

JUDICIAL PROFILE: PAUL CASSELL

by Jonathan O. Hafen

Television lawyer extraordinaire Perry Mason profoundly motivated a young Paul Cassell. Although only in junior high at the time, that TV court drama made his career choice an easy one. In fact, he wanted to skip high school and college and go straight to law school. Because that was not possible, Judge Cassell instead focused his attention on debate.

He excelled as a debater at Caldwell High School in Caldwell, Idaho, and later in college. He initially enrolled at Stanford University. However, to enhance his opportunities in competitive public speaking, Judge Cassell left Stanford for a time to attend Western Washington University, which had a top debate program. Judge Cassell then returned to finish his undergraduate work at Stanford. In addition to debate, Judge Cassell participated in a number of other collegiate activities, including Stanford's intercollegiate ultimate frisbee club team. One of Judge Cassell's claims to fame is scoring a touchdown against defending ultimate frisbee national champion Santa Cruz.

Judge Cassell remained at Stanford for law school, where he served as President of Stanford's Law Review. In that role, he learned the difficulty of managing others with only moral authority as a motivational tool. Judge Cassell notes with a smile that he no longer has that problem.

Following graduation from law school, Judge Cassell clerked for Judge Antonin Scalia, who was then a judge for the U.S. Court of Appeals for the District of Columbia. In addition to enjoying his personal relationship with Judge Scalia, Judge Cassell learned many things during his clerkship. For example, Judge Scalia was assigned a case involving federal regulation of sausages. The law clerks were joking about how this case presented an intriguing opportunity to deal with both halves of the old aphorism that the two things people never should see being made are law and sausages. Judge Scalia walked in on that conversation and in a friendly way reminded his clerks that all cases mean a great deal to the litigants and must be taken seriously by the judiciary.

Following his clerkship with Judge Scalia, Judge Cassell clerked with Warren Burger, Chief Justice of the United States Supreme Court. Unlike Judge Scalia, who had a much more academic approach to the law, Judge Burger believed that legal opinions must be for "real world lawyers." Justice Burger emphasized to Judge Cassell that judicial opinions should be practical and to the point, giving clear guidance to practitioners. Judge Cassell intends to pursue that philosophy.



After his clerkship with Justice Burger, Judge Cassell worked for the Department of Justice as an Associate Deputy Attorney General. During his time with the DOJ, Judge Cassell enjoyed his experience with civil litigation, which included antitrust, bankruptcy, and environmental cases. As part of his responsibilities, Judge Cassell defended federal court sentencing guidelines. Ironically, in that capacity he took the position that you cannot trust district court judges to make decisions without appropriate guidance. Now, as a district court judge himself, he has a slightly different view on that subject.

Judge Cassell later served as an Assistant U.S. Attorney for the Eastern District of Virginia. There he tried 18 felony jury cases. Many practitioners appearing before Judge Cassell have heard about his emphasis on making the litigation process more efficient. Judge Cassell attributes this view to his experience in the Eastern District of Virginia, which maintained a "rocket docket," making it the fastest moving federal judicial district in the country.

For about ten years prior to his appointment to the bench, Judge Cassell was a professor at the University of Utah College of Law. There he taught courses including evidence, criminal procedure, criminal law, and advocacy. As a law professor, Judge Cassell also published numerous law review articles on issues important to him, such as crime victim's rights and overhauling the "Miranda Rule."

After being a self proclaimed “reform-minded litigator and professor,” Judge Cassell now views his role as being an objective decision maker. While Judge Cassell views that function as often more difficult than advocacy, he does enjoy the balancing of facts, law, and public policy intrinsic in the judicial process.

Judge Cassell also enjoys reading briefs from his former law students, particularly when those briefs cite to cases from Judge Cassell’s class casebooks. Judge Cassell takes such things in stride and is pleased that his former law students were paying attention in class.

In terms of a caseload breakdown, Judge Cassell has approximately 300 civil cases and 100 criminal cases. Judge Cassell devotes at least nine out of ten work hours to his civil cases.

Practice Pointers

- Judge Cassell has prepared a website containing important information for those appearing before him. He encourages attorneys to visit http://www.utd.uscourts.gov /judges/cassell_pra c.html.
- Counsel should recognize that at a hearing Judge Cassell typically is prepared to issue a ruling when he takes the bench. Prior to the hearing, he will have read the briefs and supporting materials, discussed key issues with his clerks, and drawn certain conclusions. Nevertheless, he does believe that oral argument has an important role in the decision making process. Consequently, he will give each party the chance to be heard and will seriously consider arguments raised. Because of his level of preparation, Judge Cassell notes that power point presentations may not always be helpful because they restrict flexibility during oral argument. Judge Cassell also prefers to focus on key issues rather than case background or who is the “good guy” or the “bad guy.”
- Practitioners should also be aware that Judge Cassell and his staff look carefully at evidence and authority cited in briefs. For instance, if the plaintiff says in a pleading that Exhibit 35 will make her case, Judge Cassell will often personally review Exhibit 35 prior to the hearing.
- Judge Cassell is slowly implementing some of the processes he learned in the Eastern District of Virginia’s “rocket docket.” For example, with respect to motions to suppress evidence in criminal proceedings, Judge Cassell routinely directs advanced briefing prior to the hearing. This allows him to usually rule from the bench, often avoiding a potentially lengthy delay while the parties await a decision.
As Judge Cassell gets more experienced, he is hoping to be able to conform to a “30/30 Rule”—once a motion is fully briefed, he will hold the hearing within 30 days and provide a ruling on the motion within 30 days.
Judge Cassell also is attempting to hold parties and their counsel to trial dates. In that regard, Judge Cassell has adopted a policy of not granting continuances on trial dates absent good cause shown. He feels that this policy helps to keep the parties on track toward resolving their cases expeditiously. He also believes an additional benefit of this approach is to allow the court to control its docket. Nevertheless, Judge Cassell wishes to emphasize that if there is a good reason to continue a trial date, he has no problem granting such a request.
- Judge Cassell is implementing new procedures for jury selection. Practitioners will find a form on his website containing a questionnaire which typically goes out to all jurors. This questionnaire contains a much more extensive survey than is usually presented to jurors during voir dire. After the court receives responses to this survey, counsel on both sides, as well as the court, have the opportunity to carefully review survey responses. This allows the court and counsel to be better prepared for jury selection, as well as saving time in the jury selection process.
- With respect to discovery disputes, if counsel are unable to reach any of the magistrate judges, Judge Cassell invites parties to contact him to resolve disputes. He takes such disputes seriously and will

try to understand the issues before giving a ruling. It is important to Judge Cassell that unreasonable lawyers not get the upper hand during discovery.

- Judge Cassell also counsels practitioners appearing before him to have a high level of civility toward one another, toward witnesses and toward the court. He notes that judges have very long memories, particularly with respect to inappropriate conduct by counsel.
- Judge Cassell has two full-time law clerks and a half-time law clerk. The half-time law clerk position rotates every two years, while the other two clerk positions rotate annually. Judge Cassell also employs a secretary who is in the office from 9:15 a.m. to 1:15 p.m. every day. In addition, Trisha Little serves as his case manager. Ms. Little comes from the district court clerk's office and is very experienced.
- Judge Cassell is interested in receiving feedback from attorneys. He notes that he is not set in his ways, and he is trying to do what is best for lawyers, the parties, the public, and the court. If practitioners have ideas to improve the way that he runs his court, Judge Cassell welcomes such input.

While Judge Cassell will no longer be able to be the Perry Mason in the courtroom, he very much looks forward to participating in real world courtroom drama.