

Judicial Profile

NINA HESS HSU AND MARC VOCKELL

Hon. Sam Sparks U.S. District Judge, Western District of Texas

WHEN ASKED WHAT his favorite case is after 18 years on the federal bench, Judge Sam Sparks replies, without skipping a beat, “The next one.” Judge Sparks’ passion for the courtroom—and specifically for jury trials—developed during his long and storied career as a trial attorney from 1965 through 1991, when he tried all manner of cases in West Texas and across the country. Although many lawyers know him for his quick wit and sense of humor on the bench, including his occasional tendency to include poetry in his orders, Judge Sparks is noteworthy in many more respects.

Sam Sparks’ journey to the federal bench began at the University of Texas at Austin. After graduating from the university with both a Plan II Honors degree and a law degree, Sparks began his legal career as a law clerk to Judge Homer Thornberry, U.S. district judge for the Western District of Texas, El Paso Division. At the time, Sparks did not imagine that, more than two decades later, he would be appointed as a U.S. district judge and would move into the chambers space in Austin that had been occupied by Judge Thornberry when he served on the Fifth Circuit Court of Appeals.

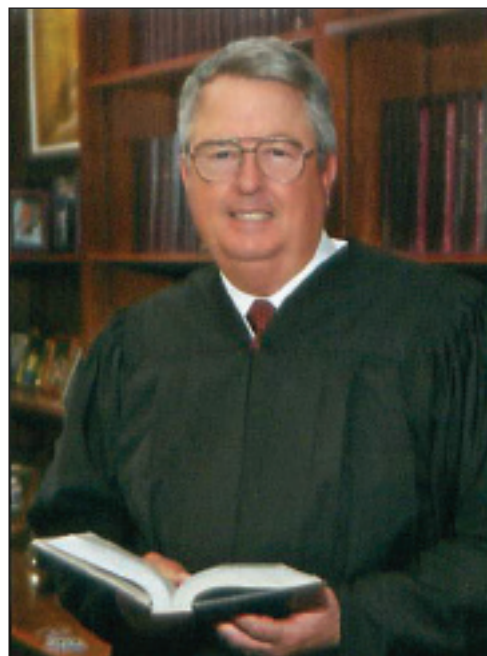
After his clerkship with Judge Thornberry, Sparks became a litigator with the law firm of Hardie, Grambling, Sims and Galatzan in El Paso, Texas. Even among federal judges, Judge Sparks’ high level of trial experience before taking to the federal bench is unique. During his years in private practice, Sparks gained a vast amount of trial experience in both state and federal courts, trying hundreds of cases to a verdict, including wrongful death, products liability, professional malpractice, insurance, and school law cases, among others. He was board-certified in both civil and personal injury litigation and was inducted into the American College of Trial Lawyers. His grueling trial schedule did, of course, come with a price: Sparks underwent two stomach surgeries that his physicians attributed to his tough trial practice. Nonetheless, Judge Sparks looks back fondly on his days of trying cases and maintains to this day that trying cases as a lawyer is much more enjoyable than trying them as a judge. He still

misses
trying
cases,
and it
bothers

him when he knows a lawyer should make an obvious objection but fails to do so.

Many attorneys and judges have witnessed Sparks’ trial skills over the years, including Senior Judge Royal Furgeson, now seated in the Northern District of Texas but formerly of the Western District of Texas, San Antonio Division. “Sam was a superb trial lawyer, not only because he was such an exceptional advocate, but also because he was such a remarkable student of the law,” says Furgeson, who practiced “down the street” from Judge Sparks in El Paso for 20 years. Furgeson recalls that, when Sparks “showed up on my side of a case, I could relax just a bit, because I knew he would always have my back. But, if he showed up on the other side, I knew that I needed to elevate my game to the highest level, because when you are facing the best, you must be at your best. And Sam was as formidable a trial lawyer as I ever saw in action.”

The lessons Sparks learned during this part of his career have carried over into his courtroom. Fellow Western District Federal Judge Robert Junell of Midland, Texas, notes that “Judge Sparks has a variety of complex cases that come before him, from intellectual property cases to antitrust cases to questions involving the State of Texas. It is amazing the job he does with his docket. I always read the opinions Judge



Sparks writes closely because I learn from every one of them.”

Judge Sparks takes his role as a federal judge seriously, and he firmly believes that he can improve the quality of the trial bar one attorney at a time. Although he says his job is never done in this respect, he admits that the second time he sees lawyers in his courtroom “they do a lot better job than the first time.” According to Joe Bill Watkins, a retired partner of Vinson & Elkins LLP, who met Sparks when both were undergraduate students at the University of Texas at Austin, “Sam Sparks has always had an acute sense of right and wrong. He has always had high personal standards for himself, so it is not surprising that he holds lawyers in his courtroom to a high standard.”

Karl Bayer, an Austin litigator and dispute resolution expert who has worked with—and in front of—Judge Sparks for decades describes Judge Sparks as follows:

As a baby lawyer, I was fortunate to have Sam Sparks as my mentor. He loved good lawyering and insisted on it, both from himself and young lawyers. As a judge, he still does. He believes that the system works well, if and only if good lawyers do their jobs for their clients, judges, and juries. As a judge, nothing frustrates him more than poor lawyering. He wants lawyers to do well in his court and he continues to teach from the bench. For the insecure or thin skinned, the bench lessons can sometimes feel too gruff and tough, but in my experience (even as a receiver) he is usually spot on.

It is well known that lawyers who are not prepared and candid in Judge Sparks’ court will suffer the consequences. He is known for his sometimes acerbic, sometimes poetic admonishments of lawyers in his court. In a case he heard in 2004, *Klein-Becker LLC, et al. v. William Stanley, et al.*, No. A-03-CV-871-SS, one of the judge’s highly publicized orders described how he felt like a kindergarten teacher because the attorneys involved in a discovery dispute had failed to learn how to get along well with others. However, Sparks has not given up on his attempts to improve the quality of the federal bar, and he continues to play his part by speaking frequently at CLE presentations nationwide, at the University of Texas School of Law, and at bar association events. Judge Sparks notes that today’s legal practice is far different than it was in his day, in that young lawyers today have little opportunity to gain trial experience because so many cases are settled or go to arbitration rather than to trial. “In my day, we tried several cases to a jury every month, and now lawyers can become litigation partners in some of the top law firms without ever having tried a single case,” Sparks laments. “It’s really a shame because you need to develop that scar tissue through experience. Even if it’s through pro bono representa-

tion, litigators need to get into the courtroom as often as possible.”

Aside from his extensive experience as a trial lawyer, another unique and interesting characteristic of Judge Sparks is that he is one of the most apolitical and nonpartisan federal judges a lawyer is likely to come across. Judge Sparks’ history and record speak for themselves on this point. Notably, he was a Democrat appointed by a Republican President, George H.W. Bush in 1991. Although Judge Sparks was never deeply involved in politics during his days as a trial lawyer in El Paso, he was known as a conservative Texas Democrat at the time. The first time he was approached about becoming a federal judge was by the Carter administration, but at the time, he wasn’t interested in seeking the nomination, because he “loved trying cases too much.” However, circumstances had changed by the early 1990s when the Bush administration approached Judge Sparks regarding an appointment to the federal bench. Judge Sparks’ first wife, Arden Reed Sparks, had passed away after a difficult battle with cancer; his children were grown; and his family encouraged him to make the move from El Paso to Austin and to pursue the nomination. Although it was still a difficult decision for him, this time Sam Sparks agreed to begin the process of becoming Judge Sparks. On Oct. 1, 1991, Sparks was nominated to a new judicial seat created by statute and quickly sailed through the Senate confirmation process with the support of both Democratic Sen. Lloyd Bentsen and Republican Sen. Phil Gramm and was confirmed on Nov. 21, 1991. Despite the rather simple confirmation, Sparks dislikes the judicial selection process itself, and describes it as “an endurance contest,” which is not worth it for “anybody that’s had any trouble in life.”

Judge Sparks is well known for letting the law, not ideology, drive his rulings. Judge Junell remarks that “all judges should be apolitical, and Sam Sparks sets a good example in this regard.” As Karl Bayer explains, “Judge Sparks has made peace with his trial judge role of applying the law. He has strong personal beliefs and opinions, but as a trial judge he sets them aside and follows the law—if it’s clear—whether or not he likes the outcome. Where the law is not clear, fortunately he has a strong sense of fairness and practicality that inform his judgment.”

A brief look at some of Judge Sparks’ noteworthy decisions over his 18 years on the bench unequivocally demonstrates his devotion to adhering to precedent and giving all litigants a fair forum for their disputes. For example, in the 1994 case of *Hopwood v. Texas*, 861 F. Supp. 551 (W.D. Tex. 1994), Judge Sparks upheld the University of Texas School of Law’s use of affirmative action in its admissions process to maintain a diverse enrollment or to remedy past discrimination. Judge Sparks’ decision was overturned by the Fifth Circuit, which held that race could not be used as a factor in admissions. *Hopwood v. Texas*,

78 F.3d 932 (5th Cir. 1996). The Fifth Circuit's opinion was appealed to the U.S. Supreme Court, but the Court declined to review the case on July 1, 1996. 518 U.S. 1033 (1996). Nearly seven years later, the U.S. Supreme Court issued its opinion in *Grutter v. Bollinger*, 539 U.S. 306 (2003), abrogating the Fifth Circuit's decision in *Hopwood* and holding that race could be used as a factor in admissions. Ultimately, nine years after his 1994 decision, the Supreme Court vindicated Judge Sparks' original ruling in *Hopwood*, using similar reasoning to what had appeared in his original district court order.

During his judicial career in the capital city of Texas, Judge Sparks has been called on to preside over political cases on a number of occasions, and he has made tough rulings against Democrats and Republicans alike. In 2003, the former attorney general of the state, Dan Morales, a Democrat, pleaded guilty to fraud charges related to his handling of the Texas tobacco settlement and channeling attorneys' fees to his acquaintances. Early in the criminal proceedings, Judge Sparks showed that he was not inclined to show leniency. When Morales purchased two luxury automobiles and made representations about his financial condition to the dealerships that were inconsistent with his plea of indigence that was made almost contemporaneously when seeking the assistance of a public defender, Sparks commented on the record that Morales' actions were "beyond stupidity." Sparks revoked Morales' bond and kept him in federal custody pending his plea. *United States v. Morales et al.*, No. 1:03-CR-00085-SS.

As another example of his nonpartisanship, in July 2006, Judge Sparks presided over a case involving whether or not Tom DeLay, a Republican, could be declared ineligible by his party and thereby be replaced by another Republican candidate of the party's choosing on the ballot for the November general election for the U.S. House of Representatives. DeLay had decided to give up his candidacy for the congressional race and to resign from his congressional seat after winning the Republican primary, and the question before Judge Sparks was whether DeLay was legally "ineligible" for the race. Judge Sparks ruled against DeLay and the Texas Republican Party, holding that, even though DeLay was free to withdraw his name from the ballot, he could not be declared ineligible and thus replaced by another Republican candidate because he did not meet any of the "ineligibility" criteria set forth under Texas law. *Texas Democratic Party v. Benkiser*, No. A-06-CA-459-SS, 2006 WL 1851295 (W.D. Tex. July 6, 2006). The case was appealed, and the Fifth Circuit affirmed the decision in its entirety. *Texas Democratic Party v. Benkiser*, 459 F.3d 582 (5th Cir. 2006).

Perhaps being a master of the trial court and objectively applying the law to the facts before him are the easy parts of the job for Judge Sparks. One of the more troublesome aspects is the security risk inherent

in the job. "I was a silk stocking lawyer," Sparks quips. He had no idea that a federal judgeship would often require U.S. marshals' protection not only for himself and his immediate family but also for his grandchildren. Unfortunately, bearing this risk does not entitle the judge—or any federal judge—to hazard pay, and Sparks notes that "judicial salaries have not increased since I joined the bench in 1991. I have law clerks who leave me and go to work at their law firm—and they make more than I do in their first year in private practice." Sparks was fortunate that his successful private practice provided him with enough financial security to enable him to live comfortably while taking more than a 50 percent pay cut when he took the bench. However, Sparks notes that he knows "several outstanding federal judges who live with economic uncertainty as their families grow and their salaries remain stagnant."

Fortunately for litigants and citizens in the Western District of Texas, Judge Sparks bears these burdens of the job and continues to look forward to his next "favorite case." As for his personal life, Sparks continues to enjoy life in Austin with his wife Melinda, whom he married in 1995, and he likes spending time with their six children and seven grandchildren. From a professional perspective, there can be no doubt that Judge Sparks has been a success on the bench. Among his many accolades, one of the most prominent is the 2005 Trial Judge of the Year award given by the Texas Chapters of the American Board of Trial Advocates. Additionally, at a ceremony this September, Sparks will become the second recipient in the history of the American College of Trial Lawyers Sandra Day O'Connor Jurist Award. This is a unique award that is not even given annually, but is given "from time to time to a judge, either federal or state, who has demonstrated exemplary judicial independence in the performance of his or her duties, sometimes in difficult or even dangerous circumstances." When Judge Sparks is asked what is the secret to being such a successful federal judge, he replies with a smile, "I've often said that you just need experience, a sense of humor, and the ability to drink whiskey to handle this job." **TFL**

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