a large staff. He was awed by the honor and responsibility of the position, especially the duty to represent the United States in a court of law. He realized the importance of avoiding abuse and corruption in exercising the power of public office. Having moved from assistant public defender to U.S. attorney in the space of a year, the judge found himself attuned to the strategies and struggles of both sides. His rulings are undoubtedly enriched by this insight, and although one suspects that this well-rounded perspective adds some challenge to his decision-making process, he has evidently succeeded in replacing bias

with reason, logic, and respect for the law.

President Reagan then nominated the judge for the U.S. District Court for the Western District of Texas in 1984. At just 36 years of age, Judge Prado was confirmed and thus began his 19-year career as a federal district judge. From the bench, Judge Prado enjoyed watching and refereeing the dramatic conflicts between legal advocates. While he took pleasure in observing many great lawyers, he also felt frustration when faced with inadequate ones. The judge strove to apply the rules and the law fairly—without prejudice or bias. After years of trying cases, he felt something like a backseat driver trying to deduce the lawyers' strategies and anticipate their actions. He recalls feeling surprise at times when he anticipated objections—and prepared to rule on them—but the lawyers had failed to object. Although he found satisfaction in concluding cases, he missed the more personal thrill of winning positive outcomes for his clients.

In 2003, President George W. Bush nominated Judge Prado to a seat on the Court of Appeals for the Fifth Circuit. In preparation for his confirmation hearing, the judge prepared himself to discuss political issues, *Roe v. Wade*, and other aspects of constitutional law. After a 19-year career on the district court, he anticipated thorough questioning from the Senate. He was relieved to find that he was somewhat over-prepared for his confirmation hearing, which lasted 15 minutes.

In his role at the appellate level, Judge Prado enjoys the challenge of deciding unanswered questions and examining issues that fall outside the bounds of clear precedent. He realizes the significance and importance of his role in rendering decisions for parties and providing direction for the lower courts and the legal system as a whole. In deciding these unanswered questions, Judge Prado's approach is to consider statutes, relevant law, and the facts in order to craft the right principles and standards for the law. In some cases, he finds that legislative history can also be relevant and helpful. He is continually amazed by the myriad of new legal issues that require appellate review.

Judge Prado finds that the variety of subject matter in his cases makes his work more interesting. The Fifth Circuit hears a large number of cases involving immigration, some of which are criminal cases, because of its jurisdiction over large parts of the border between the United States and Mexico. Admiralty law is also a recurring issue, as the court hears cases involving the Mississippi River and the Houston Channel. Judge Prado also hears a number of cases dealing with religion and constitutional issues. The judge finds that the opportunity to hear cases that present new issues and to explore a variety of legal topics keeps him well engaged.

Judge Prado believes that three-judge appellate panels, when composed of diverse groups of judges, can ensure that opinions are strengthened by input from



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different perspectives. After listening to the same cases and considering the same laws, judges can arrive at amazingly different positions. Often, the judges' different backgrounds have shaped different perspectives, which lead to these differences in opinion. However, these differences ensure that each position is examined critically and that the final decision is the product of careful evaluation and reasoned compromise.

Because Judge Prado enjoyed his interactions with lawyers, parties, witnesses, and jurors as a district judge, he sometimes feels isolated as an appellate judge. When his schedule allows, he likes to volunteer to fill in at the district court. He has also remained active in San Antonio's closely knit bar organizations and legal community. He feels sad that trial advocacy is becoming a lost art, with more cases being settled or otherwise resolved outside of courtrooms. He has endeavored to pass on his passion for trial advocacy to students at the Benjamin N. Cardozo School of Law in New York, where he has served as a trial skills instructor.

Looking back at his career, Judge Prado cites *G.I. Forum v. Texas Education Agency*, 87 F. Supp. 2d 667 (W.D. Tex. 2000), as one of his most challenging decisions. In this case, minority groups challenged a Texas law that required students to pass a standardized test in order to get a high school diploma. The plaintiffs argued that the test was discriminatory and unconstitutional, because poor public schools that serve districts with large minority populations weren't preparing students for the test properly. The court heard weeks of testimony from test experts and statisticians who analyzed the fairness of the test. Because of his personal background, Judge Prado empathized with the plaintiffs. However, he forced himself to focus on the constitutional analysis of the issue and determined that the law was an acceptable constitutional public policy decision by the state legislature. Although mi-

norities failed the test at disproportionately higher rates, he determined that the plaintiffs had not shown that the students did not have a reasonable opportunity to prepare for the test. The judge admits that he was somewhat surprised that the decision wasn't appealed.

Offering advice to young lawyers, Judge Prado stresses the importance of preparation and honesty with the court. He tells them that building a reputation is essential to a lawyer's success in court, and that judges will remember a lawyer's conduct and often share it with other members of the bench. According to

the judge, it can be difficult to repair a reputation, and it is therefore essential for lawyers to avoid misconduct.

Judge Prado has endeavored to share his unbiased and empathetic approach to the law with legal groups outside the United States. He has traveled to China to train legal aid lawyers who act as public defenders within the Chinese system. He has also visited courts and spoken to associations of judges in South America. His friend and fellow traveler on the trip to China, Cincinnati attorney Marty Pinales—who knows the judge from their service together on the Federal Courts Defender Services Committee and who holds the judge in high regard—says that these visits have only reinforced Judge Prado's respect and appreciation for the U.S. legal system. One of the Chinese lawyers asked Judge Prado how a judge who, like him, was appointed by President George W. Bush could ever rule against the same Bush administration. The question served as a reminder to the judge that the concepts of an independent judiciary and the separation of powers are unknown in many countries, and the reminder renewed the enthusiasm for impartial justice that Judge Prado first felt so many years ago when he watched his father's testimony in Small Claims Court.

The U.S. legal system undoubtedly owes a great debt to individuals like Judge Edward C. Prado, who commit their careers to honoring the system's traditions of fairness and justice by their work as public servants. **TFL**

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