



## Judicial Profile

by Hon. David G. Campbell, Richard B. Kendall, and George E. Pence

# Unbounded Energy: The Remarkable Career of Judge J. Clifford Wallace U.S. Circuit Judge, Ninth Circuit Court of Appeals

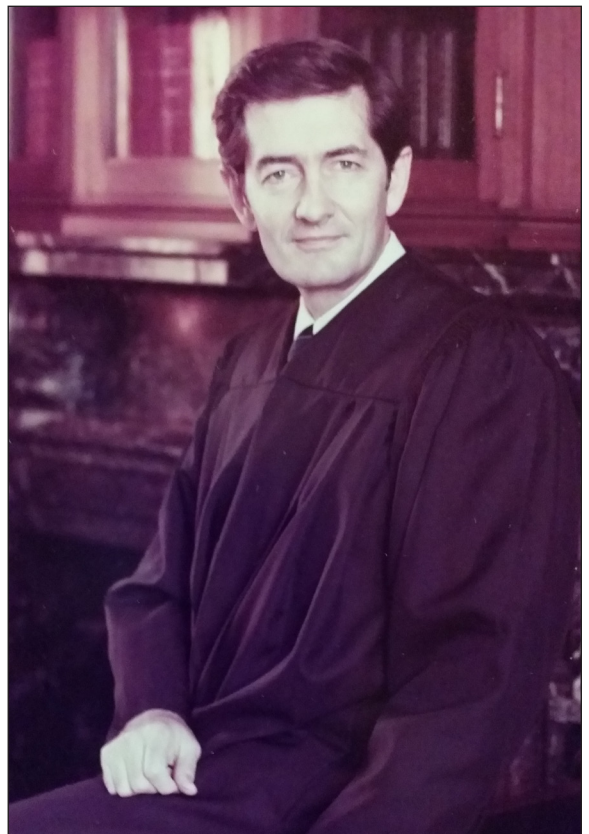
**W**hen Cliff Wallace told his high school guidance counselor that he wanted to be a lawyer, her response was blunt: “I don’t think you’d better try to do that. You’d better go out to the shops and learn a trade, because you can’t make it into college, let alone get *through* college.”

She was not speaking rashly. Judge Wallace came from a poor background and never read a book before he graduated from high school. Few would have guessed he would serve more than four decades as a distinguished federal judge or complete national and international work celebrated for its professionalism and public service. Justice Anthony Kennedy has described Judge Wallace as bringing “new meaning to the ideal of judicial service.” Justice Antonin Scalia has described him as “a major force in spreading the principles and the practices of American courts around the world; I daresay no figure in American law has done as much.” Judge Wallace’s high school counselor would be stunned.

### Formative Years

Judge Wallace was born in 1928. His father, who was partially disabled from World War I, worked for the Works Progress Administration during the depression and at other times earned a modest living as a carpenter. The Wallaces lived in a small home in southeast San Diego, heated only by a coal oil stove. Because they were poor, Judge Wallace learned early to fend for himself. His first job was selling *Liberty* magazines. He earned one-quarter of a cent for each sale.

Education was not a priority in the Wallace household. His father completed third grade, his mother tenth grade. His father was an abusive alcoholic. Judge Wallace



still recalls a particularly important milestone in his childhood—when he and his brother were finally strong enough to protect their mother from their father.

As Judge Wallace entered adolescence during the 1940s, his hometown of San Diego was transforming “from a sleepy border town [in]to a teeming wartime metropolis,” as local industry beefed up production of

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military equipment to supply to the allied nations and tens of thousands of young people arrived for training at bases and camps before heading overseas.<sup>1</sup> His brother enlisted first and, as the war was not officially over, Judge Wallace joined the Navy in 1946. It was a watershed. He learned discipline and began to excel academically. Graduation from the Navy's aviation electronics training school was his first true academic achievement, and his superiors began to recognize considerable promise in the young man. Judge Wallace did, too, and developed a new ambition to make something of himself.

Judge Wallace scored high on naval exams and received an appointment to the Naval Academy. For many young men, particularly those in similar modest circumstances, accepting such an opportunity would have been the obvious choice. But Judge Wallace was independent-minded. Still interested in becoming a lawyer, Judge Wallace consulted with a friend's father who was an attorney and decided to leave the Navy for a more general college education. He enrolled in San Diego State University, studied economics and political science, and graduated with honors and distinction in 1952. Judge Wallace was accepted to Boalt Hall Law School at the University of California at Berkeley, graded onto law review, and graduated in 1955. Although he was offered a prestigious position in the antitrust division of the Department of Justice, Judge Wallace chose to return to his hometown and join the prominent law firm of Gray, Cary, Ames & Frye (now DLA Piper).

### **Trial Lawyer and Judge**

Judge Wallace wanted to be a trial lawyer. He started trying minor cases and progressed to medical malpractice and complex business disputes. His trial schedule was relentless. As soon as the jury would retire to deliberate in one of his cases, Judge Wallace would start preparing for the next trial. He often carried more than 100 active files. He succeeded by out-preparing his opposing counsel.

Judge Wallace's attitudes about judges and judging crystallized during these heady days. He did not consider judges necessarily superior to the lawyers who appeared before them. Instead, he came to believe that "[t]he judge had his role to play in the process and I had mine." Judge Wallace had little interest in becoming a judge himself—he was enjoying trying cases.

In 1970, however, President Richard Nixon nominated Judge Wallace—then only 42 years old—to a newly created seat on the U.S. District Court for the Southern District of California. Some joked that Judge Wallace's trial opponents mounted a lobby to get him appointed and out of the opposing counsel's chair. After reflecting on the importance of public service, Judge Wallace accepted the assignment and began managing a busy trial court docket with the same energy he had brought to the bar. Less than two years later, President Nixon elevated Judge Wallace to the U.S. Court of Appeals for the Ninth Circuit, where he serves to this day.

### **Faith and Family**

Judge Wallace's father was a Catholic and his mother

Presbyterian, but neither was devout. At age 14, Judge Wallace joined the Church of Jesus Christ of Latter-Day Saints. His initial interest grew from a desire to associate with people he believed to be leading good lives. In college and law school, however, he grew increasingly interested in the religion's theology, which he embraced.

Judge Wallace credits his Mormon faith with giving him a sense of self-worth and the confidence that he could accomplish good things in his life. It also pushed him toward a life of service. He left a lucrative law practice and became a judge in part because of his desire to serve the greater good.

Judge Wallace married his first wife, Virginia, one year after he completed law school. Like Judge Wallace, Virginia had been raised in a difficult environment and had found the Mormon faith in her youth. They met at a church dance and together raised four children. Judge Wallace married his second wife, Elaine, when Virginia passed away, and married his current wife, Jenee, when Elaine passed away. Judge Wallace and Jenee now oversee a combined family of 15 children, 51 grandchildren, and 32 great-grandchildren.

Throughout his years as a father, trial lawyer, and judge, Judge Wallace readily accepted church assignments, often at great personal sacrifice. For 21 years Judge Wallace served in church administrative positions, including presiding over local Mormon congregations and training others, and serving as president of the church's San Diego Temple. These positions often required more than 20 hours of his time each week in addition to his many other duties. He continues his active service today.

### **International Work**

From the beginning of his judicial career, Judge Wallace used his vacation time to travel to other countries and train judges, lawyers, and government officials on the rule of law, the importance of judicial independence, and efficient court administration. As one legal writer observed, "[Judge] Wallace has traveled to some 60 countries, advising judiciaries on everything from combating corruption to implementing mediation programs to staving off interference by a military president."<sup>2</sup>

In the early 1970s, Judge Wallace started working with the Asia Foundation, a nonprofit organization committed to Asian development. He helped launch the Conference of Chief Justices of Asia and the Pacific, an organization that has brought chief justices together for more than 30 years to discuss best practices and court improvement. He

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also helped organize the Pacific Judicial Council and the Conference of Chief Justices of Eastern and Central Europe.

Judge Wallace facilitated the development of economic courts in the Peoples Republic of China and spearheaded a program to translate Hong Kong legal decisions, which are written in English, into Chinese, and make them available on the Internet. Judge Wallace understood that China needed a reliable economic law to attract investment, and the court decisions from Hong Kong provided a ready source. But Judge Wallace saw another, more important opportunity. The law of Hong Kong has a rich heritage of human rights, and he foresaw that as China advanced economically and secured economic rights, the influence of the Hong Kong decisions would help secure political rights.

Judge Wallace's work has extended to the Middle East, where he is on a first-name basis with the presiding judges in virtually every country. His initiatives in Africa have led to substantial advances in the judicial efficiency of several countries. In Thailand, he is referred to as the "father of the courts." In Guatemala, he helped implement a travelling court system in which a judge and mediator, aboard a bus converted to a mobile courthouse, visit rural areas and resolve disputes.

Judge Wallace has been a life-long jogger, and judges around the world speak of having seen him jogging the streets of their cities before meeting with them to transmit enthusiasm for the judiciary and the rule of law.

For his work both at home and overseas, Judge Wallace received the 2007 Edward J. Devitt Distinguished Service to Justice Award, which the American Judicature Society confers on Article III judges whose careers have been exemplary. Justice Sandra Day O'Connor, who has worked with Judge Wallace in Bahrain and other countries, says that, "No one has done what he has done in terms of improving the judicial systems around the world."

### **The American Inns of Court**

Judge Wallace's influence has been no less significant at home. In 1977, while visiting England, Judge Wallace encountered the English Inns of Court. To be called to the bar and practice as a barrister in England and Wales, an individual must belong to one of four inns. The inns are professional bodies that provide legal training, selection, and regulation.

Impressed by the inns and their approach to mentoring members of the bar, Judge Wallace suggested to Chief Justice Warren Burger that a similar program be started in America.<sup>3</sup> The Chief Justice asked Judge Wallace to explore the idea, and six months later Judge Wallace returned with a proposal to implement Inns of Court nationwide, starting with a pilot program. Today, the American Inns of Court actively involve more than 29,000 judges, attorneys, legal scholars, and law students.<sup>4</sup> One of the inns bears Judge Wallace's name in honorarium.

### **Judicial Administration**

Judge Wallace has also been an innovator in judicial administration. His interest in this subject dates back to the

1970s, when he first studied the topic at the Kennan Institute in Washington, D.C. Judge Wallace has put his theories into practice through numerous high-level administrative roles, including chief judge of the Ninth Circuit, as a member of the Judicial Conference of the United States (including its executive committee), as a member of the Judicial Council of the Ninth Circuit, and as a proponent of state-federal judicial councils.

Judge Wallace was the first chief judge to establish a long-range strategic plan for the Ninth Circuit; assisted in the creation of task forces to study gender, race, ethnic, and religious bias in the federal courts; and developed a cooperative education program with certain states for *habeas corpus* cases. As chief judge, he also helped develop a unique appellate settlement program; established an office to handle Criminal Justice Act applications, motions, and attorneys' fees; and developed a *pro se* litigant program that helps secure *pro bono* assistance for cases requiring oral argument.

Judge Wallace's approach to judicial administration is consensus building, which often requires tremendous patience. That is not always an easy task for Judge Wallace. He has joked that one day he will write a book entitled *I Want Patience, and I Want It Right Now!*

Judge Wallace's extensive background as an administrator provides a unique perspective on the issue of whether the Ninth Circuit, the nation's largest, should be divided. Judge Wallace strongly opposes division of the circuit. He is proud of the collegiality the circuit has maintained despite the differences in judicial philosophy of some of its members. What's more, he believes that division would only increase the lack of consensus on legal issues among the circuit courts. Judge Wallace believes the country would be better off with fewer, larger circuits instead of more, smaller ones.

### **Judicial Philosophy**

Judge Wallace reportedly has said that no one will remember his judicial opinions.<sup>5</sup> It is true that his straight-to-the-point writing style, which eschews footnotes and *dicta*, does not always produce media-worthy sound bites. But Judge Wallace will be remembered for his judicial philosophy, which placed him at the vanguard of conservative jurists in the early 1980s. More than once he was considered seriously for a seat on the U.S. Supreme Court.

The cornerstone of Judge Wallace's judicial philosophy is "judicial respect," by which he means respect for the distinct roles of the judicial, executive, and legislative branches of the federal government. For some, this philosophy signifies a stubborn unwillingness to wield judicial power to rectify perceived social wrongs. For Judge Wallace, however, this philosophy expresses his profound belief that the democratic process works so long as the judiciary does not eliminate the political branches' incentives to meet the challenges that the nation will inevitably face.

An early example of this at work is *Anti-Monopoly, Inc. v. General Mills Fun Group*,<sup>6</sup> a decision that

rigorously adhered to the plain language of the Lanham Act even though it was obvious that the Trademark Bar and Congress would be displeased with the result. The holding of the case was to overrule a district court's judgment that Parker Brothers' "Monopoly" trademark was valid and enforceable. The issue was whether the "Monopoly" trademark still denoted the source of the game (Parker Brothers), or whether it had evolved in public usage to identify the game itself, much as chess is the name of a particular form of checkerboard contest.

Judge Wallace's opinion found that the district court had not sufficiently considered the issue of whether members of the consuming public used the term Monopoly simply to name the game they wished to purchase or play. The problems this inquiry would create for trademark owners of successful games (once the games' copyright protection ran out, as Monopoly's had) were clear, but as Judge Wallace saw it, these were problems for Congress, not the courts, to address. Congress promptly did so, with new language in the Lanham Act that effectively overruled the effect of the decision. As the Supreme Court of New Jersey later recognized, "[t]he *Anti-Monopoly* decision created an uproar among commentators and practitioners," and "Congress responded by amending the Lanham Act to make clear that trademarks and service marks may distinguish unique products and products whose source is unknown."<sup>7</sup>

In Judge Wallace's view, this feedback loop between Congress and the courts is precisely what is supposed to happen in the American system of separated powers. The courts must interpret the law, without regard for whether it reflects sound policy, and the political branches may respond by changing the law if they disagree.

### The Limits of Federal Law

Judge Wallace's judicial philosophy is also deeply concerned with the boundaries of power set by American federalism. He rejects the presumption that "the federal courts are better guardians of individual rights than the state courts."<sup>8</sup> As he has written, "[a] considered decision not to further expand federal jurisdiction, based on concerns grounded in federalism, should be viewed not so much as closing the doors to the federal courts as redirecting litigants to the doors of the state courts."<sup>9</sup> The jurisdiction of the federal courts should be reserved for truly national issues.

Consistent with his limited view of the power of the federal courts, Judge Wallace questions whether there should generally be less federal law, especially federal criminal law. He has repeatedly raised concerns about whether some crimes should be prosecuted, if at all, only in state courts, and has called upon the federal

government to "have a turnaround on federalization of crime."

### Conclusion

Judge Wallace's accomplishments would not only surprise his high school counselor, they are impressive by any measure. He has shared his judicial philosophy and insights on the judicial process in hundreds of opinions and more than 40 scholarly articles, introduced substantial new innovations in judicial administration, launched the American Inns of Court, raised a wonderful family, devoted countless hours to his faith, and traveled internationally for more than 40 years to improve courts around the world.

Now in his eighties, Judge Wallace shows few signs of slowing. He continues to exude an inspirational energy, optimism, and international outlook and to work as hard as many men and women half his age. Judge Wallace's legal hero, Abraham Lincoln, seems to have set the tone: "The leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for tomorrow which can be done today. ... Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it which can then be done."<sup>10</sup> The unbounded energy and tireless work of Judge J. Clifford Wallace provide a fitting example of Lincoln's ideal lawyer. ☺

### Endnotes

<sup>1</sup>Lucinda Eddy, *War Comes to San Diego*, THE JOURNAL OF SAN DIEGO HISTORY (Spring 1993), available at [www.sandiegohistory.org/journal/93spring/warcomes.htm](http://www.sandiegohistory.org/journal/93spring/warcomes.htm) (last accessed May 24, 2014).

<sup>2</sup>Amelia Hansen, *Federal Judge J. Clifford Wallace Travels the World Promoting the Rule of Law*, California Lawyer Magazine (Aug. 2009), available at [www.callawyer.com/common/CLprint.cfm?eid=903327&evid=1](http://www.callawyer.com/common/CLprint.cfm?eid=903327&evid=1) (last accessed May 25, 2014).

<sup>3</sup>Hon. J. Clifford Wallace, *Birth of the American Inns of Court*, 25 BERKELEY J. INT'L L. 109, 109-110 (2007).

<sup>4</sup>See [home.innsofcourt.org/about-us/get-to-know-the-american-inns-of-court.aspx](http://home.innsofcourt.org/about-us/get-to-know-the-american-inns-of-court.aspx) (last accessed May 25, 2014).

<sup>5</sup>See *supra* note 2.

<sup>6</sup>611 F.2d 296 (9th Cir. 1979).

<sup>7</sup>*Christian Science Bd. of Directors of First Church of Christ Scientists v. Evans*, 520 A.2d 1347, 1354 (N.J. 1987).

<sup>8</sup>Hon. J. Clifford Wallace, *The Law of Federal Courts*, 62 TEX. L. REV. 191, 195 (1983).

<sup>9</sup>*Ibid.*

<sup>10</sup>The Collected Works of Abraham Lincoln edited by Roy P. Basler, Volume II, *Notes for a Law Lecture* (July 1, 1850), p. 81 (spelling updated).