

Judicial Profile

DEIRDRE PURDY

Charles H. Haden II Chief Judge, Southern District of West Virginia

If everyone gets 15 minutes of fame, Judge Charles H. Haden II, chief judge of the Southern District of West Virginia, has been double-dipping recently. His October 2000 appointment by Chief Justice Rehnquist to be chair of the Executive Committee of the Judicial Conference received mention in major newspapers across the country. In May 2001, Judge Haden was presented with the Vandalia Award, West Virginia University's highest honor for service to the university and state, and he received West Virginia University Law School's highest accolade, *Justitia Officium*.

Recognition of Haden's gifts as a judge and administrator followed an uproarious reaction to his 1999 decision that, under surface mining law, mountaintop removal mining operations could not dump leftover coal into streams. That decision created controversy from West Virginia to the White House and Congress. Mountaintop removal became the subject of a "60 Minutes" television story just as a local West Virginia music, politics, and entertainment magazine named him "Eer of the Year," short for "Mountaineer of the Year," and a city councilman from the coalfields said his decision was "probably equivalent to what Hitler did in Europe." More subdued reaction followed Judge Haden's recent ruling in May 2002 that the Clean Water Act also barred disposal of waste from mountaintop removal in streams, a decision he declined to stay.

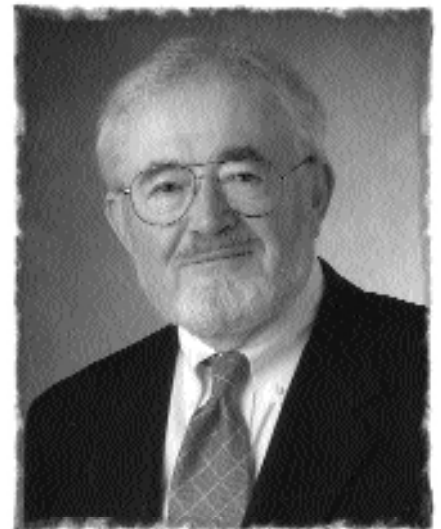
A handsome, stocky man with a neatly trimmed white beard; prominent black eyebrows; and an open, pleasant, ever-curious, and attentive gaze, Haden still likes people better than paper. He startles lawyers by answering his own phone during lunch hour in his unmistakable basso profundo or greeting them as he passes through the public areas of chambers unexpectedly. Although sometimes besieged with the people problems of administration of the courthouse, office, and judicial district as well as of Judicial Conference brouhahas, the judge still welcomes visitors into his office and returns all phone calls.

After serving 26 years as a federal district judge and 20 years as chief judge of the Southern District of West Virginia, Judge Haden is the longest-serving chief judge in recent U.S. history. Born April 16, 1937, in Morgantown, W.V., Haden grew up outdoors in the creeks and fields watching the bird life. He originally wanted to be an ornithologist. "Back then," he says, "I

could still see them, and I would sit quietly under a tree for half an hour till I could identify one." The son of a lawyer, Haden also had the run of Chancery Row, the jail, and the county courthouse. When his father delivered oral arguments in the Supreme Court of West Virginia, he'd take the younger Haden along to listen or allow him to spend hours at the state museum studying the stuffed animals and wildlife exhibits.

At West Virginia University, Judge Haden studied business administration. Following a classic college-student pattern, he earned a 3.8 average in his freshman year and then, testing limits and trying temptations, a 1.6 average as a sophomore. He married his wife, Priscilla, in 1956 and spent the rest of his college years working himself out of the grade-hole he had dug. By graduation he had acquired a reputation as an excellent retailer, with job offers from two big department stores, Joseph Horne's and Kaufmanns. By then a family man with two young children to support and armed with his pragmatic business degree, he asked his father for advice on a career path. His father said, "Take the job as a shoe buyer and work your way up. The law is a jealous mistress. It requires discipline and self-discipline. You're great with people." Stung by the implied criticism and angry at himself, Haden decided, "I'll show you." He graduated from West Virginia University Law School in 1961, having made law review.

Judge Haden joined his late father's law practice, which became Haden and Haden, and almost immediately he went into politics. He ran for the West Virginia House of Delegates in 1962, a decision his apolitical father questioned. It was his mother, Beatrice Costolo Haden, who was the passionately political parent. Disdainful of Adlai Stevenson as overly intellectual, she left the Democratic Party. In preparation for a neighborhood party, she emptied the household



commodes and pasted Stevenson stickers in the bowls before refilling them. That was the same election for which 15-year-old Haden and his high school sweetheart (now wife of 46 years) set up loudspeakers in the high school stadium and organized an "I Like Ike" rally; thus, his later political proclivities were not entirely unanticipated.

In his 1962 run for the House of Delegates, Haden ran as a Republican. In those years, West Virginia was a Democrat fiefdom. It was also an era of a notorious governor (who later went to jail for jury tampering in his bribery trial). Reform was the political watchword of the day, and at that time the Democrats were not the West Virginia reform party. Haden defined himself early on as a "fiscal conservative, a social liberal, and a pragmatist," a label he still claims. Elected in 1962, Haden served one term before the 1964 Goldwater "landslide" took down Republicans throughout the country.

In 1966, Haden ran for the Monongalia County Board of Education. When he announced his decision to run, an aged member who the voters had hoped would retire did so. Haden's election was easy, but the job was "perhaps the hardest I ever had." The revamped board brought in a Ph.D. superintendent, tried to pass a substantial capital improvements bond to consolidate schools, and generally riled up certain constituents who met him outside the gym door after a meeting, lifted him up against the wall, and explained their positions in ways that could not be misunderstood. The bond issue failed and the superintendent moved on.

After a tumultuous two years on the Board of Education, Haden resigned to join the statewide Republican ticket as candidate for attorney general. His candidate for governor won, Haden did not. As governor, however, Arch Moore appointed Haden as state tax commissioner, a position he held until 1972. Running again in the Republican primary for attorney general, Haden lost again. He says he was discouraged with politics and looking to return to private practice when Gov. Moore appointed him to the West Virginia State Supreme Court.

Although his unexpired term was for four years, because it was longer than two years, he had to run for the judgeship in the 1972 election. ("You'll notice," he says, "no governor made *that* mistake again.") It was a tight election, and, according to Judge Haden, a late election night inquiry by a friend to a Democratic kingpin in a coalfield county brought this exchange: "How bad is Chuck Haden going to be beat in your county?" The unexpected response: "How bad do you want him beat?" No Republican had been elected to the state Supreme Court since 1928 (and none has been elected since), but Haden defeated his Democratic opponent with the help, he says, of the Democratic county officials with whom he had worked as tax commissioner.

In 1974, the Judicial Reorganization Amendment of

the West Virginia Constitution unified the state court system, putting the state Supreme Court at the head. It was at that time, Haden says, that he learned the importance of process. Haden now remarks that an appeals court position can be a "wonderful place, but extremely confining," the work is "quiet, withdrawn and heads down." In 1975, President Gerald R. Ford appointed Haden to the federal bench as district judge for the Northern and Southern Districts of West Virginia, a so-called "roving judgeship." Because he was already in Charleston serving at the state Supreme Court, Judge Haden simply went across town from the state capitol to the federal building for his swearing-in. This geographical happenstance at the time of his appointment made him a "Southern District" judge later on, when that chief judgeship opened.

Although identified throughout his career as a "Republican judge," he questions the label as one affixed by "people who don't know much about me, or Republicans." Haden says he grew up in the era of *Brown v. Board*, *Gideon*, and *Miranda*. An early hero of his was Judge Frank Johnson, a moderate Republican, who protected civil rights in the deep South. He came to the law with a firm commitment to the rights secured by the Constitution. However, he confesses a greater allegiance to the 14th Amendment than he does to the 11th. Weary of being labeled by party, Haden registered as an Independent in 1987. The local newspaper, however, declined to identify him as "Independent Chuck Haden." "They just stopped using the other adjective," he jokes.

From 1975 until 1982, he was the swing judge, sitting in Wheeling, Clarksburg, Parkersburg, Charleston, and Huntington. "We only needed five weeks a month to cover every court," he remembers. When he took the bench, which had been unfilled for 18 months, he inherited 900 cases, some as old as 1968, one with 400 plaintiffs. He was always on the road with his law clerk and his court reporter, his files and his robe in the trunk. He lost several official files when his overworked and underserviced car caught fire and burned up on the interstate. That original case overload explains why, once he caught up, "by putting one foot in front of the other for a long time," Judge Haden has kept his caseload and his district current, with no reportable cases.

As a roving judge, he remembers, he sometimes had to hold court in a grand jury room with a desk that needed a modesty panel and more distance from the litigants. He recalls a case in which a man lost his business and was desperate and angry. "To me, it was just a case; to him, it was everything." It makes you realize again, he says, the importance of process. The robe and the elevated bench are not just empty trappings. They are symbols for the judiciary as well as the public — reminders of the process of justice.

Early on in his federal judgeship, Judge Haden says, he occasionally would lose his temper. One litigant whose case he dismissed for outright lying re-

ported the judge to “60 Minutes” and “20/20.” The television investigators discovered his accuser was a perjurer, and an arsonist to boot. Nevertheless, Haden learned, “I should have never lost my temper, just seen it through and resolved it with a written opinion. Now I am more dispassionate and less demonstrative.”

These historical vignettes may explain why lawyers in the *Almanac of the Federal Judiciary* describe Judge Haden as formal, professional, and cordial, but no nonsense. On the other hand, clerks know a yellow sticky note passed during trial may ask for a case cite, or it may say, “Who is the Big Cheese?” When the Cheese brothers were being tried, that note came early in a clerkship. The recipient says she wrote a lengthy explanation of the structure of the Cheese conspiracy before the judge’s grin told her that her leg had been pulled. Another clerk remembers being berated in a phone conversation with an overbearing attorney. The judge walked by and stage whispered, “Tell him ‘Screw you, details to follow.’” And a third recalls the judge studying a waist-high stack of summary judgment briefs and assuring him: “There must be a genuine issue of material fact in there somewhere.”

On Feb. 11, 2002, a Westlaw search for Judge Haden’s decisions among Fourth Circuit cases produced a 36-page list of 631 published cases. Of the 631, only 35 have red flags, indicating they are no longer good law. A 94 percent average is pretty good for a judge who told one of his law clerks, “Our job is to *decide*, their job” — finger pointing upward and east to indicate the Fourth Circuit — “is to *decide it right*.” Under Judge Haden’s leadership, the West Virginia Southern District also has been innovative. It is the only court in the country in which the district, bankruptcy, and probation functions are combined into a unified organization. The judge also oversaw building a new seven-story federal courthouse in Charleston, a project that spanned almost a decade.

Judge Haden’s attitude toward the appeals court is mixed. On the one hand, he views it as “a den of legal philosophers” with whom he plays “Mother, may I.” On the other, he doesn’t worry too much about being reversed, especially if it is a case of first impression. When the U.S. Supreme Court reversed the judge, the law clerk who had worked on the case slunk into his office, only to be told, “Don’t worry. We did the right thing for the First Amendment.” As an anonymous *Almanac* reviewer wrote, “If you are looking for a judge who needs to have courage to get to his decision, he is the judge, regardless of the consequences.”

Because he loves trials — the give-and-take in the courtroom, working with juries and lawyers — Judge Haden is often asked (or volunteers) to help out in other districts. He has tried drug cases in Miami, a drugs and murder case in North Carolina, and a bribery case involving state legislators in South Carolina. Also in South Carolina, Judge Haden tried General Motors impact of fire pickup cases, where Haden held

that the infamous Ivey memo — which assigned a \$200,000 value to a human life and estimated that fuel-fed fire deaths cost GM \$2.40 per vehicle — was not privileged. GM settled numerous cases a month later, but its counsel, Kenneth Starr, successfully persuaded the appeals court to vacate the key discovery order. That story was recently revisited on the *MoJo Wire* (*Mother Jones* online).

For a different readership, the *Reader’s Digest* described Haden’s West Virginia trial of the Preece family, three of whose members were the mayor, the police chief, and the fire chief. The Preeces sold cocaine, LSD, and marijuana from a drive-through operation in a trailer in downtown Kermit. When necessary, the defendants hung out a sign: “Out of Pot — Back in 30 Minutes.” The town of 300 residents had a transient population of more than 1,000 while the “retail” establishment was open.

Haden believes he was lucky to take the bench when he did. Citing changes in federal litigation during his tenure, he notes, “Now we don’t try admiralty cases, railroad cases. Only 3 percent of civil cases and 5 percent of criminal are tried at all now.” In contrast to his first days on the federal bench, Haden maintains, “Now there is no federal plaintiffs’ bar, except under protest and removal.” When the state courts were perceived as much friendlier, plaintiffs’ lawyers “snuck away in the dead of night.” Federal courts, he believes, have become specialty courts with increasingly limited jurisdiction. Criminal cases are “processed,” and civil cases are often decided on academic grounds in dispositive motions.

Still, he says, being a federal district judge is the greatest job in the world — “as good as being an ornithologist on a grant.” Haden says he’d like to be remembered as a public servant. “I’d probably have been a poor lawyer,” he says. “I didn’t bill my clients with regularity. This way I have steady work, receive a regular paycheck, and do my best to earn it.” His secretary and courtroom deputy, who have both been with him for more than 20 years, say the judge works more intensely at the office than he used to, but he’s also learned to take more time off. He and his wife, Priscilla, now have three adult children and 10 grandchildren. At their vacation home in the West Virginia mountains, the whole family can gather and ski, hunt, fish, or watch birds, as they wish. While acknowledging it’s a nice place to visit, Judge Haden denies any plans to retire there — or anywhere. The recent celebration was only for the *first* 25 years. TFL

Deirdre Purdy is Judge Haden’s law clerk.