



# Hon. Kenneth A. Marra

## Senior U.S. District Judge, Southern District of Florida

by Andrew Kwan



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**F**orty years ago, in Judge Kenneth A. Marra's first trial as a rookie lawyer, he found himself confronting a courtroom full of irate homeowners. His client, the Cayuga Indian Nation of New York, filed Notices of Pendency on thousands of properties in upstate New York, alleging that its original reservation lands had been wrongfully taken in 1795 and 1807. The defendants included the State of New York, Cayuga and Seneca counties, private businesses, and countless individual property owners. "It was in federal court in Syracuse in front of Judge Neil McCurn. They would bus—*bus*—people to the courthouse. It was a packed courtroom with angry citizens—an intense experience," Judge Marra recalls.

Despite the pressure, Judge Marra kept his cool and won the trial, though his client ultimately lost its case in the Second Circuit based on the doctrine of laches.<sup>1</sup> It was "intense experiences" like this one that formed and annealed a young boy from Queens, N.Y., into the respectful, kind senior U.S. district judge that lawyers around South Florida know today.

### Early Life

Judge Marra spent most of his youth in Queens and then moved to Long Island for his high school years. He credits city life for exposing him to other cultures at an early age. "It was very diverse," Judge Marra recalls. "Looking back on my youth, I was very fortunate to live with and grow up with a wide variety of individuals in terms of their backgrounds and ethnicities. We had Italians, Greeks, Irish, African Americans, Dominicans, Puerto Ricans—everyone had a different background, but we were all friends, we grew up together. I think that has served me well in terms of my ability to have respect for everyone."

In his youth, Judge Marra was fascinated by courtroom dramas. He was a fan of *The Defenders*, a 1960s television series starring E.G. Marshall and Robert Reed as father-and-son criminal defense attorneys. The show featured complex cases about the political and social issues of the day, like the Vietnam War and abortion, and often presented thorny ethical questions to its protagonists. "I thought that was a great show," Judge Marra says. "They were representing defendants



all the time, like *Perry Mason*, but the difference was they didn't always win. Perry Mason always won his cases, so *The Defenders* was more realistic."

The biggest influence on Judge Marra as a child was his parents. He received the usual values from them, including "love for family, love for God, love for country, and love and respect for authority and the law," but they also instilled in him a strong work ethic. As a kid in Queens, Judge Marra took on all sorts of odd jobs for pocket change: shoveling snow for neighbors, rummaging for soda bottles to deposit, cleaning up the basement of the local grocery store, and trussing up Christmas trees during the holidays. Judge Marra's main takeaway from his folks was, "Follow the rules and you'll be okay," a lesson he would heed for the rest of his life.

### Education and Family

Judge Marra excelled in high school athletics and enrolled in Stony Brook University in New York. He became the first in his family to graduate from college, but he didn't go directly to law school. "I started out as a teacher," he says. "That didn't work out too well. I didn't have a full-time teaching job. I was a substitute teacher in Nassau County for a year and a half, going to different schools that needed help. I didn't enjoy



Hiking in Zion National Park, Utah.

it very much, and didn't like having to deal with the disciplinary issues."

After his stint as a teacher, Judge Marra went to Stetson University College of Law in Florida, graduating in 1977. During law school, he met and fell in love with his wife, Louise Reid. The two married the summer after he took the bar exam. "She graduated a year before me, and started out as the legal aid lawyer in Fort Myers, the sole lawyer running the office," Judge Marra says. "I had the fortune of getting an Honor Graduate Program position with the Justice Department in Washington. We moved up there, which was very difficult for her."

When Judge Marra's career flourished in D.C., the couple decided to start a family, which now includes eight adult children and many grandchildren. In their over 40-year marriage, Louise has been a bedrock of support. Judge Marra is quick to credit her for his success: "I owe a great debt to Louise. I know she envisioned something a little different with her life. She made a major sacrifice in giving up her legal career to be a mother, but she raised our children and was very devoted to their upbringing."

How did Judge Marra balance work and family? "I tried to be involved and hands-on, and not an absentee father," he says. In terms of advice for busy lawyers, Judge Marra is candid. "You can't devote yourself totally to one, to the exclusion of the other. If you do have to make a choice, you have to put your family first." In Judge Marra's view, "that doesn't mean not being a

professional and not working hard. But if it comes down to sacrificing family and children, or sacrificing your job, the family always comes first."

### Private Practice and State Court

Judge Marra says his most important mentor as a young lawyer was Arthur J. Gajarsa, an attorney who later became a judge on the U.S. Court of Appeals for the Federal Circuit. As Judge Marra remembers, "We worked together on a case when I was with the Department of Justice, and then Art offered me the opportunity to join him as an associate with his law firm, Wender, Murase & White. The firm was based in New York City, and we worked together in the Washington, D.C., office."

Gajarsa was careful to give Judge Marra plenty of chances to gain courtroom experience, including in the high stakes Cayuga Indian Nation of New York case. Judge Marra was litigating against two big-time Boston law firms, Goodwin Procter and Hale & Dorr, and facing off against the legendary James D. St. Clair (who represented President Nixon during Watergate) and managing partner William F. Lee. In spite of the legal firepower on the other side, Gajarsa let Judge Marra, only three years out of law school, take the reins. "I was the person making the arguments, writing the briefs—I was really the lead lawyer handling the minute-by-minute things going on in the case." As Judge Marra fondly recalls, "Art was and is a great person, and taught me a great deal about how to litigate a complex case, how to be a great counselor to your clients, and also a great deal about corporate and securities law, because he also represented numerous corporate clients."

When asked how his experience as a civil attorney helped him on the bench, Judge Marra says that the main things that carry over are "hard work, professionalism, the way you treat people." After working in Washington for six years, Judge Marra moved back to Florida and spent another 12 years in private practice. His colleagues included senior partner Herbert Gildan of what was then Nason, Gildan, Yeager & Gerson, P.A., an established local law firm. Judge Marra looked up to Gildan for his "professionalism, intellectual curiosity, and zeal for representing clients."

In 1996, Judge Marra was appointed as a circuit judge for the Fifteenth Judicial Circuit in and for Palm Beach County, Fla. He served for six years in the civil, family, and criminal divisions of the court. His experience there taught him the nuts and bolts of jurisprudence, giving him a leg up on colleagues who sat on the federal bench right after private practice. "There is a learning curve in terms of how to be a judge, how to decide cases, and I was definitely ahead of it when

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I became a federal judge," thanks to state court, Judge Marra says.

## The Federal Bench

President George W. Bush nominated Judge Marra as a federal judge in 2002, and in nearly two decades on the bench, Judge Marra has presided over many notable cases. He has had one case, *Kaley v. United States*,<sup>2</sup> go all the way to the Supreme Court. *Kaley* dealt with whether criminal defendants were entitled at a pretrial asset freeze hearing to contest a grand jury's prior determination of probable cause. Judge Marra held that they were not, and Justice Kagan, writing for a 6-3 majority that included Justices Scalia, Kennedy, Thomas, Ginsburg, and Alito, affirmed.

Judge Marra's most well-known case involved the victims of disgraced financier and convicted sex offender Jeffrey Epstein. In the discovery phase of the case, an issue arose as to whether Epstein's plea negotiations with the government could be released. "I said they had to be released—that's when basically all the dirt came out about what happened with this non-prosecution agreement," Judge Marra recalls of the ruling. His decision was affirmed by the Eleventh Circuit.<sup>3</sup> The revelations of what had occurred led to a national scandal and a deep examination of the criminal justice system. After Epstein died in prison in 2019, Judge Marra held that Epstein's death precluded the court from throwing out the once-secret non-prosecution agreement. While the scope of Epstein's non-prosecution agreement is still being litigated in other courts, Judge Marra's role in uncovering Epstein's sordid conduct appears to be over.

## Life During COVID-19

Along with the rest of the Southern District of Florida, Judge Marra ceased conducting trials in early March 2020 but otherwise attended to the business of the court. "I think under the circumstances the entire judicial system has done an amazing job of keeping things moving," Judge Marra says. To unwind during the pandemic, Judge Marra played guitar, hung out with his wife and family, and kept up on his tennis and basketball skills when it was safe to do so. He also caught up on shows like *Homeland* and the BBC series *Line of Duty*. Finally, the lockdown was an opportunity to read nonfiction, including *Boone: A Biography*, by Robert Morgan, and *Ayn Rand and the World She Made*, by Anne C. Heller.

## Professionalism and Advice

Like many judges, Judge Marra is concerned about the erosion of professionalism in the practice of law. He recalls lawyering in Palm Beach County during the 1980s and 1990s as professional and collegial but has seen that courteousness wane over the decades. "I liked dealing with other lawyers back then," he says. "There was very little of the backbiting and nastiness that you see today—lawyers attacking each other, pointing fingers. It has been getting confrontational, which is unfortunate." Judge Marra hails the emphasis of the FBA and other bar organizations to curtail the trend, and he has seen improvement in recent years.

When asked about the one piece of advice Judge Marra would give to people appearing in front of him, he says it is "Forthrightness with the court. Your credibility is the most important thing you have." For those who know him, Judge Marra's advice is no mere lip service but words he lived by—through adversity in the courtroom, dedication to his family, and a lifetime of public service. ☺

## Endnotes

<sup>1</sup>*Cayuga Indian Nation of New York v. Pataki*, 413 F.3d 266 (2d Cir. 2005).

<sup>2</sup>134 S. Ct. 1090 (2014).

<sup>3</sup>*Doe No. 1 v. United States*, 749 F.3d 999 (11th Cir. 2014).