

Judicial Profile

MARK G. KOBASUK

Hon. Herman J. Weber Southern District of Ohio

ORPHANED AT THE age of five, Hon. Herman J. Weber made his own way in the world and has served as a state and federal judge for more than 40 years, embodying a selfless devotion to duty and the administration of justice.

Judge Weber was born into a family of lawyers. His grandfather was a lawyer and his father was a law professor and dean of Ohio Northern University Law School in Ada, Ohio. Herman Weber's mother was a schoolteacher and a lawyer, but she did not practice law because of the arrival of her son, the

couple's only living child. At age five Judge Weber's life was forever altered. In 1932, both his parents were tragically killed in a car accident. Although the young Weber was riding on his mother's lap at the time, he remarkably survived the accident relatively unhurt.

After the accident, Judge Weber was reared by his uncle and went from being an only child to the sixth child in his uncle's large family. The judge's uncle was a minister in the United Brethren Church (now

United Methodist Church), and the family moved frequently throughout northwestern Ohio, living in six towns in 13 years. Judge Weber began his education in a two-room schoolhouse in West Leipsic, Ohio, and graduated from Fremont Ross High School in Fremont, Ohio. In those early years, Judge Weber delivered coal, loaded grain cars, and delivered the *Toledo Blade*. The judge remembers as a broadening life experience delivering newspapers in the early morning hours and collecting the money for those papers in the late evening hours during the height of the

Great Depression.

After high school, Judge Weber entered the U.S. Navy as a seaman first class in 1945 and received technical training in radar and sonar. He was slated to be in the force to invade the mainland of Japan, and he believes his life may well have been spared by President Truman's decision to drop the atomic bomb over the Japanese cities of Hiroshima and Nagasaki, which reportedly saved the lives of an estimated one million U.S. servicemen. Surviving both the war and the tragic accident that took his parents' lives, the judge believed he was living on borrowed time and was determined to make the most of his life.

After the war, the judge attended Otterbein College in Westerville, Ohio, and received a degree in 1949, majoring in government and history. Taking advantage of the GI Bill, the judge attended Ohio State University College of Law, graduating summa cum laude in 1952 with membership on the *Ohio State Law Journal* and Order of the Coif. The judge remembers being challenged by the dean to obtain straight A's in his last quarter in order to graduate summa cum laude, and the judge has never turned down a challenge. Upon graduation from law school, the judge was offered a scholarship to Harvard University Law School to pursue a master's degree in law but instead chose to practice law with his father-in-law in Fairborn, Ohio. Unfortunately, the judge's father-in-law passed away before the judge was admitted to the bar and could practice with him. The judge entered into practice with a fraternity brother under the name Weber and Hogue in Fairborn, Ohio. The law firm practiced both civil and criminal law in a number of cities in southwestern Ohio.

Along with his general law practice, the judge was active in the local community and served on the Fairborn City Council in the late 1950s. Because he was a lawyer, he presided over the Fairborn mayor's court and served as an acting municipal court judge, thus beginning his judicial career. Local residents lobbied the Ohio legislature and obtained a new state court judgeship to serve the residents of Greene County, but no local lawyer was willing to run for the seat, given the low level of compensation. Reluctantly, Judge Weber decided to seek the judgeship because he had supported its creation. The judge's wife, Barbara, approached members of the local bar



with two petitions: one blank and one for Judge Weber. She informed the local lawyers that both she and Judge Weber would sign a petition for them or they could sign the petition for Judge Weber. The local lawyers all signed Judge Weber's petition, and at the age of 33 he ran for and was elected to the Greene County Court of Common Pleas in 1961. He became one of the youngest common pleas judges ever elected in the state of Ohio.

Judge Weber served as a trial judge in Greene County, Ohio, for 21 years. Although largely a rural county, Greene County contains five colleges/universities and Wright-Patterson Air Force Base and its Air Force Institute of Technology, giving the county a cosmopolitan feel and a diverse mix of cases and residents. During this period, Judge Weber served as president of the Ohio Common Pleas Judges Association (1975) and chair of the Ohio Judicial Conference (1980–1982).

In 1982, Judge Weber was appointed and subsequently elected to the Ohio Second District Court of Appeals, further expanding his judicial experience. He served as a state appellate judge for three years in Dayton, Ohio, and during that time sat by assignment of the chief justice on the Supreme Court of Ohio, participating in several cases. Judge Weber enjoyed the intellectual policy issues facing an appellate judge but missed interacting with the litigants and helping people resolve their disputes.

In 1985, when Judge Weber and his wife were contemplating their retirement upon the expiration of his six-year term as an appellate judge, President Ronald Reagan nominated Judge Weber to a new U.S. District Court judgeship created in the Southern District of Ohio. Judge Weber was sworn in as a U.S. District Court judge in April 1985, serving now for 17 years. During these 17 years on the federal bench, Judge Weber has had several noteworthy cases. In 1988, he presided over a four-month jury trial brought by 1,800 physicians as a class action against Cincinnati's largest HMO. The jury found that the HMO had violated federal antitrust, securities, and RICO laws and awarded damages, which, after mandatory trebling, amounted to nearly \$102 million. The verdict was the first RICO award against an HMO.¹ Judge Weber tried one of the first jury trials in a patent case, allowing the jury to determine whether infringement existed under the doctrine of equivalents. The case proceeded to the U.S. Supreme Court.²



Judge Weber with his son Clayton and three grandchildren.

Judge Weber also ruled on a Voting Rights Act and a 14th-Amendment challenge to Cincinnati's system for electing city council members and upheld the city's system allowing each voter to choose up to nine candidates. The U.S. Court of Appeals for the Sixth Circuit affirmed his decision.³ Recently, Judge Weber rejected a claim by private schools in Ohio that they should be exempt from a

graduation test mandated by the state. It is likely the first time a federal court has determined whether a state can force private schools to participate in state-wide testing.

The judge's judicial philosophy is straightforward: all cases are important, with none more important than any other, and each case depends on its own facts. A judge's job is to settle the litigants' disputes in one way or another without an agenda and without imposing the judge's own thoughts or mores on the matter. Having a high regard for the collective wisdom of the jury, the judge is reluctant to dismiss a case or grant summary judgment unless it is clearly appropriate. Given his experience as an appellate judge, Judge Weber is always careful to make a complete record. He views the appellate courts as his eraser and has been known to say to lawyers and litigants that he can sleep comfortably at night because the appellate courts will correct any mistakes he might have made. The judge is known for being extremely well-prepared in the courtroom, having fully reviewed the record and often knowing the case better than the lawyers involved. Lawyers note that Judge Weber has tremendous foresight, understanding the consequences of what he does several steps down the line.



Judge Weber with his wife Barbara.

The chief judge of the U.S. District Court for the Southern District of Ohio, Walter Herbert Rice, has known Judge Weber for more than 30 years, as they first served as state trial judges in adjoining counties and now serve together on the federal bench. Chief Judge Rice described Judge Weber as an "extremely hardworking and highly intelligent judge who knows how to take charge of litigation without intimidating

anyone, and he brings out the best in lawyers and gives all parties a fair hearing.” The chief judge describes Judge Weber as “a marvelous trial judge” and has heard Judge Weber, on more than one occasion, refer to himself as a “country lawyer from Greene County and then proceed to analyze a complex factual and legal situation in such a way as to leave no question that he has fully absorbed all the facts and issues.” U.S. District Judge Susan J. Dlott practiced before Judge Weber for 15 years before going on the federal bench in 1995. Judge Dlott notes that “Judge Weber is a wonderful mentor who shares all his vast experience with his fellow judges. On more than one occasion I have actually recessed a trial to walk down the hall and seek Judge Weber’s sage advice. His kindness and humility are an inspiration to all his colleagues.” U.S. Sen. Mike DeWine (R-Ohio) stated: “since my days as an assistant county prosecutor in Greene County, I tried cases before Judge Weber and learned firsthand that he is a man of great integrity and personal virtue. He has been a role model within our community and the judicial system, and I thank him for his commitment and dedication to our state and country.”

In a 1979 article, Judge Weber summarized the qualities of the ideal trial judge, writing: “an appropriate epitaph for a trial judge is this: this judge exercised common sense, was slow to anger, rich in courtesy and understanding; unquestionably fair but firm; and steadfastly encouraged the search for truth.”⁴ These qualities have guided Judge Weber in the performance of his judicial duties and are excellent qualities for any trial judge — a job the judge described as “the most demanding on the human personality ever to be devised by society.”⁵

After serving 17 years on the federal bench, Judge

Weber took senior status on Jan. 1, 2002. True to form, he still maintains a full caseload, and his law clerks note that he is always the first one to arrive at his chambers and usually the last to leave. After more than 40 years, Judge Weber continues in the search for truth and the equal administration of justice. TFL

Mark G. Kobasuk is a member of the Executive Committee of the John W. Peck Cincinnati/Northern Kentucky Chapter of the Federal Bar Association and an attorney at Taft, Stettinius & Hollister LLP in Cincinnati, Ohio.

Endnotes

¹ *Thompson v. Midwest Foundation Independent Physician’s Association*, 117 F.R.D. 108 (S.D. Ohio 1987) and 124 F.R.D. 154 (S.D. Ohio 1988).

² *Warner-Jenkinson Co. Inc. v. Hilton Davis Chemical Co.*, 520 U.S. 17, 117 S. Ct. 1040 (1997).

³ *Clarke v. City of Cincinnati*, 40 F.3d 807 (6th Cir. 1994).

⁴ Hon. Herman J. Weber, *The Perfect Judge*, 17 COURT REVIEW, 11 (Sept.-Oct. 1979), published by the American Judges Association.

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Id. at 6.