

Judicial Profile

H. ROBERT CHAPIN

Hon. Elizabeth Wall Magner U.S. Bankruptcy Judge, Eastern District of Louisiana

SHE HAD BEEN called a lot of names: soccer mom, homeroom mom, Brownie troop leader. Introducing herself as Elizabeth, she strode into a sun-drenched banquet hall crowded with students, professors, and judges. She was armed with a briefcase slung around her shoulder that said business and a grin on her face that announced confidence. Bankruptcy Judges Douglas D. Dodd and Harlin D. Hale together had pleaded with her to address the group to kick off Louisiana State University's annual seminar on bankruptcy.

Judge Elizabeth Wall Magner spoke without hesitation: "I believe that in this day and age, bankruptcy law is the most exciting and challenging area of practice. It has been an absolute pleasure, and a tremendous honor working with such an excellent caliber of attorneys. In practice, participating in trials, arguing motions, and confecting 'plans' is a fun way of saving peoples' livelihoods." She paused thoughtfully, then said, "Of course, it doesn't hurt that it's the only area of law where you get to be a CFO when you're 26!"

That was my first impression of Judge Magner. Later, I would observe that her ardor for the practice of bankruptcy law that she had shown that day in October 2008 was nothing unusual for her. Judge Magner wears her unwavering fervor for the judicial process as a badge of pride. "I'm just a law nerd," she candidly admits. The upcoming fourth anniversary of her appointment to the bench coinciding with this issue of *The Federal Lawyer* offers readers the perfect occasion to get a glimpse into this outstanding federal lawyer's story.

Elizabeth Wall grew up in Baton Rouge. The oldest of four children, she had two sisters and a brother. For as long as she could remember, she wanted to be a doctor. This aspiration seemed perfectly normal for Elizabeth, as the Wall family had a history of provid-



ing Louisiana with doctors going all the way back to the time it first became a state. Growing up in a large family made her conscientious from an early age; a lifelong feeling of responsibility would accompany her unshakable status as the family's first child. As a precocious youngster, she excelled in sciences and mathematics.

When she was a teenager, her father gave her a job assisting him in his private surgery practice. This experience instilled in her the first inklings of professionalism. For three summers, she worked the same exhaustingly long hours as her father. In describing their return home each day, she explains, "I was always worn out by dinner time. But my father somehow found the energy to call the families of every single recovering patient to see how they were doing. His personal touch showed how much he cared about his patients."

Elizabeth graduated from an all-girl's Catholic school and immediately enrolled in Louisiana State University. Because she wanted "to do deals," she

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majored in accounting and minored in finance and graduated in three years. As a college student, she also worked at Louisiana National Bank, which offered her the opportunity to work on the cutting edge of managerial accounting. She climbed the corporate ladder from gofer to analyst and ended up in the Managerial Accounting Department, where she scrutinized financial profit centers.

Immediately after graduating from college, Elizabeth attended LSU's Paul M. Hebert Law Center, where she did three things: "lived life, loved school, and worked hard." On the side, she worked as a law clerk for Sanders, Downing, Kean & Cazedessus—a precursor to Kean Miller, Milling Benson, and Phelps Dunbar law firms. She still wanted to "do deals," and decided that tax law was the best route for her. After graduating from law school, she continued working at Milling Benson for over two years. After that she was hired by Lemle & Kelleher. That same year she married her husband, also an attorney, with whom she would soon raise two children—a boy and a girl (as well as their pet poodle). Four more years passed, and Elizabeth became one of three female partners at Lemle & Kelleher. After six years in the partnership, she resigned and hung out her own shingle. She practiced solo for 10 years until Sept. 9, 2009, the day she was sworn in as a bankruptcy judge.

In her days working as an associate at both firms, Elizabeth discovered that she had an inexplicable drive to do commercial litigation. "There is no objective reason why I should have been successful in that field in New Orleans right after law school. I didn't fit the mold of the person who played golf with clients or schmoozed with them at dinner. I just worked hard, worried mostly about winning cases, and communicated regularly with clients." That formula was her prescription for success. Elizabeth built her connections from the ground up as her clients became her most reliable business network. "My father had always taught me that the biggest asset you have and best defense against malpractice is knowing your clients."

Elizabeth began her connection with the bankruptcy specialty in an unusual way. The OPEC embargo ended, precipitating a drastic economic downturn. "Every kind of deal contingent on the oil market went through the floor. Bankruptcy suddenly became an attractive solution for companies defaulting on commercial loans. For the first time, there was a Bankruptcy Court and it was *federal*." One of the partners at Milling Benson had experience in bankruptcy law, and he knew she had taken a course on the topic when she was in law school. "We became the bankruptcy department overnight. It was very serendipitous since I thought my field was going to be tax law."

Those were wild days, according to Judge Magner. "It's hard to believe this now, but I was trying cases

alone two weeks after being sworn into the bar. When I ran into my first big problem preparing to argue on a motion, I had this scary moment. I went to the firm's library, and there were only three volumes of the *Bankruptcy Reporter*! There was just no jurisprudence." After some reflection, though, she realized that her situation was nothing but an opportunity to blaze her own trail. "It was an exciting field for a new lawyer because you couldn't be outgunned by your lack of knowledge." Elizabeth was grateful for her training in the ancient Roman civilian law tradition as practiced in Louisiana courts. Having cut her teeth on the Civil Code, which governs a vast array of subjects, she had a peculiar advantage in analyzing how Bankruptcy Code articles were constructed and how they fit together under broader policies and rules of public order. Louisiana lawyers and bankruptcy specialists have a lot in common, she says. "Our mutual task is to give life to a systematic body of law that the legislature enacts."

Elizabeth's personality fit well with bankruptcy practice. "It involved the managerial accounting aspects I loved. I got to wrestle with great questions from my accounting days, like 'what makes a business profitable?'" Bankruptcy practice's frenetic pace triggered an intuition in Elizabeth that had been developing since her early days working in family medicine. "I thrived on that type of uncertainty and pandemonium. That's why I'd probably be an ER physician if I weren't a lawyer." As she gained experience in bankruptcy law, she incrementally upped the ante by taking on new and challenging projects. "I started out on very small files—suits on notes and foreclosures and worked my way up. First, it was several thousand dollar deals, then a couple hundred thousand, then million dollar deals, then two million, then 10, then 20—I just kept pushing forward."

Elizabeth developed a name for herself for her sternness in facing triage situations and for her fearlessness in expressing her opinions. She had a zest for making decisions with imperfect information and not worrying about it. "Part of me loved being aggressive, and part of me just hated routine." In a major prepackaged bankruptcy case involving exposure to asbestos, for example, with the corporate world's eyes on her, she persuaded the Third Circuit Court of Appeals to reverse the lower court. The 135-page opinion became precedent for reorganizing more than \$200 billion in corporate debt.

Although clearly confident, Elizabeth believes she owes much of her success to her willingness to negotiate. According to Judge Magner,

This characteristic is what made me less inclined to get into needless ego battles in litigation. Ambition is a great thing, but stubbornness can be fatal. I consider it a strong skill for lawyers to

be able to grovel, beg, plead, cajole—basically do whatever it takes to develop settlement or consensus. Recognizing when a settlement or deal is in your client's best interest is the key to success as a bankruptcy litigator. To avoid being "crammed down" upon, you have to be a positive participant in the system.

She credits her family with preserving a sense of humility. "I was very fortunate that both my husband and I supported each other, so my negotiating perspective remained unclouded from outside financial pressures."

It takes some moderate arm-twisting, but Judge Magner is willing to share some of her top bankruptcy war stories from this epoch. She begins the account with a chuckle, "I often wondered to myself—how did a good Catholic girl end up in a case like this?" The most absurd story goes like this:

One time, I represented a video poker truck stop owner in a real death match. It was no-holds-barred litigation against a prominent individual in Lake Charles. So we're in bankruptcy getting ready to go to court, and the night before trial, I get this strange phone call out of the blue. Basically, this anonymous guy tells me he has information helpful to my client and that he wants to meet me at the Holiday Inn in Jennings, Louisiana, at midnight. ... So, there I go. I take my male co-counsel with me as a chaperone (so that I don't end up at the bottom of the bayou), and meet this guy and he hands me two boxes of damning impeachment evidence. The day after, when the gaggle of lawyers on the other side put their witness on the stand, I ask him my first question. The next thing you know, they're all screaming and hollering objections—the judge was completely mystified—he didn't know what he stepped into.

Elizabeth lived to tell more shocking tales of frontier lawyering. One memorable event involved her dispensing legal advice to an emotionally disturbed client while he held her at gunpoint. But the case that took the cake in terms of physical difficulty was a filing that involved her litigating 165 motions in three months, taking 20 depositions in three foreign countries, reviewing 360,000 documents, and, just for good measure, ending with a five-week trial.

Elizabeth was appointed a U.S. bankruptcy judge for the Eastern District of Louisiana, at New Orleans, one week after Hurricane Katrina struck. In addition to fielding manifold legal problems in the wake of the city's devastation, she took charge of the situation from a disaster relief standpoint. "We [the Eastern District Bankruptcy Court] became a central locator when people went missing. For instance, we used the electronic filing system to get in touch with clients

and posted names and numbers of lawyers on our website."

She began her judicial career in charge of all of the consumer bankruptcy cases in the district. She had never handled a Chapter 13 consumer case before then. Her colleague, Judge Jerry A. Brown, took on the corporate cases. This bifurcated system developed because the Bankruptcy Code had just been revised in 2005 under the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA). "There was a lot of uncertainty. So when an issue came up, I refused to tell lawyers what I thought the answer was. I made them try cases. That's how it's supposed to work."

"I was fortunate that the lawyers in my bar were very cooperative with each other. Where the law was unclear, they consolidated cases allowing me to write opinions on the different issues presented by BAPCPA. Those opinions gave lawyers in my district the guidance they sought." Because of her ample solo practice experience in pushing the envelope by arguing new law, she had no fear of wading into previously undecided issues. "I'm used to sticking my neck out. No guts, no glory."

These circumstances led to a series of watershed opinions whereby Judge Magner breathed new life into bankruptcy courts that were involved in consumer cases. In one case, her court held that the "means test" statute did not prevent the bankruptcy court from exercising its discretion in granting a debtor a beneficial deduction. Judge Magner's grand exhortations of judicial power helped spark a national movement toward more policy-sensitive jurisprudence in consumer bankruptcy cases. She wrote, "The Bankruptcy Code embodies a flexible scheme for the reorganization of debt and the orchestration of a debtor's fresh start. ... No statute can anticipate every factual circumstance, and this Court does not believe that Congress intended to attempt such a feat. ... [W]hile the [means] test itself is mechanical, its application is not. The calculations derived from the means test are only presumptive, not definitive, and may be modified by the existence of 'special circumstance.'" *In re Devilliers*, 358 B.R. 849, 856–858 (E.D. La. 2007) (citing Bankruptcy Code § 707(b)(2)(B)(i)).

Over time, Judge Magner began to take on corporate cases in addition to her usual consumer docket. Her judicial philosophy continued to dovetail with her litigious experience. With new issues came new challenges in the form of pressures to dispose of matters hastily, but Judge Magner did not relent. "It's my job to try cases, and I am happy to do it. It's not my job to hint that parties should settle or try to induce them to do so. Trying cases is an appropriate means to resolve issues if the parties cannot or do not settle."

Judge Magner believes that the key to the entire process flourishing is her commitment to the judicial system's efficiency. "I don't let matters sit. I move my

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the 30-plus years I've been appearing before Barry Russell, it has always impressed me how efficiently he runs his courtroom," remarks Edward Wolkowitz, a bankruptcy attorney, professor, and trustee. "There are usually very few continued matters on his calendar," Wolkowitz adds, "which is a testament to Judge Russell's ability to get the matter resolved the first time around."

It should also be noted that, beyond being thought of as a knowledgeable and capable judge, Judge Russell is also extremely well liked by both fellow judges and practitioners. Judge Neiter describes him as "decent human being," noting that he truly considers the impact of his rulings on the people before him. Kenneth Klee, who has appeared before Judge Russell on numerous matters throughout the years, recalls Judge Russell's remarkable good humor while being splashed by Klee's children during a white-water rafting trip. Even to those who do not know him well, Judge Russell's energetic nature, good spirit, and easy and sincere smile are hard to overlook.

Thirty-five years have passed since Judge Russell took the bench, but fortunately for the attorneys and parties appearing before him, he has no plans to retire. Helping people resolve their problems gives him too great a feeling of satisfaction. He looks forward to coming to work every day, seeing his staff, and doing everything he can to make a meaningful and worthwhile contribution to society. His enthusiasm for the law, for teaching, and for improving society is palpable, and, quite frankly, it is difficult to imagine him ever slowing down. **TFL**

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docket. I have internal flags and trigger points, and if the case doesn't go according to the pretrial plan, I call the whole group in for a status conference." (Not always a popular move.)

A central feature of Judge Magner's court is its fastidious organization according to extremely rigorous local rules. Remarking on this subject, she explains, "I came from private practice believing that if the judiciary demands a certain level of behavior—litigants will rise to the expectation." For instance, her court enforces a strict ethics program through the use of procedure. "As I see it, lawyers are going to settle their discovery disputes among themselves *if they can*. If they can't, they'll file a motion to quash or compel. When that happens, I expect them to call chambers and let us know. We normally set the dispute for hearing within 48 hours, at 7:30 a.m. if necessary, because nobody is working at that time. I get down to the nut quickly and then send out detailed orders. I think that avoids delay, so people can't force the other side to lose time."

Judge Magner adapts her strict expectations for herself into what she asks of the litigators who appear before her. "Federal practice is and should be exacting. I expect lawyers to be prepared, on time, organized, and ready to go because I work very hard to be that way." Adopting features of the inquisitorial style routinely practiced in Louisiana state courts, Judge Magner commands a spectacular performance from her litigants. "As soon as a lawyer opens, I may start peppering him with questions, bringing out other relevant code articles and policies. Very often, I get into intellectual-big-picture discussions with the coun-

sel appearing in front of me. I don't mind going round and round with lawyers for hours on a motion; those are just opportunities to soak it all in."

Addressing misconceptions about bankruptcy law, Judge Magner says, "There is a prejudice with both bench and bar that only Chapter 11 cases are important. The perceived idea is that those are the cases that give you the press, that make you an 'important judge' or that make real 'precedent.' However, the dirty little secret on the bench is that consumer cases make up probably 90 percent of the docket. So, when you look at the big picture, consumer cases in fact represent a lot of people, money, and issues that move through the system."

What does bankruptcy law mean to Judge Magner, and what should it mean to aspiring lawyers? The answer is, in her own words: "It means having to adjust quickly, not knowing where you're going, moving your brain—and your feet—quickly. And it means matching wits with really good, smart lawyers." **TFL**

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