

## Judicial Profile

DENISE SEBASTIAN

# Hon. Peter Beer Senior U.S. District Judge, Eastern District of Louisiana

A REGULAR MOTION day for Judge Peter Beer, senior U.S. district judge for the Eastern District of Louisiana in New Orleans, usually begins about 9:35 on Wednesday mornings. Wearing a blue button-down oxford shirt, khaki pants, and Top-Siders without socks, Judge Beer casually puts on the tie that hangs on the back of his office door and the robe that is draped over

the chair. He saunters down the short hall to his courtroom and, after a short knock, opens the door and announces, "Keep your seats, folks." His court reporter of 27 years, Rhonda Hardin, smiles saying, "That's the Pete Beer oy yez."

With court in session, Judge Beer's eyes squint while he listens intently to the attorneys and weighs the arguments in his mind's eye. After hearing arguments from the plaintiff and defendant, he says respectfully, "Thanks for all of the good work on both sides." Recessing court and taking the matter under advisement, Judge Beer strolls back to his chambers down the hall—a tunnel of sorts, brimming with framed memorabilia documenting his life as an accomplished sailor, veteran of two wars, admiralty lawyer, New Orleans city councilmember, state appellate judge, and federal district judge for more than 27 years.

Opening the door to his chambers, he rattles the wooden boat-shaped sign that reads, "Old sailors don't die, they just get a little dingy." "This self-deprecating humor is characteristic," said Judge A. J. McNamara, who served as chief judge of the Eastern District and is currently a senior judge. "Pete has the ability to laugh at himself. But he is possessed with an ideal judicial temperament, that rare blend of firm control in the courtroom while not being overbearing. He is respected by both his colleagues on the bench and the lawyers and litigants who appear before him." And lawyers agree with this assessment, as shown by their comments in the *Almanac of the Federal Judiciary*: "He has a good judicial temperament ... is courteous to lawyers ... affable, has a great sense of humor and is pretty laid back."

What is not laid back about Judge Beer is his commitment to fairness and evenhanded justice and to the protection of due process for everyone who appears before him. According to Senior Judge Adrian Duplantier of the Eastern District of Louisiana, who has served with Judge Beer for his 27 years, "He displays sound judgment, empathy to those less fortunate, and most of all a sense that he is first and foremost a servant of his beloved nation. As a result of a lifetime of public service, Peter Beer has been a consummate federal trial judge."

Judge Beer was born in New Orleans. At the time of his birth, however, his family was living in São Paulo, Brazil, where his father, Mose Beer, worked for a New Orleans coffee company. His mother, Rhett Lowenburg Beer, traveled by steamer from São Paulo to New Orleans to deliver Judge Beer on April 12, 1928. Both of his parents were from Natchez, Miss., where the historic Mose Beer House still overlooks the Mississippi River. His mother's ancestor, John Meyer, was the aide-de-camp to Gen. P.G.T. Beauregard, the famous Confederate general. His grandfather, Sim Lowenburg, was the mayor of Natchez for many years.

Raised in New Orleans, Judge Beer grew up first on Hurst Street and later on Pine Street, in an area referred to as "Uptown." He attended LaSalle School and Newman School, where he played baseball. Like most men of his generation, World War II interrupted his traditional path to college, and in April 1945, after graduating early from Newman, he volunteered for the U.S. Army and became an infantry corporal. Honorably discharged at the end of the war in 1946, he attended Tulane University in New Orleans on the GI Bill, graduating in 1949. He was commissioned as a second lieutenant in the Air Force Reserve. Judge Beer attended Tulane Law School, where he was president of the Intramural Council and the Student Bar Association.

Called to active duty when the Korean conflict began, he graduated early from Tulane Law School in 1951 and served as first lieutenant and later captain in the Judge Advocate General's Corps of the U.S. Air Force and was awarded the Bronze Star. He remained a member of the Air Force Reserve and retired with the rank of lieutenant colonel.

Upon his return to New Orleans from Korea,

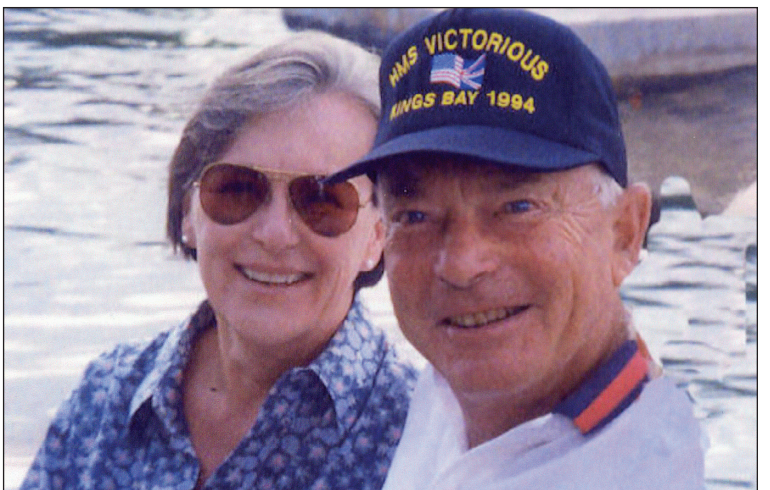
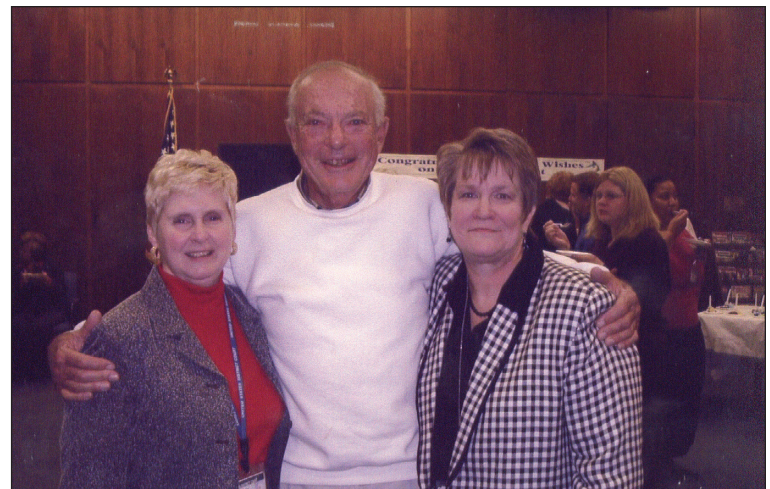
Judge Beer became an associate in the law firm of Montgomery, Barnett, Brown and Sessions in 1954 and remained with the firm for 20 years, eventually becoming a managing partner. He served as District A councilmember on the New Orleans City Council from 1970 until 1974, when he was elected to the Louisiana Court of Appeal.

His writing that was done early in his tenure on the state appellate bench reveals his philosophy regarding fairness under the law. In *Succession of Fuselier*, 325 So. 2d 296 (La. App. 3d Cir. 1975), the court held that a testator's illegitimate daughter had the capacity to receive the property of her father under his will. In a footnote to his opinion, Judge Beer made the following personal observation: "I believe that Article 1483 of the Louisiana Civil Code is violative of the equal protection clause of the Constitution. ... I believe that our Civil Code must be interpreted in the bright reflected light of the Constitution, and I believe that the Constitutional safeguard of equal protection connotes an ever changing, always vibrant quest for fairness and impartiality in the administration of justice." His assessment of the article in the code was accurate; Louisiana Civil Code Article 1483 was declared unconstitutional and repealed in 1979 (Acts 1979, no. 607, section 4).

In December 1979, President Jimmy Carter appointed Judge Beer to the federal bench as an independent. During his confirmation hearing, Sen. Russell Long (D-La.)—who was chairman of the Senate Finance Committee and described as the busiest man in the Senate—attended the hearing in order to endorse Judge Beer, saying, "Mr. Chairman, Peter Beer is a competent and conscientious individual who has the credentials and the necessary judicial temperament to perform admirably on the federal bench. I wholeheartedly endorse his appointment as a federal judge."

During Judge Beer's confirmation hearing, when asked by Sen. Patrick Leahy (D-Vt.) to comment about the influence a judge's background and temperament may have on his or her rulings, Judge Beer responded, "I think all of us are a product of our own growth. ... And I think we are constantly charged with the responsibility of trying to be evenhanded in the administration of justice, regardless of those persuasions." And for more than 27 years, Judge Beer has reiterated this judicial philosophy; his work is replete with his notion that, above all, the judiciary should make decisions based on fairness, remembering first the constitutional guarantee of due process.

This philosophy is clearly illustrated in Judge Beer's July 28, 1993, Minute Entry in *U.S. v. Sheena Madison*, 1993 WL 293287 (E.D. La.) and is especially timely in light of the Supreme Court's recent decision in *United States v. Booker*, 534 U.S. 220 (2005). In the first case, Madison had been convicted of conspiring to possess—and possessing—cocaine, along with intent to distribute it, in addition to knowingly using



(top photo) Judge Beer on his horse at the Elkhorn Ranch in Big Sky Montana. Judge Beer was attending FREE's Seminar Series for federal judges and law professors; (middle photo) Judge Beer with his staff. Rhonda Hardin has been his court reporter since he was appointed to the federal bench in 1979. Terrie Galle has been his secretary for more than 20 years; (bottom photo) Judge Beer and his wife Margie on the boat near Houma where they evacuated after Hurricane Katrina.



and carrying a firearm in connection with drug trafficking. Judge Beer imposed a downward departure sentence of 15 years, rather than 25 years, as established in the federal sentencing guidelines. When the Fifth Circuit Court of Appeals remanded the sentence, *See United States v. Shenna Madison*, 900 F.2d 178 (5th Cir., 1993), Judge Beer responded—

The ultimate responsibility for a departure must remain with the sentencing judges. To have it any other way is to deprive the judicial system of an ingredient that should be preserved. That ingredient is judicial common sense.

There are only about 500 of us out here doing this work. We are vastly different in many, many ways, but there is one thing that pretty much represents a common thread among us and it is a sense of evenhanded fairness which I believe forms the cornerstone of our sentencing system.

It is difficult, perhaps impossible, to quantify the storehouse of common sense that has been built up by U.S. district judges in matters of sentencing but it is, I believe, a palpable force for fairness. When the use of that palpable force comes into conflict with a “minimum” then the conflict is one that needs to be evenhandedly resolved.

I believe that a convicted defendant has a constitutional right to have his sentencing judge make use of that judge’s store of common sense.

To erode a convicted person’s right to this judicial function is to erode that convicted person’s right to due process to a degree that is constitutionally unacceptable.

When I sentenced Madison I had the benefit of having observed her throughout the trial, and particularly at the time she testified. I had no flash of insight only a gut feeling that she might be salvageable. Thus, when it came time to impose sentence I felt that 25 years was, essentially, life imprisonment. I just couldn’t see it in the circumstances of this case, her rap sheet to the contrary notwithstanding. Fifteen years seemed to me to hold out a slim chance that she might be able to make it back to the mainstream—a likelihood, I felt, that would almost surely be diminished by a 25-year sentence.

I just felt the situation called for this final gamble in behalf of this defendant. What more can I say. ... For those reasons I am unable to increase my original sentence. 1993 WL 293287.

After Judge Beer refused to change his sentence, the U.S. attorney brought no further appeal. Madison



Judge Beer’s sailboat (with its hurricane damage repaired) in the New Orleans Marina.

served her sentence, completing several computer training programs while in confinement. She is now gainfully employed in the computer industry and communicates with Judge Beer annually.

In February 2005, Judge Beer received a letter from a local attorney recalling the judge’s opinion in a 1992 admiralty case. The attorney said, “I have never forgotten it, both for its eloquent statement as to the proper function of a judge and for its effect on my client,” a Greek national who owned a small shipping company. Judge Beer’s opinion read in part,

I firmly subscribe to the proposition that U.S. District Judges are not just bystanders who must restrict their actions to simply viewing the passing parade of litigation and litigators. I believe they have a duty to apply their common sense and store of experience to matters that come before them for such action as is appropriate. I can think of few more unacceptable usages of the arresting power of a U.S. District Court. ... It cries out to be reckoned with in a manner that permits the [c]ourt to make use of its common sense and experience and that is what I have tried to do here.

The attorney’s letter continued, “At that time you issued the opinion, my client had several vessels being held up in state courts for exorbitant amounts. Because they were wage claims, the shipowner had

to put up security itself, which was a very substantial economic burden on a small shipping company. Your decision was the first ray of hope my client received that there was some understanding in the court here that common sense would dictate.” The letter concluded with the following words: “They described you as a good and ‘brave’ judge.”

Several months ago, Judge Beer received the Justice William J. Brennan Jr. Award for his continued service to the University of Virginia Law School, from which he had received an L.L.M. in the judicial process in 1985 and where he has participated in the school’s National Trial Advocacy Program, a training seminar for trial lawyers, for many years. Accepting the award, Judge Beer said,

In 1956 President Eisenhower appointed William J. Brennan Jr. to the Supreme Court. At the press conference announcing his recess appointment, Judge Brennan was asked how he would fare as a new justice. Judge Brennan replied that he would be like the mule that was entered in the Kentucky Derby. “I don’t expect to distinguish myself, but I do expect to benefit from the association.” I have a compelling notion that unlike the justice I really will not distinguish myself in any respect whatsoever, but I, also, am very grateful and much honored by the association.

This introduction to his acceptance speech was typically self-effacing, but the remainder of his remarks took a more serious tone:

Permit me, please, to take just a moment more of your time. I don’t feel that I would be fully respecting the lesson of Mr. Justice Brennan if I did not refer, in this disturbing time, to his concern for strict adherence to procedural fair-

ness as a precondition to effective protection of individual rights. ... His zeal for due process was uninhibited, uncomplicated and uncompromised by political pressure. He would, I believe, tell us that the so-called test is not as to the status of accused but the status of the nation dealing with accused ... and that in this great nation, due process is the order of the day. This is no suggestion of leniency for vicious murdering terrorists and traitors; it is simply recognition of the majesty of [c]onstitutional due process in America. Thank you.

With those remarks, made to a rather hushed, surprised audience, Judge Beer reiterated his judicial philosophy that he has maintained throughout his tenure on the federal bench: fairness, common sense, and due process are the “order of the day.”

### Postscript

Following Hurricane Katrina, Judge Beer evacuated to southwestern Louisiana and lived on a boat for several days, facilitating the opening of the Federal Court for the Eastern District of Louisiana in Houma, La. Judge Beer lost his house on Henderson Point to Katrina’s tidal surge, but he continues to assist U.S. District Judge L.T. Senter in the Southern District of Mississippi and continues to serve as a senior judge for the Eastern District of Louisiana. **TFL**

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*Denise B. Sebastian has served as Judge Beer’s permanent law clerk for the past three years. Originally from Natchez, Mississippi, she graduated from Louisiana Tech University with a B.A. in journalism and from Loyola Law School in New Orleans. She clerked for Hon. Harry G. Walker with the Mississippi Supreme Court and worked in the oil and gas industry for many years.*