

Judicial Profile

LANA CHIARIELLO AND REBECCA POATE

Hon. Melvin T. Brunetti U.S. Circuit Judge, Ninth Circuit Court of Appeals

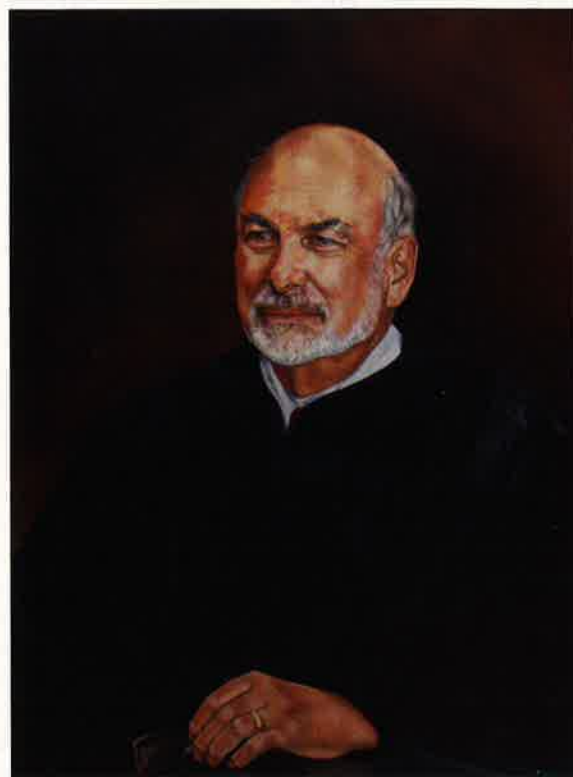
THIS YEAR MARKS the 20th year that Hon. Melvin T. Brunetti has served on the federal bench as a now senior member of the Ninth Circuit Court of Appeals. In June 2005, friends, family, fellow judges, and law clerks gathered to honor him at the federal courthouse in Reno, Nev., where his chambers are located. Everyone present at

that reunion was reminded that Judge Brunetti is not only a hardworking judge who has significantly contributed to the Ninth Circuit, but he is also a caring family man, a good friend, a wise mentor, and often the most entertaining person in the room.

Those close to Judge Brunetti know him to be an engaging storyteller — so much so that one can listen to him for hours and not realize how much time has passed. Mindful of his audience, the judge will often interrupt himself and announce “long story short,” signaling the imminent end to that particular tale. If the listener is lucky, another tale will begin when the judge catches his breath. While the judge’s repertoire teems with interesting topics, perhaps the most compelling stories surround his history, his heritage, and his path to the federal bench.

Judge Brunetti takes a great deal of pride in his Italian heritage and in his hometown of Reno — both of which crossed paths by a chance encounter. His grandparents were Italian immigrants who made their way through New York’s Ellis Island and headed west. The judge’s paternal grandfather, Joe Brunetti, left Monferrato, Italy, after hearing stories that there was opportunity and work in the United States. He decided to come to America to help pay the family debts and to build a family in the new country. After arriving at Ellis Island, Joe Brunetti worked his way across the country and, on a train stop through Reno, encountered a friend from his hometown in Italy. According to Judge Brunetti, “The friend told my grandfather there was work to be had in Reno. He thought that sounded good and stayed.”

That grandfather opened a small grocery business that grew into the Brunetti and Patrone grocery store, located in downtown Reno, where Lake Street met



Hon. Melvin T. Brunetti. Portrait by Cathryne A. Trachok.

Commercial Row in the 1920s. The grocers provided food staples and imported products directly from Italy for sale to Reno’s locals and businesses, surrounding sheepherders, ranches and farms, and mining communities in northern Nevada and eastern California. The business flourished, and Judge Brunetti’s father, Frank, eventually joined the enterprise.

When World War II dealt a blow to the Italian import business, the judge’s father bought a small ranch in nearby Sparks, Nev., and moved his wife and three sons there. The judge recalls, “We had no running water, so we had to pump it from a well by hand.” Undeterred, the Brunettis succeeded in growing vegetables and raising animals to be sold in the family grocery store.

At the age of nine, Melvin Brunetti’s mother Nancy urged her son to learn an instrument and took him into town to purchase one. “I wanted a trumpet, but ended up with a clarinet,” says the judge. He soon became proficient and, though still in junior

high school, was invited to join the high school marching band. By the time he was in high school, he was playing the clarinet and saxophone with a large swing band in dance halls and recreation centers all over Reno and the surrounding area. "We played every Friday and Saturday night."

He eventually formed his own four-man band called, simply, Brunetti's Band, with his brother Larry on guitar and his friends Neil O'Doan on piano and Richard Thomas on drums. The band thrived throughout the judge's high school and early college years, and music now became a lucrative enterprise for the teenage Melvin. "For a kid, I made a lot of money." But the band disbanded when Neil headed off to Juilliard and the others dispersed to follow their chosen paths.

With a mother "responsible for his education" and a father who "taught him how to work," Judge Brunetti spent the decade after graduating from high school alternating between the two paths. For two years he studied electrical engineering at the University of Nevada. Along with his high school comrade Proctor Hug — whose footsteps Judge Brunetti would later follow onto the court — Melvin involved himself in fraternity life and college politics. Proctor was president of the student body, and Melvin was elected president of the junior class. Both were members of the Alpha Tau Omega fraternity.

But life took Judge Brunetti in a different direction during his junior year in college. He left the university and entered the dairy business, eventually going to work for the Windmill Dairy, a large dairy cooperative in Gardnerville, Nev. In addition to working full time, he joined the Army National Guard in the midst of the Korean War and rose to the rank of sergeant E-5. He thereafter applied for active duty, leaving his job with the dairy. Having sold his belongings and prepared for departure, he reported to Stead Air Force Base and received startling news. During his final physical, an Army doctor told him that a medical condition barred him from serving. "I left the base with no home and no job," he remembers.

Judge Brunetti nevertheless forged ahead and returned to Windmill Dairy. Now familiar with the ranches and dairy farmers in Nevada, he soon became the operations manager of a new dairy, James Canyon Ranch Creamery, which produced, processed, and distributed milk products to all of Nevada and part of eastern California. During the seven years he worked in the dairy industry, he also spent his evenings at the University of Nevada studying accounting. When a dispute arose over a distributor who refused to pay the bills, Judge Brunetti sought the assistance of a country lawyer named Vernon Summers and decided that he wanted to be on Summers' side of the desk. The judge returned to the University of Nevada and was accepted into the last



Judge Brunetti and his family at a recent Brunetti family reunion.
Photo by Derron Inskip.

four-year program at Hastings College of Law in San Francisco. He worked his way through law school in the tax department of the accounting firm of Arthur Young & Company.

With law degree in hand, Judge Brunetti returned to Reno in search of opportunity. He was hired by the prestigious firm of Vargas, Bartlett and Dixon, which was managed by the preeminent lobbyist, George Vargas. While practicing there, the judge had occasion to work with the Laxalt family law firm, whose members included Paul Laxalt, a prominent lawyer who later served as Nevada's governor and U.S. senator from Nevada. Several years later, Judge Brunetti joined the firm of Laxalt, Bell, Berry, Allison and LeBaron, where he eventually became a shareholder. His work there sent him to Las Vegas, where he lived for two years and represented a diverse clientele, including the Nevada operations of magnate Howard Hughes.

Along with his wife Gail, the judge returned with the firm from Las Vegas to Carson City to raise his three children, Nancy, Bradley, and Melvin Jr. From 1978 to 1985, Judge Brunetti continued practicing law as a named partner in the law firm Allison, Brunetti, MacKenzie, Hartman, Soumbeniotis and Russell Ltd. He served for 10 years as a member of the board of governors of the State Bar of Nevada and then as the president of the Nevada State Bar. He also served for three years on the Council of Legal Advisors to the Republican National Committee.

In the mid-1970s, Judge Brunetti's legal career intersected with Nevada politics, when he became involved in Paul Laxalt's bid for the U.S. Senate against current Senate Minority Whip Harry Reid. The initial election results showed Laxalt the winner by a thin margin; Reid called for a recount. Judge Brunetti as-

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sisted with the statewide recount effort — complete with hanging chads, a Las Vegas convention center filled with lawyers, and a trip to the Nevada Supreme Court. “It was Bush versus Gore Vegas-style,” the judge recalls, and Laxalt emerged victorious.

President Reagan appointed Judge Brunetti to the Ninth Circuit on April 5, 1985. Since then, Judge Brunetti has authored close to 400 opinions and participated in countless others. He decides cases “on the facts and the record” and strives to draft no-nonsense opinions that parties and future litigants can understand. Behind the scenes, the judge tackles each case with characteristic zeal. In contrast to his usual mild manner, he is a formidable presence on the bench, which can catch the lawyers off guard at times. As Judge Hug recently observed, Judge Brunetti is predictably the most prepared judge at oral argument; therefore, those who appear before him should know the record inside and out.

In light of his pragmatic approach to decision-making, it is not surprising that the types of cases Judge Brunetti finds most challenging are those in which the “social and political ramifications are immense.” Included on the list are Social Security determinations, issues relating to tribal sovereignty, and immigration matters — the latter making up the bulk of his workload when he first joined the court. “Some of these cases are just heart-wrenching,” he says, but he believes strongly that his role is not as ideologue or advocate but simply as a judge who applies the law to the facts of each case.

The cases Judge Brunetti finds most memorable are those that have had a significant impact on both the court and the law. The first to stand out surrounds the 1992 execution of Robert Alton Harris — a case that assumed historical significance and attract-

ed national attention because it involved the first execution in California since 1967. Judge Brunetti was assigned to the three-judge panel hearing Harris’ habeas appeals and subsequent stay petitions. In the three days preceding Harris’ execution, the case volleyed between the Ninth Circuit and Supreme Court — the latter vacating all last-minute stays and forbidding any others. “The *Harris* case took a lot out of me; there was so much tension it was unbelievable,” the judge recalls. But he remembers the case for the lasting effect it had on the court. He notes that *Harris* was the springboard for the court’s creation of a more streamlined and efficient process by which to handle last-minute death penalty appeals.

In another case of significance, *Duro v. Reina*, which concerned the jurisdiction of Indian tribal courts, Judge Brunetti authored a split decision that took a broad view of tribal sovereignty and the tribe’s ability to govern its members. The Supreme Court reversed the decision, but in a matter of months Congress amended the Indian Civil Rights Act and essentially codified the interpretation of Indian sovereignty set forth in the panel’s opinion.

Despite their inevitable differences of opinion, Judge Brunetti counts his colleagues on the court as friends. One notable example is Judge Hug, whose close friendship with Judge Brunetti began when they attended Sparks High School together more than 50 years ago. “I was elated when Judge Brunetti joined me on the Ninth Circuit,” says Judge Hug. “He is well respected as an excellent judge.” Recognizing that the one in the majority sometimes finds the other in dissent, Judge Brunetti jokes that he and Judge Hug “don’t always agree on everything.” But to personal observers, the two are like brothers.

Judge Brunetti respects the opinions of others, including those of the 80-plus judicial law clerks with whom he has worked through the years. The judge’s warmth and down-to-earth personality always set his clerks at ease, as the judge makes it clear that he welcomes an opinion even though it may differ from his. At his 20-year celebration, Judge Brunetti told a room full of former and current clerks that he considers them friends and that perhaps the most rewarding part of his job has been his interaction with them. The feeling is undoubtedly mutual. Brad Johnston, who was Judge Brunetti’s law clerk in 1998, is just one example. After clerking for the judge, Johnston left his practice in New York City to make Reno his home. “I doubt I would have made the same decision had my clerkship with the judge not been such a fantastic experience on both a professional and personal level.” For many, that one year with Judge Brunetti was the best experience of their legal careers. As a testament, the group commissioned his portrait and traveled great dis-



In chambers (l to r): 2000–2001 clerks Lana Chiariello, Rebecca Poate, and Gene Litvinoff; Judge Brunetti; and administrative secretaries Patricia Cooper-Smith (now retired) and Julie Patterson.

tances to see it unveiled this past summer.

The judge receives that same devotion from his administrative staff. Patricia Cooper-Smith left private practice with the judge to join the court as his administrative secretary. She worked with him from his first day on the bench until her retirement this summer, and the reason for her long service is obvious. "After working with Judge Brunetti for 25 years, it is easy for me to say that I have never met a more decent and honorable person. He treats all those around him with dignity and respect, and he values and understands the merits of loyalty and friendship." Julie Patterson, who has served as one of the judge's two administrative secretaries for the past 19 years, has faithfully taken over the helm.

Having assumed senior status in 1999, the judge's caseload is now reduced. This must certainly be a welcome change after years of laboring under a heavy docket and plenty of intense moments. Nonetheless, Judge Brunetti's valuable contributions to the court continue. Since shortly after Sept. 11, 2001, he has served as the chair of the court's Space and Security Committee — a job he describes as one of the most interesting and challenging he has done to date. He believes the mission of the committee is an important one, as it struggles to find the balance between appropriate security for judges and public

access to the court system.

When he's not tending to court business, the judge spends time with family and friends and also dotes on his beloved bassett hound, Angus. He travels and busies himself with his various hobbies — both new and old. In 2001, close to 50 years after Brunetti's Band disbanded, the judge once again took up the clarinet. "I ran into my old music teacher and he asked me if I wanted to take some lessons. I said okay." After months of practice, the judge orchestrated a Brunetti's Band reunion. The group met for several "band camps" and later appeared for a reunion concert at the rest home in Reno where the judge's mother lived before she passed away. That performance certainly stands as a touching tribute to his mother, who set him on his musical path.

So much more can be said about Hon. Melvin T. Brunetti and the way he has enriched the lives of so many. Long story short — Judge Brunetti is an extraordinary man whose company is always a pleasure to share. **TFL**

Lana Chiariello is an associate in the Los Angeles office of Mayer, Brown, Rowe & Maw LLP. Rebecca Poate is an associate in the San Francisco office of Lieff Cabraser Heimann & Bernstein LLP. They served as law clerks to Judge Brunetti in 2000-2001.

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