

Judicial Profile

GREER BARKLEY

Judge Alfredo C. Marquez Senior U.S. District Court Judge, District of Arizona

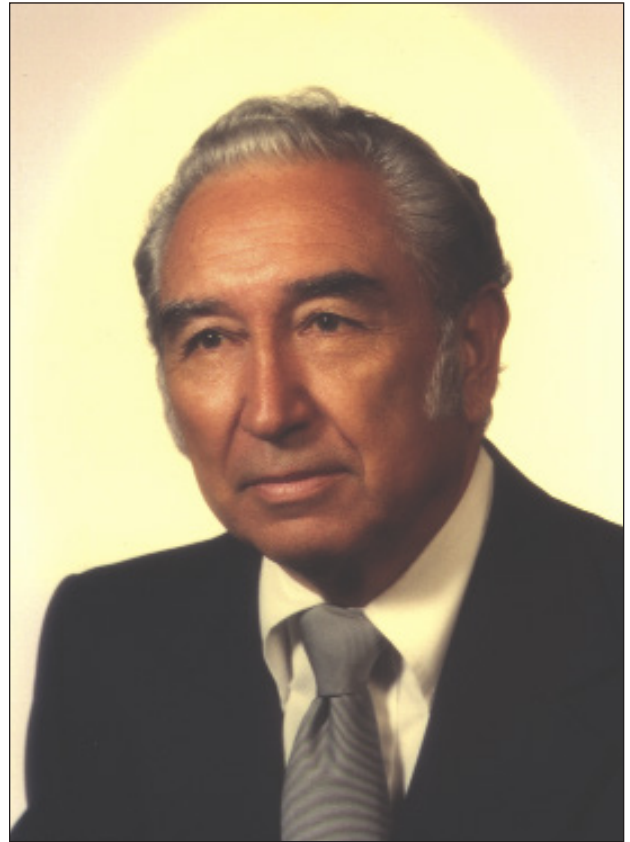
THE ESTEEMED JUDICIAL career of Senior U.S. District Court Judge Alfredo C. Marquez dates back some 25 years. It was a humble road that brought “Freddy,” as his friends called him, to the federal bench. His considerate and caring nature makes him an exceptional judge, and his own life has uniquely shaped him to see the person underneath the label — defendant or plaintiff — who is before him.

Judge Marquez was raised in the small southern Arizona town of Winkelman. Both of his parents were naturalized citizens who had immigrated to the United States from Mexico. Judge Marquez’s father worked for a short time in the copper mines in Bisbee (a small town in southeastern Arizona) and eventually joined his older brother, who was living in Winkelman, where, together, they owned and operated a grocery store. After leaving Mexico, the judge’s mother also settled in Winkelman, where the judge’s parents met, married, and raised two children: the judge and his older sister.

Judge Marquez recalls a happy childhood. He and his friends enjoyed swimming in the Gila River and playing baseball in the fields around town. Although the judge went to grade school in the town of Winkelman, his high school was in nearby Hayden, Ariz., a company-run mining town. Judge Marquez describes the two towns as being very different. Hayden was segregated by neighborhood (separating Anglos from Hispanics) and even had segregated seating in the movie theater. By contrast, in Winkelman, the judge’s hometown, residents lived and worked side by side.

Judge Marquez recalls the small-town schools he attended as being “excellent.” In high school, for example, the principal put together some special advanced math classes for three students, including the judge, which gave the judge a solid education and an appreciation for the importance of this subject. During his formative years, the judge decided that he wanted to fly airplanes and study aeronautical engineering.

Despite the judge’s academic strengths and interests, he could not afford to attend college immediately after graduating from high school. However, this obstacle did not stop the judge’s pursuit of learning nor his drive to pursue the field of aeronautics. The judge chose a technical school, where he



worked and enrolled in engineering courses. By 1941, the judge was working in the Engineering Department of Douglas Aircraft, and when World War II started, he enlisted in the armed forces and became a pilot in the U.S. Navy Air Corps, serving as a flight instructor and training fighter pilots during the war.

After the war, Judge Marquez enrolled in the University of Arizona, from which he received a degree in economics. The judge then decided to go to law school, also at the University of Arizona. He completed an accelerated two-year program and received his law degree in 1950. The judge recalls that his law school class was larger than normal because of the GI Bill. Judge Marquez believes this program — a single piece of legislation that gave so many a great opportunity they would not have had otherwise — is an example of the good the government can do for people.

Throughout his career, Judge Marquez has had the honor of working with individuals who became household names

in Arizona and beyond. They range from the Udall brothers (Morris, who served as a member of Congress representing Arizona, and Stewart, who served as both a member of Congress and as the secretary of the interior under President John F. Kennedy) to Raul Castro (who served as Pima County attorney, superior court judge, governor of Arizona, and U.S. ambassador to El Salvador). Initially, when Judge Marquez graduated from law school, he worked in the Arizona attorney general's office in Phoenix. Shortly thereafter, he moved back to Tucson and took a part-time position at the Pima County attorney's office, which was then headed by Morris Udall. At the time, there were just two or three part-time positions in the office — including one held by Raul Castro. In addition to part-time work in the county attorney's office, where he remained until 1954, the judge opened his own private practice.

When Stewart Udall was elected to the U.S. Congress, Judge Marquez served as the congressman's administrative assistant in Washington, D.C., where he stayed for approximately a year before returning to Tucson because of his son's health. The judge was then appointed the Tucson city prosecutor, a part-time position, which meant that he again had time to pursue his own private practice. In 1958, the judge became a founding partner in Mesch, Marquez, and Rothschild, a firm that is still thriving today. He stayed with the firm until President Jimmy Carter appointed him to the federal bench in 1980.

It is, of course, impossible to list all of the cases over which Judge Marquez has presided during his 25 years on the bench. The following descriptions are offered to illustrate the contribution the judge has made in resolving federal disputes in the District of Arizona.

In 1984, *Fisher/Mendoza v. TUSD* was transferred to Judge Marquez to oversee the stipulated settlement agreement for desegregating the Tucson Unified School District (TUSD). In 1993, Judge Marquez refused to allow TUSD to close Catalina High School and build a new high school in the southwestern portion of the school district. The judge held that doing so would close the only ethnically balanced high school in the district and divide it into high schools on the west side whose enrollment consisted predominantly of minorities, and five high schools on the east side with a mostly Anglo enrollment.

In another class action case involving schools, *Flores v. State of Arizona*, Judge Marquez ruled that the state of Arizona had failed to provide children with limited English proficiency with a program of instruction calculated to make them proficient in speaking, understanding, reading, and writing English, so that they could compete academically with other students. The judge ordered the state to appropriate an amount of funding reasonably calculated to ensure that these students receive an equal education.

Judge Marquez also has addressed important environmental issues. For example, he has ruled on the environmental protections afforded to the red squirrel (in *Mt. Graham Red Squirrel v. Espy*) and to the pygmy owl (in *Southwest Center for Biological Diversity v. Babbitt* and *Defenders v. Babbitt*). In *Defenders of Wildlife v. Browner*, the judge ordered the Environmental Protection Agency to promulgate water qual-

ity standards for the state of Arizona, and he ordered the EPA to revise its air quality standards for the state in *American Lung Association v. Browner*.

Judge Marquez is no stranger to controversy. Twice, he struck down Arizona statutes requiring minor girls to get parental consent before having an abortion. In 1992, in *Planned Parenthood v. Neely*, the judge found Arizona's parental consent statute unconstitutionally vague, and in 1997, in *Planned Parenthood v. LaWall*, he ruled that an amended version of the statute was unconstitutional because it failed to provide a specific time frame or deadline in its judicial bypass provision.

Judge Marquez received national recognition for his opinion in *Grijalva v. Shalala*, in which he held that a Medicare-participating HMO's denial of coverage to beneficiaries without adequate notice constituted government action, which had repercussions on a citizen's constitutional due process protections. Legislators discussing health care benefits and considering related legislation relied on the directives Judge Marquez issued in regard to notice requirements.

It is important to note that, in all these cases, Judge Marquez understood the distinction between his role as a member of the judiciary and the role of members of the legislative branch of government. The judge was careful not to cross the line, but he also refused to allow political grandstanding to violate the constitutional rights of those who appeared before him.

In the criminal arena, Judge Marquez has been an outspoken opponent of the war on drugs in general and the Federal Sentencing Guidelines in particular. His philosophy was made evident in *United States v. Valdez-Gonzalez*, 957 F.2d 643 (9th Cir.1992) (limited by statute as stated in *United States v. Webster*, 996 F.2d 209 (9th Cir. 1993)). In *Valdez-Gonzalez*, Judge Marquez examined the socio-economic conditions of people living along the Mexican border as well as the sentencing patterns in other cases arising from drug trafficking across that border. In the Valdez-Gonzalez case, the drug "mules" involved in the case were minor participants in a conspiracy to import marijuana, but if Judge Marquez had imposed a sentence within the applicable range provided by the Federal Sentencing Guidelines, he would have sentenced a mule to a *longer* term than full participants in the conspiracy received. The absurdity of this possible outcome led Judge Marquez to rule that the lesser culpability of mules in the drug trade was sufficiently atypical to warrant a downward departure from the guidelines. Eventually, the U.S. Sentencing Commission adopted Judge Marquez's logic.

Because the judge took senior status in 1992, he no longer carries his own criminal caseload. Nevertheless, Judge Marquez has taken it upon himself to assist with the extremely heavy criminal caseload carried by the other district judges in Tucson. The judge understands the social problems caused by the economic disparity between the U.S. and Mexico as well as the unique challenges that accompany being a sitting judge in a border community like Tucson. He objects to sentencing individuals with multiple illegal entries to long prison terms when they have little or no other criminal history, and he has been frustrated by the lack of discretion afforded judges under the Federal Sentencing Guidelines. The judge

has repeatedly said, “I doubt that the legislators in Washington, D.C., have any idea of what we see here and the consequences of their legislation.” The judge’s criticism has finally subsided somewhat in light of recent Supreme Court rulings, including *Blakely v. Washington* and *Booker v. United States*.

The judge’s senior status allows him some perks. Since the early 1990s, he has been a faithful member of the “Old Timers’ Club,” which any retired lawyer or judge can join and participate in telling war stories. The judge’s senior status also gives him time to pursue his passion for golf, a sport that he picked up while he was in law school. (He has scored two holes-in-one.) According to the judge, his handicap is “being too short” and his goal is “to shoot his age.” In fact, being on the golf course doesn’t slow down his professional duties; he has refereed discovery disputes by telephone from the San Ignacio Golf Course in Green Valley, Ariz.

In addition to playing golf, Judge Marquez can now spend more time with his family in San Diego, where he now lives part-time. The judge and his wife, Linda, have been mar-

ried for 30 years and have raised five children; they have 14 grandchildren and two great-grandchildren. One of his granddaughters served in Bolivia with the Peace Corps in 2001, and the judge vacationed there, touring the country with his granddaughter.

Everyone who has had the privilege to work for or with Judge Marquez understands just how important he has been to the federal bench and to the Arizona community. He commands respect because of the knowledge he has gained over the 25 years he has been on the bench and because of the courtesy he shows to all participants in his courtroom. Judge Marquez remains a vital asset to the judiciary. When he finally decides to retire, he will be sorely missed. **TFL**

Greer Barkley is a law clerk for U.S. District Judge David C. Bury in Tucson, Ariz. She served as Judge Marquez’s law clerk from 1994 through 2002.