

Judicial Profile

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Hon. Gerald E. Rosen U.S. District Judge, Eastern District of Michigan

IN SUMMER 2004, U.S. District Judge Gerald E. Rosen faced the challenge of deciding whether to set aside guilty verdicts in the most controversial and highly publicized cases of his judicial career so far. The Detroit Sleeper Cell Case, as it was called, began six days after the Sept. 11, 2001, terrorist attacks with the arrest of

several individuals in a Detroit apartment and other areas in the Midwest. The defendants, who were suspected of terrorist activity, were indicted in the U.S. District Court for the Eastern District of Michigan and tried before Judge Rosen.

Because of the intense publicity surrounding the case, as well as concern over whether the defendants would receive a fair trial, Judge Rosen prohibited federal prosecutors and defense attorneys from discussing the case publicly. Nevertheless, he had to deal with leaks to the media on several different occasions, which included issuing an opinion admonishing former Attorney General John Ashcroft for his public statements regarding the case.

Even though several of the defendants were eventually convicted of providing material support to terrorists and of committing document fraud, the difficulties surrounding this case did not end with the conclusion of the trial. Following the convictions, serious questions were raised regarding the withholding of exculpatory evidence by prosecutors. As a result of this discovery, Judge Rosen ordered the government to conduct a review of the case and periodically report to him on the progress of its efforts. The exhaustive review placed a considerable burden on the judge, who, after presiding over the first post-Sept. 11 terrorism trials, then had to review voluminous amounts of documents and personally review classified information contained at the Central Intelligence Agency. At the end of the review, the government filed a lengthy motion requesting the dismissal of the material support charges against the defendants, which included the admission that the prosecution had committed mistakes and oversights that deprived the defendants of key evidence and created misleading inferences in the record.



On Sept. 2, 2004, Judge Rosen dismissed the terrorism charges against the defendants and granted them a new trial on the document fraud charges — a decision that was one of the most difficult ones the judge ever had to make. As he acknowledged in his opinion —

For those of us who work in our Nation's courts and whose responsibility is the administration of justice — including not only judges, but prosecutors and defense lawyers — perhaps our greatest challenge will be to insure that this new threat is confronted in a way that preserves our most fundamental and cherished civil liberties. ... [T]hose of us in the justice system, including those prosecuting terror suspects, must be ever vigilant to insure that neither the heinousness of the terrorists' mission nor the intense public emotion, fear and revulsion that their grizzly work produces diminishes in the least the core protections provided criminal defendants by our Constitution. To permit anything less — to allow our constitutional stan-

dards to be tailored to the moment — would be to give the terrorists an important victory in their campaign to bring us down because they will have caused us to become something less than what we are — a nation of laws based on constitutional foundations developed over more than two centuries of jurisprudential evolution.

While it is probably the most well-known case of his career, the terrorism case is only one of many controversial matters Judge Rosen has handled in his 15 years on the bench as a U.S. district judge for the Eastern District of Michigan. Facing such challenges, however, is nothing new to this judge.

Born in Oak Park, Mich., in 1951, Judge Rosen attended Kalamazoo College, a small liberal arts college in western Michigan, where most students spend their junior year studying abroad. In deciding among several different regions as the site of his foreign study, including the south of France, Judge Rosen chose Sweden and spent a year studying in Stockholm. The following year, he obtained a research grant to go back to Stockholm to prepare his senior thesis about American news stories as seen through the eyes of the Swedish media, a project that involved translating, reading, speaking, and writing in the Swedish language. He also played tennis for three of his years at Kalamazoo College, a sport that he still plays today.

After receiving his bachelor's degree in 1973, Judge Rosen worked in Washington, D.C., for five years as a legislative assistant for Sen. Robert P. Griffin of Michigan, working on issues such as ERISA, tax reform, labor, health care, agriculture, and education. It was during this time that Judge Rosen first became involved with Focus: HOPE, a Detroit nonprofit organization that seeks to create economic opportunities for those in need in the Detroit community; and he currently serves on the organization's board of directors. During his time as a legislative assistant, he attended law school at George Washington University at night and received his law degree in 1979. Judge Rosen then returned to Michigan and worked for the law firm of Miller, Canfield, Paddock and Stone, eventually becoming senior partner. During his career as a trial lawyer, he litigated several high-profile cases, including one that resulted in one of the first state court decisions under the Michigan constitution involving the rights of free expression, assembly, and the gathering of initiative signatures at a private shopping mall. He was also involved in pursuing a Title VII class action suit against a large insurance company in Michigan on behalf of Focus: HOPE.

Judge Rosen ran as the Republican candidate for the U.S. Congress for Michigan's 17th district in 1982, but he lost to the current representative, Sander Levin. The judge recommenced his public service in 1985, serving for five years as co-chair of the Judicial Evaluation Committee for the U.S. District Court for the Eastern District of Michigan.

In 1989, President George H.W. Bush nominated Judge Rosen to the federal bench, and the judge began his duties in March 1990 as one of the youngest federal judges in the nation. Since his investiture, he has presided over, and issued opinions in, cases that evoke statewide and sometimes national recognition for their controversial matters. The media dubbed Judge Rosen the "casino judge" for his involvement in *Barden v. City of Detroit*, 59 F. Supp. 2d 641 (E.D. Mich. 1999), *aff'd*, 230 F.3d 848 (6th Cir. 2000), in which he rejected a last-ditch effort by a rebuffed casino developer to enjoin the city of Detroit from opening three highly anticipated casinos in the city. In *Kevorkian v. Thomas*, 947 F. Supp. 1152 (E.D. Mich. 1997), the judge held that there was no inherent right to physician-assisted suicide under the Due Process or Equal Protection Clauses of the Constitution. (The U.S. Supreme Court subsequently ruled the same way on the issue in an unrelated case, *Vacco v. Quill*, 521 U.S. 793, 804 n. 8 (1997), citing Judge Rosen's opinion). In a challenge to Michigan's partial birth abortion statute, one of the first of its kind in the nation, Judge Rosen struck the law down as unconstitutionally vague under existing Supreme Court precedent. *Evans v. Kelley*, 977 F. Supp. 1283 (E.D. Mich. 1997). (Again, the Supreme Court cited Judge Rosen's opinion in deciding this issue the same way in *Stenberg v. Carhart*, 530 U.S. 914, 929 (2000).) Finally, Judge Rosen refused to approve an award of \$1.7 million in attorneys' fees as part of a settlement reached in a wrongful death action against the city of Detroit by the estate of Malice Green, who died as a result of a beating by Detroit police officers in 1992. *Green v. City of Detroit*, 1995 U.S. Dist. LEXIS 12535 (E.D. Mich. July 28, 1995).

Off the bench, Judge Rosen is probably best known for his expertise in evidence, trial procedure, and criminal law. From 1995 to 2001, he served on the Criminal Law Committee for the Judicial Conference of the United States, assisting in the development of criminal law and procedure and sentencing policy for the federal bench. He has co-authored leading practice guides on both federal and Michigan civil trials and evidence. For almost as long as his judicial career, he has taught courses on evidence at several law schools in the Detroit area and frequently lectures on his topics of expertise to other judges and lawyers in the United States as well as internationally.

As these experiences demonstrate, a recurring theme in Judge Rosen's life is public service. His willingness to address important legal issues, educate his peers, and serve his community is based on his desire to give back — an ambition that was instilled in him by his parents and clearly exists today in his role as a federal judge. **TFL**

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