

Judicial Profile

MARILYNNE GORHAM

Hon. David Hittner Senior U.S. District Judge, Southern District of Texas

HAVE YOU EVER heard of an everyday Superman? Unlike Clark Kent, U.S. District Judge David Hittner is larger than life with or without his robe. Whether he is presiding in court, lecturing to law students, conducting a continuing legal education seminar, volunteering for the Boy Scouts of America, or attending a judicial reception, Judge Hittner's persona fills the room. His energy knows no bounds, as evidenced by reviewing highlights of his distinguished career.

Judge Hittner was raised in Brooklyn, N.Y. When Judge Hittner was 15 years old, his father died, leaving the judge's uncle to pay the judge's way through college and law school at New York University. After graduating from law school in 1964, Judge Hittner volunteered for active duty in the U.S. Army. During his service, he was stationed for a time in Louisiana, where he enjoyed Southern hospitality. Upon being honorably discharged as an infantry captain and a paratrooper in 1966, Judge Hittner moved to Houston, where he practiced commercial and family law for 12 years. In 1978, when Judge Hittner was 38 years old, Gov. Dolph Briscoe Jr. appointed him to serve as a judge of the 133rd District Court of Harris County, Texas. Judge Hittner became the youngest member of the civil judiciary. He remained on the state court bench until 1986, when President Ronald Reagan appointed him a U.S. district judge.

Over the past 20 years on the federal bench, Judge Hittner has presided over many high-profile cases that involved a variety of issues. These cases include three City Hall bribery charges; a panel decision invalidating three Texas congressional districts as unconstitutional because of racial gerrymandering; a school law case determining whether students' right to free speech included the right to carry rosary beads; the scheme to kill the racehorse Alydar in order to collect insurance proceeds; and a suit that was brought to determine who owned the gold coins of Belarus. Judge Hittner also presided over a case involving a cross burning in Katy, Texas; the decision to grant habeas



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corpus relief to a death row defendant whose court-appointed counsel had slept during significant parts of the defendant's trial; and environmentalists' protests over a large highway construction project near downtown. Still other proceedings included the disposition of a trade dress and service mark infringement case in which the Tour 18 Golf Course had copied national golf hole designs and used their distinctive service marks in its advertising; litigation requesting seizure of czarist Russian jewels that were on traveling display at a Houston museum; and the dispute over the guilty plea of Lea Fastow, a former Enron executive and wife of one of the infamous Enron officers.

Notwithstanding his involvement in more than his share of highly publicized matters, Judge Hittner dispenses justice evenly, treating large and small cases with equal importance. An anomaly in federal courts, oral motion hearings are available on all matters in

Judge Hittner's courtroom upon request, five days a week. Similarly, in an era of the "vanishing jury trial," Judge Hittner readily admits that he is happiest when he is on the bench. Over the years, Judge Hittner has respectfully declined inquiries about his interest in an appointment to federal appellate bench, saying, "You need judges to judge other judges [that is, appellate judges], but it is not for me." He is a "people person," who enjoys the dynamics a trial court has to offer.

In his courtroom, Judge Hittner demands that counsel be knowledgeable in every aspect of the facts and law surrounding their cases. To put it simply, he expects attorneys appearing before him to follow the Boy Scout motto, "Be prepared." Over the years, courthouse lore has developed from tales told about errant lawyers who had appeared before Judge Hittner. For example, when a young lawyer attempted to address the court from a seated position, he received an embarrassing lesson in courtroom etiquette. Judge Hittner said to the young lawyer, "Counsel, I cannot hear you." Not realizing his mistake, the young lawyer spoke up a bit but remained seated. Judge Hittner sternly told him again, "Counsel, I cannot hear you." After the third go-around, the lawyer stood up, addressed the court, and the proceeding continued. On a different occasion, a state court practitioner, who had failed to heed the judge's warning to "move on" during direct examination of a witness, felt the full impact of being in a federal courtroom. Judge Hittner took over the questioning and completed the direct examination. On yet another occasion, a misguided lawyer presented as a witness a physician wearing his scrubs; Judge Hittner excused the witness so that he could obtain proper courtroom attire.

Although these types of stories are abundant, almost all counsel agree that Judge Hittner pushes lawyers to be the best advocates they can be in the courtroom. Evidencing his skill as a jurist are the countless awards he has received from local and national organizations. He also presses his law clerks to take advantage of learning opportunities by observing courtroom practice — both good and bad. Because he is genuinely interested in his law clerks' professional advancement and personal well-being, even after they have left his chambers, Judge Hittner serves as their mentor. In addition, every year he honors his incoming and outgoing law clerks, his court staff, and their families with a "Hail and Farewell" party, during which war stories are exchanged and Judge Hittner's lighthearted humor touches all while he is roasting his outgoing law clerk.

Although Judge Hittner took senior status in July 2005, he continues to carry a full numerical docket of civil and criminal cases and consistently has one of the lowest pending caseloads. He credits his ability to move cases along by placing each civil case on a firm two-month trial schedule. No matter how busy the



Judge Hittner's chambers are filled with memorabilia commemorating trials and personal relationships. They include a collection of photographs of Judge Hittner shaking hands with Presidents Reagan, Carter, and Clinton, as well as with both Presidents Bush.

judge's schedule is, however, if a judicial colleague is preoccupied in a long case, sick, or out of town, Judge Hittner routinely offers to assist. His assistance may be in the form of traveling to another division within the Southern District of Texas, presiding over a case that is ready for trial, or hearing an emergency motion.

Outside the courtroom, Judge Hittner is a prolific writer who has produced more than 85 publications. He is the lead author of a three-volume book, *Federal Civil Procedure Before Trial, Fifth Circuit*; a co-author of the book, *Summary Judgments and Defaults in the State Courts of Texas*; a contributing author to



Judge Hittner is a dedicated fan of his former hometown team, the Brooklyn Dodgers, as attested by the collection of baseball memorabilia in his chambers.

a six-volume book, *Business and Commercial Litigation in Federal Courts*; and a contributing author to the first and second editions of the *Texas Collections Manual*. He has appeared as a guest lecturer at countless law schools, colleges, bar associations, medical organizations, and other professional and civic associations throughout the United States and Canada. His most prized contribution to continuing legal education is his award-winning "Saturday Morning in Court" annual programs, which have provided lawyers with practice tips for the past 25 years.

Judge Hittner's public service extends far beyond the legal arena. Since his youth, he has been active with the Boy Scouts of America, having achieved the highest rank, Eagle Scout, and participating in its honorary service organization, the Order of the Arrow. Judge Hittner remains involved in scouting and has received the Silver Beaver and Silver Antelope awards together with the highest Jewish service awards, the Shofar Award from the Boy Scouts and the Ora Award from the Girl Scouts. In addition, Judge Hittner has been actively involved in Masonic organizations, including the Scottish Rite and Shrine. He is one of the distinguished few individuals in the United States to hold the Masons' highest designation, the Thirty-third Degree. He also has received the Sam Houston Medal, the highest recognition of the Masonic Grand Lodge of Texas.

Despite a demanding schedule, Judge Hittner maintains close relationships with his three children, Miriam, Susan, and George, and two grandchildren, Joe and Sophie. The judge's commitment to his family is symbolized by numerous photographs of his children and grandchildren throughout his chambers. In his spare time, Judge Hittner plays the electric bass and 12-string acoustic guitars in a band named the "Texas Barflies." Finally, at the end of the day, he dotes on his Burmese cat, Murray.

Judge Hittner continues to serve the public, as he has for the past 30 years, with passion and enthusiasm. His love for life can be felt from the energy he exudes and can be seen in the sparkle in his eyes. He is a man of integrity and a man of character. Everyday Superman? Absolutely. **TFL**

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