



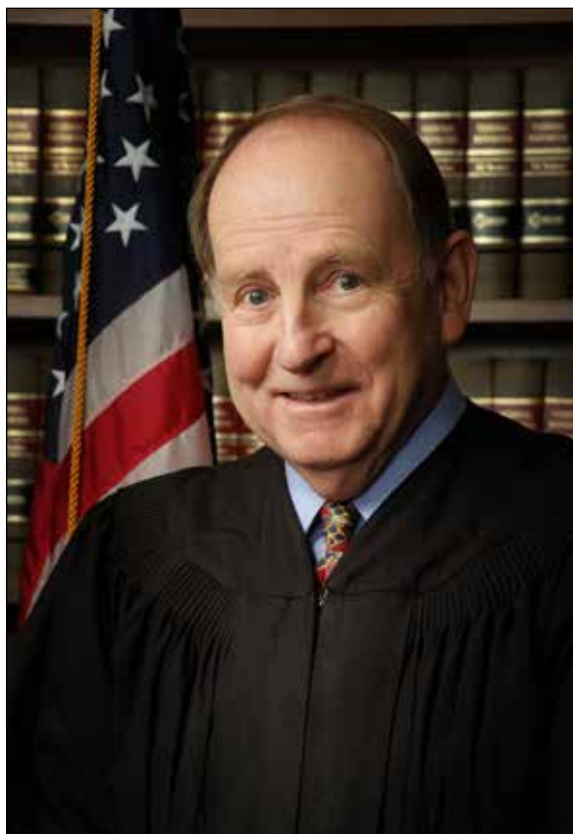
Judicial Profile

by Nancy B. Clark

Hon. Thomas B. Donovan U.S. Bankruptcy Judge Central District of California

Serendipity is defined as “the faculty of making fortunate discoveries by accident.” Judge Thomas B. Donovan would be the first to point out that his 50-year legal career is full of fortunate discoveries that have led him from arguing before the U.S. Supreme Court in 1966, to a successful career as a trial and bankruptcy lawyer for 30 years, to his appointment as a U.S. bankruptcy judge in 1994, and most recently, as the presiding judge in the *In re Balas-Morales* Chapter 13 bankruptcy, in which he was joined by 19 of his colleagues in finding the Defense of Marriage Act unconstitutional. Although he may not have consciously planned any of these extraordinary events, he was wise enough to take on the challenges and rise to the occasion.

When asked why he became a lawyer, Judge Donovan explains that it was not something that was preordained. Although his grandfather had been a lawyer, he had retired by the time Judge Donovan came to know him and passed away long before he could become an influence on his grandson. Growing up in San Jose, Calif., his parents struggled with illness and poverty to make ends meet. By encouraging purposeful, nonfiction reading on different subjects like engineering, aeronautics, and design, Donovan's parents hoped their son would become interested in something that would be worthwhile in life. It was through reading that Judge Donovan first came to know the law. As a young man, Donovan discovered he preferred to read any and everything on legal subjects like the biography of Supreme Court Justice Oliver Wendell Holmes and high caliber legal novels like *Anatomy of a Murder* and *To Kill a Mockingbird*. “I probably read more legal novels and legal biographies than any other category of books,” he explains.



At the age of 14, young Donovan made three fortunate discoveries that would shape his future and manifest into his three great passions: family, the law, and golf. On a school field trip to the local courthouse in San Jose, Donovan realized that he knew more about significant activities in the courthouse than his teacher. As his class-

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mates were led to the Probate Court, he ducked out and headed to a criminal trial he had been following in the newspapers. Upon entering the courtroom, he became transfixed by the way the criminal defense attorney commanded the entire courtroom's attention by his presence and his words. "He had that entire courtroom in the palm of his hand." At that moment, he thought to himself, "Boy, that's what I want to do when I grow up."

However, as serendipity would dictate, soon after this fortunate discovery, Donovan began working at the local country club and picked up his first golf club ever. Although his father had long ago been a professional golfer and had given him a book about the technicalities of hitting a golf ball, Donovan had never before hit a golf ball. Upon picking up that golf club, he discovered he had a natural ability for the game. By the end of that first summer, he became so consumed by golf that he spent the next three years trying to become proficient enough at the sport to become the next Ben Hogan.

Soon after his discovery of golf, Donovan started high school. As luck would have it, on the first day of school, he met his future wife, Shirley, and his passion for his future wife (whom he has been married to for 56 years) would eventually lead him away from the game of golf to college and a career in the law. As graduation approached, he realized he wanted nothing more than to marry Shirley some day and start a family. As consumed with golf as he was, Donovan sold his golf clubs, made the decision to pursue a legal career—giving up his boyhood dream of becoming a professional golfer—and went off to college.

Donovan graduated from the University of California, Berkeley in 1957 and entered active duty as a second lieutenant in the U.S. Army. He was assigned to the U.S. Army Security Agency in Arlington, Va. It was a highly classified organization doing important work during the Cold War. Donovan achieved the rank of first lieutenant before leaving active duty in 1959, while he continued to serve his country in the U.S. Army Reserves until 1964.

After his military service, Donovan returned to California to attend the University of California, Boalt Hall School of Law, where he was an editor of the *California Law Review*. While attending law school, Donovan found that he enjoyed being a law student, the challenge and the camaraderie, and found that he had an interest in a wide variety of legal matters. He expressed this interest to the on-campus recruiter from the prestigious Washington, D.C., law firm of Covington & Burling LLP. Out of 20 students interviewed by Covington & Burling, Donovan was the only one offered an associate position with the firm. He was very nervous about accepting the position. "I came from the wrong side of the tracks. I'm a small town guy," he explains. "Nobody in my family had any pretensions of major advancement in life while I had been working menial jobs since the age of nine." However, with his professors' encouragement he agreed to join the prestigious law firm upon graduation in 1962. Although he loved the firm and the people he worked with, Donovan found Washington was far from his roots and lacked the sense of community that he craved. This was

the era of Martin Luther King's March on Washington and the assassination of President John F. Kennedy. Donovan longed to be in a place where he could pursue an active role in community affairs.

Upon this discovery, Donovan and his family moved back to the Bay Area where he joined the San Francisco firm of Dinkelspiel & Dinkelspiel in 1964. As was customary, on the first day at the office he met individually with each of the seven partners. Each partner gave him an assignment. He soon discovered that this "first day" experience would come to define his practice as both a trial and bankruptcy lawyer.

One of the partners he met with that first day asked him to take on an important new client with whom the firm hoped to forge a long and fruitful relationship. As requested, Donovan met with the client, wrote and filed the complaint, tried the case, and won. Upon winning the case, the senior partner then met with Donovan and

asked him how much they should bill the client. Donovan responded that he believed they should bill the client approximately \$2,000, which would just cover his time on the client's matter. The partner disagreed and believed the case was worth much more. Donovan convinced him that they would make a better impression with the client if they charged less and built a rapport with the client. The partner finally agreed. Donovan successfully developed a long term relationship with the credit manager and senior management of the company. He became the responsible lawyer for the client on all legal matters for the next 20 years, and the client became the primary consistent revenue producer for his firm. Gaining the trust of this client eventually led to Donovan's promotion to partner.

That same first day at Dinkelspiel & Dinkelspiel, he also met with the firm's bankruptcy partner. The partner told him that his client, a Chapter 7 trustee, was administering a bankruptcy estate in which an officer of the bankrupt corporation, Marin Seafoods, wrote himself a friendly vendor personal checks on the company's bank account at the Bank of Marin after the filing of the bankruptcy. The officer and his vendor friend tendered the checks and the bank teller gave them their money. Under Section 70(a) of the Bankruptcy Act, upon the filing of the bankruptcy the assets of the debtor become the property of the estate. Furthermore, the filing of the petition constituted adjudication of bankruptcy. The theory promoted by Donovan's bankruptcy partner was that all of the entities involved in the transactions occurring on and after the date of filing (including the corporation, the officer of the corporation and vendor and the Bank of Marin) were jointly liable to

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Judge Donovan and his wife, Shirley.

the bankruptcy estate. There was no case law on point on the issue of whether a bank was liable to the bankruptcy estate for honoring checks tendered after the filing of the bankruptcy but before actual notice was given to the bank. However, Donovan took on the challenge, and successfully briefed and argued the case before the bankruptcy court that under Section 70(d) of the Bankruptcy Act, the parties were liable to the bankruptcy estate for cashing the checks presented after the filing of the bankruptcy.

On appeal to the district court, Donovan successfully defended the bankruptcy court's decision. The Bank of Marin appealed to the Ninth Circuit Court of Appeals. The debtor and the vendor returned the funds to the bankruptcy estate. The Ninth Circuit unanimously affirmed the district court's decision. Displeased with the Ninth Circuit ruling, the Bank of Marin filed for a writ of certiorari to the U.S. Supreme Court, and the Court granted the writ. Since Donovan had briefed and argued successfully at every level, the partners of the firm left him in charge of briefing and arguing the case in Washington.

At oral argument in 1966, Donovan argued to the Court that despite the fact that the bankruptcy estate had been reimbursed the funds by the other parties to the dispute, the trustee had a statutory right to reimbursement from the bank where another payee could not reimburse the bankruptcy estate for the fraudulent transfer. He was on his feet for about 50 minutes for his "scheduled" 30 minute argument due to the peppering he received from four or five of the justices. His knowledge of the intricacies of the issues involved in this case apparently was evident from the intensity of the grilling the justices gave him. Despite his efforts, the Supreme Court reversed the Ninth Circuit decision. *Bank of Marin v. England*, 385 U.S. 99 (1966).

Looking back, Judge Donovan says, "It was a fascinating experience." While preparing for the oral argument, his friends and colleagues at the firm needled him that he could not possibly win because his case was so weak. One associate demanded a bet on the matter. Finally, the day before he left for Washington to argue the case, Donovan said to his colleague, "Look, John. I am tired of you pestering me this way. Bring in the witnesses and I will enter into a bet with you." They gathered everyone in the office and Donovan said, "I tell you what, I will bet you one dollar that I am going

to win this case or Justice Harlan will write a dissent." Seven to one, Harlan wrote the dissent. It was a moral victory.

Upon hearing about these appeals, the bankruptcy community in the Bay Area sought out this kid who was handling the case and preparing to argue it in the Supreme Court. He was embraced by the bankruptcy community and found it to be a collegial group. He enjoyed discussing the law with members of the bankruptcy bar. This acceptance by the bankruptcy community led to a wholesome and rewarding 30-year career in bankruptcy litigation and reorganization cases.

At the end of 1968, at the age of 33, Donovan was made partner at Dinkelspiel & Dinkelspiel. In response, he called his wife, Shirley, who put champagne on ice and awaited her husband's return home to celebrate. However, as he rode the bus home, Donovan decided it was time to leave Dinkelspiel & Dinkelspiel. As he arrived home to his wife and kids, his wife greeted him holding the bottle of champagne as he announced he was leaving the firm. Suffice it to say, Shirley was stunned.

Along with four of his colleagues, Donovan then resigned and founded the firm of Dinkelspiel, Donovan and Reder. "After that day I never had a boss. I was always the head guy on all the cases I tried," he explains. "I had some really fascinating experiences as a trial lawyer and as a bankruptcy lawyer. I had sort of a split practice for the last 20 years of my practice. I would say it was about 50 percent commercial litigation in district court, bankruptcy court, and state court. And the other 50 percent was strictly bankruptcy."

As a founding partner of Dinkelspiel, Donovan and Reder, Donovan continued his successful practice in bankruptcy law in addition to commercial litigation, workouts and, to a lesser degree, civil rights litigation. It was unusual for an attorney to specialize both as a trial lawyer and a bankruptcy lawyer but his clients' needs dictated his specialization in both areas. He especially enjoyed cases that were "leaners" not easily classified as calling for either trial or bankruptcy expertise and relished pursuing the issues regardless of which would finally predominate in the case.

When asked why he left private practice in 1994 to become a bankruptcy judge in the Central District of California, Judge Donovan explains that his interest in becoming a judge was piqued years earlier. The challenges were interesting as a partner of a law firm and the hours were long, while he remained conscious of balancing his legal career with his family obligations. By the age of 40, his wife said to him, "From now on we are taking a three- or four-week vacation every year, and I don't want you to give me any argument about that." To which he responded, "Yes, dear. I'll do the best I can." For several years, he succeeded in taking a bit more time off with his family. Eventually, his firm started a sabbatical program in which each member of the firm was given three months to do as he pleased. Donovan was due to begin his three-month sabbatical in January 1979. As the Bay Area mourned the assassinations of Mayor George Moscone and Supervisor Harvey Milk, he decided to spend the first month of his sabbatical volunteering in his community and the next two months with this family.

He asked a friend who was the presiding judge at the Oakland-Piedmont Municipal Court if he could spend the first month of his sabbatical volunteering at the court. His friend accepted his offer and on the first day at the municipal court his friend handed him a cup of coffee and a robe and pointed him to the courtroom. To Donovan's surprise there were 40 small claims matters waiting for him in the courtroom. "I had a blast the first day, and I had a blast every day" exclaims Donovan. By the end of his four-week stint at the court, he had presided over 800 small claims cases. He tried one civil case by consent of the parties, and he was the settlement judge for several civil cases. He even handled the "Law and Motion" calendar one day. Donovan found a sense of community among the judges at the court—who daily ate lunch together either at the court or at local eateries. He spent that month getting an insight into the minds and attitudes of each of the judges, and liked what he observed.

After his experience at the municipal court, Donovan went on vacation with his family, during which he commented to his wife, "This judge stuff is really fascinating. It is non-adversarial in the sense that everything I do in my law practice is adversarial. It's non-mercenary in the sense that judges aren't motivated by increased profits but rather by the opportunity to be of service to the community and the cause of justice. They deal with other people's money problems. I don't think I'm a mercenary person. I think I am a capable advocate, but I don't really value always being in combat while doing my job and always trying to undermine the other guy's case while trying to advance my case. I think I have the right temperament to be a judge. And I think I could last in this business longer as a judge than I likely would as a lawyer. I think the kind of law I did, I would be burnt out by the age of 65, or perhaps nobody would want to hire me anymore because there would be younger, smarter, faster people." Shirley pointed out to her husband that with two children headed for college soon, he may have to put his desire to become a judge aside for a little while longer. Seeing the light, he took his wife's advice but continued serving as a pro tem judge from 1979 to 1994 in the California municipal and superior courts, presiding over trial, pretrial, and settlement matters, all the while honing his skills as an impartial arbiter of the law. Additionally, he served as an evaluator, mediator, and arbitrator for the U.S. District Court in the Northern District of California. He also served as a commercial arbitrator for the American Arbitration Association. As a private practitioner, he had the honor of being listed in the *Best Lawyers of America*.

Donovan also contributed to his community by serving on several theatre boards; as a member of the Berkeley Fair Campaign Practices Commission; as legal advisor and an active participant for Women Empowering Women; as a member of the Berkeley Democratic Club Steering Committee; and as a member of the steering committee of *enTrade*, a skilled trades training and support center for women.

Although his son and daughter did not choose to follow in their father's footsteps and become lawyers, Judge Donovan proudly states that his son is very knowledgeable

about the law and enjoys discussing legal matters with his father. His daughter, on the other hand, is less interested, but they both fondly remember the summer she spent working with him on a class action civil rights trial.

In 1993, while the nation watched the events revolving around the Branch Davidian cult in Texas, the federal trial of two of the officers involved in the Rodney King beating in Los Angeles, and the appointment of Ruth Bader Ginsburg to the U.S. Supreme Court, Donovan re-examined his career. Both of his children had graduated from college and he had gained more interesting experiences than he had ever anticipated in private practice. He again discussed with his wife his desire to become a full-time judge, and this time she gave her consent. Decision made, he set his sights on becoming a bankruptcy judge because, as he said, "It had been the most fun, the most interesting, and had taken me to the most interesting places and exposed me to the most interesting people and legal complexities." Although he would have preferred to serve in the Northern

District of California where he and his wife had lived most of their lives, there were no openings for a bankruptcy judge in the Northern District at the time, forcing him to look elsewhere. When an opportunity opened up in Los Angeles, he applied—reasoning that the Central District of California would present a challenging and diverse environment for a judge. Although the application process took time, he was eventually appointed as a U.S. Bankruptcy Judge on March 21, 1994, by order of the Ninth Circuit Court of Appeals. With Shirley's approval and support, the Donovans left their beloved community and moved to the Los Angeles area. From the moment of his arrival, Judge Donovan realized he had made a good decision.

Since moving, Judge Donovan has given back to his new community by serving on the board of the Oak Knoll Improvement Association; on the board of the Barlow Group (Barlow Respiratory Hospital); as a mentor and teacher at Abraham Lincoln High School; and maintained professional memberships in the Central District Bankruptcy Lawyers Inns of Courts; the American Bankruptcy Institute; the National Conference of Bankruptcy Judges; the California Bankruptcy Journal board of advisors; the Financial Lawyers' Conference; the Bankruptcy and Commercial Law Committee of the Los Angeles County Bar Association; the Los Angeles Association of Business Trial Lawyers; the Pro Bono Committee/Debtor Assistance Program; Los Angeles Bankruptcy Forum board of directors; and as a Fellow for the American College of Bankruptcy.

His 18 years on the bench have been full of wonderful

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experiences and surprises. One of his best experiences has been working with his law clerks and legal externs. Judge Donovan can be seen on any given day sitting in the cafeteria at the Roybal Building in Los Angeles having lunch with his externs. He has been a wonderful mentor and teacher to not only his law clerks and his externs but also to the bankruptcy community, giving of his time by participating in countless continuing education seminars.

Over the years he has presided over many interesting cases that have taken him by surprise. One such case was the matter of *Computer Aided Systems Inc. v. Lockheed Martin Corporation*. Judge Donovan explains that as a private attorney and as judge it is common to see parties in fraud litigation ask for punitive damages. However, in all his years as an attorney and judge he had never seen a meritorious punitive damages case until this one. It was a real David versus Goliath story. The case took five years to litigate and there were 159 entries in the docket. After the trial, Judge Donovan worked closely with an extern to arrive at a lengthy written decision, and for the first time in his legal career discovered a meritorious punitive damages claim.

When asked about the *In re Balas-Morales* case that led to his ruling on the constitutionality of the Defense of Marriage Act, Judge Donovan said, "That was certainly the most interesting case, the most momentous case in the sense that I have never written a constitutional decision before. Eighteen thousand same sex couples, legally married in California. That is an astounding figure," explains the judge. He was very cognizant of the fact that his decision would affect so many members of the community—not to mention how his

ruling might affect similarly situated people across the country. He was also very aware of the controversy he was stepping into: "I have seen plenty of homophobia in my life. I have never agreed with that, but it exists and that's the way people voted on Prop 8. Going in the face of all of that is quite daunting. Am I doing something foolish here by saying what I think, but of course, I had giant shoulders to stand on: [Justices] Kennedy, O'Connor, Douglas, Jackson. In the end it was an exciting task but it was pretty daunting for the few weeks I worked on it. And then when you look at, to my amazement, the fact that 19 of my colleagues with one look at the draft decision said sign me up... I was stunned."

In 2011, the Central District Consumer Bankruptcy Attorney Association board of directors created the Thomas B. Donovan Excellence Award. The inscription on the award sums up the Central District of California bankruptcy bar's sentiments toward the judge: This award is named after Thomas B. Donovan who is well known in the bankruptcy community for his love of the law, for his compassion and understanding of the litigants before him and for his fair and reasoned rulings.

On March 21, 2008, Judge Donovan was reappointed to the Bankruptcy Court by the Ninth Circuit Court of Appeals, and as he has done for the past 50 years, he continues to look forward to serving the legal community in the future. ☺