

Judicial Profile

NATELLA ROYZMAN AND LESLIE R. HOROWITZ

Hon. Barry Russell U.S. Bankruptcy Judge, Central District of California

IN 2004, JUDGE BARRY RUSSELL was the first bankruptcy judge to receive the Los Angeles County Bar Association's "Outstanding Jurist" award, which is given each year to the current or past member of the federal or state judiciary in Los Angeles County who has made significant contributions from the bench. The longest sitting bankruptcy judge in the Ninth Circuit and the second longest consecutively sitting bankruptcy judge in the country, Judge Russell's contributions—both on and off the bench—have indeed been truly outstanding.

After graduating from the School of Law at the University of California at Los Angeles, Judge Russell, who wanted to save the world, began his legal career as a deputy public defender. Quickly realizing that his job consisted more of plea bargaining than vindicating the wrongfully accused, he soon changed gears and became a trial attorney in the criminal division of the U.S. attorney's office in Los Angeles, where he stayed for almost four years. In that position, he tried dozens of cases and argued numerous appeals. The U.S. attorney's office had no appellate department at that time; therefore, much of any spare time Judge Russell had away from trial work was spent preparing appeals to be heard by the Ninth Circuit Court. Judge Russell recalls the experience as high-pressured but satisfying. He particularly appreciated that the U.S. attorney's office hired the best people and took on only strong cases. He had a true sense that he was serving justice.

Despite his success and satisfaction as an assistant U.S. attorney, Judge Russell could not fight his long-time wish to become a judge. He believed the position would give him greater opportunities to help society and to serve justice. Thus, after only seven years in law practice, he decided to put out feelers for a position on the bench and reached out for advice from a district judge before whom he had appeared. Judge Russell had his sights set on a municipal court judgeship, because it required a minimum of only five years



of legal practice. Little did he know that the meeting with the district judge would take Judge Russell's career in a completely unforeseen direction—one that was drastically different from his original intent.

In what Judge Russell characterizes as fate, the district judge mentioned an open position for a bankruptcy referee. (Bankruptcy judgeships were not established until the passing of the Bankruptcy Reform Act of 1978.) Judge Russell knew absolutely nothing about bankruptcy, but the district judge advising him encouraged him to apply. Judge Russell decided to take the chance; he read through the only bankruptcy law treatise then available in the library and applied for the position.

That shot in the dark paid off for him. In 1974, at just 33 years of age, Judge Russell was appointed a bankruptcy referee by a majority vote of the district court, making him the youngest bankruptcy referee in the country. He was self-conscious about his age, and it did not help matters that he looked 10 years younger than he actually was. Nonetheless, he would not allow himself to be intimidated or pushed around. He had done some teaching and figured that, if he could control a classroom, a courtroom could not be

much more difficult.

Not an insider of the then very close-knit bankruptcy world, Judge Russell began to change the way things were done in bankruptcy court. He immediately began to enforce the rules of evidence and ethics strictly—an approach that had not necessarily been the standard in the bankruptcy courts in those days. In particular, Judge Russell recounts that attorneys would knock on the door to his chambers in an attempt to talk about their case *ex-parte* or to attempt to introduce their clients to him. He often felt frustrated that he could not get to the substance of a case because of fights over jurisdiction—a consequence of the fact that nonbankruptcy practitioners would do just about anything to get their case out of the bankruptcy court. “It really bothered me that bankruptcy courts were not respected,” he recalls. “I wanted to raise the standard.”

His mission to improve the bankruptcy courts prompted Judge Russell to write an article on evidence and make a presentation on the topic at the National Conference of Bankruptcy Judges. In 1978, he became a faculty member at the Federal Judicial Center, where he taught courses on the rules of evidence and, ever since then, he has taught the subject at “baby judges’ school,” a program for new bankruptcy judges. Judge Russell was also the first bankruptcy judge to implement trial by declaration procedures (similar to summary judgments but with the right to cross-examine the declarants)—a decision that initially met some resistance but one of which he is particularly proud. “It forces people to think about their case and what their evidence is,” he explains, “which often encourages settlement.” The practice was ultimately upheld by the Ninth Circuit Court of Appeals and is now widely used in bankruptcy courts across the country.

Judge Russell’s vigorous commitment to teaching and implementing the rules of evidence eventually led West Publishing to approach him about writing a manual on the rules of evidence. It took three years of hard work—mostly during evenings and weekends—to finish the first volume of the Bankruptcy Evidence Manual, which was first published in 1987. Kenneth Klee, a professor at UCLA’s School of Law and a prominent bankruptcy attorney, describes the manual as a “breakthrough,” noting that there had been nothing like it available and that it significantly upgraded the practice of bankruptcy law. Judge Russell updates the manual annually, and it continues to be a staple found in most bankruptcy attorney’s libraries.

Yet another of Judge Russell’s important contributions is the mediation program he worked hard to develop in 1994 and continues to administer for the bankruptcy court for the Central District of California. The inspiration for the program came while Judge Russell was on the Court Administration Case Management Committee and attended a Federal Judicial Conference program on mediation. He was instantly intrigued and decided to talk to attorneys, judges,



Judge Russell and Senior Circuit Judge and former Chief Judge Dorothy W. Nelson of the U.S. Court of Appeals for the Ninth Circuit.

court administrators, and anyone else he could think of that knew something about mediation about setting up a mediation program. He had the sense that the public was growing increasingly dissatisfied with the legal system and had decreasing faith in the courts’ ability to administer justice. He believed that if people became more involved in the process and had more say over the resolution of their disputes, they would feel better about the system and would be more satisfied with the results, rather than perceive themselves as “victims” of the court.

By all accounts, the mediation program has proven to be a success. Sixty-four percent of cases settle through the mediation program, which currently has 185 mediators and continues to accept applicants on a rolling basis. The number of cases sent to the program increases yearly, as more judges and attorneys are beginning to understand its benefits. Judge Richard Neiter, now a fellow bankruptcy judge and one of the program’s first mediators, describes it as a “terrific program, administered well and favored by most lawyers.” Judge Russell’s efforts in promoting mediation have not gone unrecognized. In November 1997, he received the Southern California Mediation Association Award for distinguished service for promoting mediation in the courts, and in December 2000, he received the Los Angeles County Bar Association’s Dispute Resolution Services’ Emil Gumpert Judicial ADR Award. Judge Russell gives a great deal of credit to Susan M. Doherty, an attorney, his career law clerk, and the program’s coordinator, who assists him in every phase of the program.

The mediation program has personally benefited Judge Russell, who himself went through the mediation training required of all the program’s prospective mediators. The experience has taught him better listening skills and greater patience both on the bench and in his personal life. “Unlike being a good judge, a good mediator will not just cut through the issues and make



Judge Russell and Circuit Judge and former Chief Judge Mary M. Schroeder of the U.S. Court of Appeals for the Ninth Circuit.

a decision,” he notes. “In mediation, like many areas of life, it is more a question of perception and perspective than one of right or wrong.” There seems to be an extra glimmer in Judge Russell’s eyes when he speaks about the mediation program, and it is obvious that he is passionate about it and proud of the positive impact it has had and promises to continue to have.

Judge Russell has also had the privilege of being appointed to, and serving on, the Bankruptcy Appellate Panel of the Ninth Circuit for just shy of 14 years, making him the second longest serving judge on the panel. For two of those years he was the panel’s presiding judge. He fondly refers to his time on the panel as a “labor of love,” because the position required a good deal of traveling and working late nights and weekends. However, the effort the job required was well worth it to Judge Russell because of the satisfaction he received from grappling with intellectually challenging issues and discussing cases with other judges. His work on the panel was also a welcome contrast to the very solitary job of being a trial judge.

It is perhaps Judge Russell’s ongoing intellectual interest that has drawn him to teaching over the years. In addition to being a faculty member at the Federal Judicial Center since 1978, he has been an associate clinical professor of psychiatry law at the University of Southern California since 1975. He has also taught courses in bankruptcy, rules of evidence, and ethics at UCLA’s, Loyola’s, and Whittier’s law schools. In September 1988, he was the first American invited to the Supreme People’s Court of the People’s Republic of China to lecture on the subject of bankruptcy law. Since then, he has spoken in several other countries, including Mexico, Canada, Brazil, Argentina, the Republic of the Marshall Islands, and, most recently, Serbia and France.

Remarkably, Judge Russell has managed to find the time to be actively involved in the Federal Bar Association—both on a local and national level. He has been a FBA member since 1971, served as the president of

the Los Angeles Chapter in 1977, and later was the FBA’s national president for the 1990–1991 term. One of his contributions was establishing a foundation to fund the Los Angeles Chapter’s program that presents the Judge Barry Russell Award to students of the five local ABA-accredited law schools who have achieved excellence in the study of federal practice and procedure. Judge Russell continues to administer the program, now in its 27th year, which is one of the local chapter’s best attended programs and has helped get younger members involved in the FBA. For the last 15 years, Erwin Chemerinsky, the nationally recognized constitutional law scholar and dean of the University of California at Irvine Law School, has presented his constitutional law update as part of the program.

Another of Judge Russell’s significant projects was the Los Angeles Chapter’s Salute to Federal Law Enforcement Officials program, which honored courageous individuals from nine federal investigative agencies with Medals of Valor and Distinguished Achievement Awards (the latter award honors an outstanding agent chosen by each individual agency). After attending an FBA program honoring acts of heroism of local law enforcement agents in Washington, D.C., he decided to implement something similar for federal agents in Los Angeles County. With the help of his judicial assistant, Kathryn Kwok, Judge Russell was personally involved in just about every aspect of putting the program together—from setting up the committee and procedures for choosing the honoree to planning every detail of the banquet. He was even involved in designing the logo for the award.

Judge Russell remembers the program’s first Medal of Valor ceremony in great detail. It was 1990 and actor William Shatner was the presenter. There was a huge turnout of more than 600 people for the luncheon program. The award recipients included two Drug Enforcement Agency agents killed in the line of duty. Though many years have passed, Judge Russell’s eyes begin to well up as he recalls the touching moment when the wife and young son of one of the agents came up to accept the posthumous award on the agent’s behalf. The program was held for 14 years, and presenters in the following years included Robert Stack, Steve Allen, and Ernest Borgnine, as well as numerous U.S. attorneys.

Notwithstanding all his activities and contributions off the bench, Judge Russell manages an enormous caseload effectively and efficiently, with seeming ease. He currently has about 40 Chapter 11 bankruptcy cases and 5,900 Chapter 7 cases, but those daunting figures do not stop him from being prepared and knowledgeable about every matter before him. “For the 30-plus years I’ve been appearing before Barry Russell, it has always impressed me how efficiently he runs his courtroom,” remarks Edward Wolkowitz, a bankruptcy attorney, professor, and trustee. “There are usually very few continued matters on his calendar,” Wolkowitz adds, “which is a testament to Judge

Russell's ability to get the matter resolved the first time around."

It should also be noted that, beyond being thought of as a knowledgeable and capable judge, Judge Russell is also extremely well liked by both fellow judges and practitioners. Judge Neiter describes him as "decent human being," noting that he truly considers the impact of his rulings on the people before him. Kenneth Klee, who has appeared before Judge Russell on numerous matters throughout the years, recalls Judge Russell's remarkable good humor while being splashed by Klee's children during a white-water rafting trip. Even to those who do not know him well, Judge Russell's energetic nature, good spirit, and easy and sincere smile are hard to overlook.

Thirty-five years have passed since Judge Russell took the bench, but fortunately for the attorneys and parties appearing before him, he has no plans to retire. Helping people resolve their problems gives him too great a feeling of satisfaction. He looks forward to coming to work every day, seeing his staff, and

doing everything he can to make a meaningful and worthwhile contribution to society. His enthusiasm for the law, for teaching, and for improving society is palpable, and, quite frankly, it is difficult to imagine him ever slowing down. **TFL**

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