

Chapter 8 Humor

By J. SCOTT BOVITZ

Judicial Perspectives on Life, Bankruptcy Law and All That

I recently polled a scientific sample of bankruptcy judges to share their “perspectives on life, bankruptcy law and all that.” Here is a summary of that poll. All of the judges polled herein are with the U.S. Bankruptcy Court for the Central District of California, except for the first two.

Hon. Margaret M. Mann

Bankruptcy Judge **Margaret M. Mann** (S.D. Cal.; San Diego) was appointed in 2010, and has been an ABI member since 2002. She quips, “With each ruling, a judge makes a temporary friend, and a permanent enemy.”¹

Hon. Clifton R. Jessup, Jr.

Prior to his investiture, Bankruptcy Judge **Clifton R. Jessup, Jr.** (N.D. Ala.; Decatur) was a senior lawyer at Greenberg Traurig LLP in Dallas. An ABI member since 1986, he developed a national bankruptcy practice and has appeared in 37 states. When he was appointed as a judge in 2015, he became the only bankruptcy judge in a courthouse in Decatur, Ala.²

Judge Jessup reports that the lawyers have been more “deferential” than he anticipated. “Now that I am on the bench, everyone says that I am taller and better looking than I was in private practice in Dallas.”

Hon. Catherine E. Bauer

Before her appointment in 2010, Bankruptcy Judge **Catherine E. Bauer** worked as a bank lawyer, U.S. Attorney and part-time mediator. She received awards for “Most Frequently Chosen Mediator in the Central District” and “Most Conferences Settled in Mediation in the Central District.” In addition, she’s been an ABI member since 2002. How does Judge Bauer feel about being a bankruptcy judge? “Fabulous! I have loved the job ever since baby judges school.”³

Judge Bauer remembers her first hearings: “It was (and still is) so cool to sit on the bench. A judge

is physically higher than everyone else in the courtroom. Somehow, this empowers me to ask pointed questions and take charge of the hearings.” She is also thrilled with the stream of legal problems and personalities. “In Orange County, we have the material for a great television show.”

Judge Bauer also loves her outstanding support team: “They enable me to focus solely on the job of judging. I have very few distractions. I don’t need to worry about administrative details. My team can deal with anything.” She adds that she is glad to receive the guidance of other judges. Through email, she can “reach out to every judge in the country.” Moreover, the federal judges in the Ninth Circuit are close and supportive. “We are a family.”

Hon. Sheri Bluebond

Chief Bankruptcy Judge **Sheri Bluebond**, an ABI member since 1994, was appointed to the bench in 2001 and elevated to chief judge in 2015. According to Judge Bluebond, “There is no better job in the world.” While every bankruptcy judge has a busy schedule, “each judge has a great deal of control over her workload. The judge is like the rat who can control the shock in her cage.”⁴

Judge Bluebond is “able to do what’s right, rather than focus on a client,” and shares high praise for federal employees: “They are hard-working and equal to the best employees in the private sector — thank goodness.” Judge Bluebond loves her chambers — especially her private bathroom.

As a judge, “There is no need for me to pitch for new business. I have no need to work the room. People work me,” she says. Judge Bluebond recommends that lawyers bring their clients files to court: “I am surprised at number of times that a lawyer says, ‘I didn’t bring my file, sorry.’ Really? You should have loaded the entire file on your iPad before you came to court.” Attorneys should also study the contents of the file. “Sometimes I know the declarations and exhibits in the file better than the lawyers.”

Hon. Ernest M. Robles

Bankruptcy Judge **Ernest M. Robles** remembers his first day on the bench in 1993: “There



Coordinating Editor
J. Scott Bovitz
Bovitz & Spitzer
Los Angeles

Scott Bovitz is a bankruptcy litigator with Bovitz & Spitzer in Los Angeles and is board certified in business bankruptcy law by the American Board of Certification. He is also a photographer, musician and ham radio operator.

¹ Judge Mann attributes a variation of this quote to the husband of Chief Judge **Laura Stuart Taylor** (S.D. Cal.; San Diego).

² Bradford Botes, “Judge Clifton R. Jessup, Jr. Takes the Bench in Decatur, AL,” Bond & Botes, PC, March 18, 2015, available at bondnbotes.com/2015/03/18/judge-clifton-r-jessup-jr (unless otherwise indicated, all links in this article were last visited on Feb. 23, 2016).

³ The Federal Judicial Center conducts periodic orientation for new federal judges — affectionately called “baby judges school.” A “school bell, a gift of [then] Chief Bankruptcy Judge Barry Russell, traditionally is rung at the beginning of all sessions.” *The Third Branch*, Vol. 37, No. 8 (August 2005), available at www2.fjc.gov/sites/default/files/2014/JR00020.pdf.

⁴ See Jay M. Weiss, “Effects of Coping Behavior in Different Warning Signal Conditions on Stress Pathology in Rats,” *Journal of Comparative and Physiological Psychology*, 1971, Vol. 77, No. 1, 1-13, available at faculty.uncfsu.edu/tvancantfort/Syllabi/Gresearch/Readings/A_Weiss.pdf.

was silence in the courtroom. Everyone was looking to me to do something. How odd. This was a jarring change of perspective.” He worried about his early judicial style and collected representative recordings from the first weeks on the bench. Judge Robles brought these tapes to his mentor, Bankruptcy Judge Alan M. Ahart (ret.). “Please listen to these recordings and give me your best tips for my courtroom demeanor,” Judge Robles implored. Judge Ahart laughed, pushed back the tapes, and said, “No, I am not going to listen to your tapes. I believe in your abilities. Just keep doing what you do. You were selected for a good reason. We all believe in your abilities. Just keep working hard and doing what you do.”

An ABI member since 2015, Judge Robles took the lesson to heart. After a few months, he felt more comfortable on the bench. “I learned to hold back the wisecracks; these don’t look good on the record,” he says. “I also try to keep my temper in check so I can listen carefully to the arguments.”

Does he still like his job? “I lucked into the best job in the world,” he says. “I cannot see myself doing anything else. I am on a wonderful ride.” On a side note, Judge Robles confirmed that he was a friend of Chapter 8 Humor. “I want you to know that Chapter 8 is the first column that I read in the *ABI Journal*.” Nice!

Hon. Martin R. Barash

Bankruptcy Judge **Martin R. Barash**, an ABI member since 2002, was appointed to the bankruptcy court in 2015. He is amused that “[p]eople I have never met are solicitous. But I don’t take it personally.”

On his first day on the bench, Judge Barash realized that “[t]he entire room is designed around the judge’s seat. Everyone faces you; the judge is on stage in a one-man (woman) show. Everything you say is being recorded. You get dry mouth. When I pause to think, everyone stops and stares at me.”

“Captain” Barash is amazed that everyone in his courthouse works as a cohesive unit, “like the bridge of the U.S.S. Enterprise.” I responded with the only phrase I know in Klingon (“*LupDujHomwlj luteb gharghmej*”).⁵

Hon. Neil W. Bason

Bankruptcy Judge **Neil W. Bason** was appointed to the bankruptcy court in 2011. An ABI member since 2004, he is generally complimentary of the superb advocacy of the lawyers who appear before him: “It’s a pleasure to see good attorneys in action. I recall one attorney whose client was eagerly sitting next to him at a claim objection hearing. First, the attorney gravely explained that because of the nation’s departure from the gold standard, there was no such thing as dollars or debts! The attorney quickly added that, without in any way departing from the seriousness and ‘persuasiveness’ of that argument, he would also articulate more traditional objections. His finesse probably kept the client from disrupting the hearing, while working in some legitimate arguments for his client.

“In another case, my tentative ruling was in a party’s favor based on one of two alternative arguments,” Judge

Bason recalls. “At the hearing, that party’s counsel goofed. He ignored the time-honored rule: ‘when you’re winning, shut up,’ and he pressed me to articulate more fully why I was rejecting one of his arguments. As I did so, he suddenly realized that my tentative ruling had avoided an issue lurking in the background, which nobody had argued but that could be an Achilles’ heel for his client. Without missing a beat, he took the first opportunity to say, ‘I understand, Your Honor, but as I was saying...,’ and then he pivoted to *something he hadn’t been saying at all*. His oral advocacy was so seamless that the other side got distracted by the new argument and never noticed the Achilles’ heel.”

He continued, “Shortly before I took the bench, I discovered that Los Angeles has a lot of ‘appearance attorneys.’ I was worried: Some of the appearance attorneys I’d encountered in other districts must have been so named because they had only the ‘appearance’ of being an attorney. But I was very glad to find that most of our appearance attorneys have a thorough knowledge of the facts and the law applicable to their specific case, and are expert at what they do. Their professionalism and skills often help to steer a case in the right direction, and make everyone’s job easier.

“Many other counsel, in cases large and small, have argued tricky factual and legal issues magnificently,” Judge Bason says. “It’s a constant pleasure to see.”

Hon. Vincent P. Zurzolo

Bankruptcy Judge Vincent P. Zurzolo was appointed in 1988. From 2007-10, he served as chief judge, and confirms that he “has the best job in the world because a judge doesn’t have a traditional boss and your only task is to find the right answer.”

Judge Zurzolo noted that a good judge will usually develop the special skill of “knowing when *not* to say something.” In the future, he is looking forward to “[l]ess paper — more telephonic and video appearances.” In the courtroom of the future, Judge Zurzolo wants to see each attorney’s lifetime win/loss record on his video monitor (just like the batting averages are shown on television).

Judge Zurzolo is a die-hard baseball fan; he has a seat from the original Yankee Stadium in his chambers. He confirms that eventually, an attorney’s win/loss record will appear under the lawyer’s avatar in a virtual courtroom.⁶

Hon. Thomas B. Donovan

Bankruptcy Judge Thomas B. Donovan was appointed in 1994. He says he enjoys the “weird puzzles we get in bankruptcy court.” For example, he recalled a bakery bankruptcy where “partner #1 was in the kitchen cooking and partner #2 was in the office cooking the books.”

Hon. Peter H. Carroll

Bankruptcy Judge Peter H. Carroll was appointed to the bankruptcy bench in 2002. From 2011-14, he served as chief bankruptcy judge, but he could have become a “cop

⁶ Judge Zurzolo is a baseball fan, as evidenced by the bleacher seat from the old New York Yankees Stadium in his chambers.

⁵ Roughly translated, “My hovercraft is full of eels.” See omniglot.com/language/phrases/hovercraft.htm.

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or lawyer.” However, he says, “My dream ... was always a judgeship.” Judge Carroll appreciates the “high degree of trust and respect [that] most attorneys and their clients have for the courts” and the judicial system: “It was a pleasant surprise to know that when a ‘wet behind the ears’ new appointee to the bench was called upon to make some very difficult decisions on complex issues in a large, hotly contested chapter 11 case, and if the judge was prepared, patient, careful, understood the facts and applicable law, made an informed decision, and explained the reasoning therefore, the parties would generally accept that decision, win or lose, and appreciate the judge’s efforts and contribution to the case.”

Next, I asked whether Judge Carroll’s friends treated him differently after he became a judge. “I lost a few friends and seemed to gain a whole lot more,” he says. “Close friends, however, did not treat me any differently. My wife, who is my closest friend, had me take the trash out every night before I was appointed, and that continued to be my chore every night as a judge.”

What is the best part of the judge’s job? “Essentially, a trial judge’s job is to ‘call balls and strikes’ — identify the salient issues and pertinent facts, weigh the evidence, apply the correct standard of law, and make an informed decision,” Judge Carroll says. “If I can right a wrong in the process, that is a great day.”

What is the worst part of Judge Carroll’s job? “Frankly, there is no worst part of the job,” he said.

I asked Judge Carroll if he separated paper into piles from those attorneys he trusts, attorneys who are less forthright, and those attorneys who have not yet earned either rating. “A bankruptcy judge before whom I appeared in the Northern District told me about the ‘three piles’ sometime before I was appointed to the bench. I never forgot the story,” he says. “While I do not actually separate papers into three piles before each calendar, I feel comfortable in stating that papers from those who have proven to be less than forthright eventually attract the highest degree of scrutiny.”

What can attorneys do to make a bankruptcy judge’s job easier? Judge Carroll suggests, “Be professional. Take time to reach an agreement on issues not in dispute. Focus the papers and argument on each disputed issue, the applicable standard of law, and the distinguishing facts, if any. Long-winded briefs, string cites, derisive language, and personal attacks on the opposing party or his/her counsel are not at all helpful.”

I asked Judge Carroll if he had any funny stories from recent hearings: “Not really — other than the attorney who was holding for a telephonic appearance, went to the bathroom without hitting the mute button, and flushed the toilet ... to the utter amazement of everyone listening in the courtroom, including me.”

Judge Carroll was dual-certified by the Texas Board of Legal Specialization in business and consumer bankruptcy law, and remains certified in both specialties though the American Board of Certification. He found that specialization was helpful to his career.

“The certification process itself gave me a deeper understanding of substantive and procedural bankruptcy law,” Judge Carroll notes. “Specialization helped me secure a position with the U.S. Department of Justice and was integral to my appointment to the bench.”⁷

In the past, Judge Carroll says he was a serious marathon runner. However, he confirms that “I am not running to or from anything at this time.” He used to race with the Sports Car Club of America, so I asked the obvious question: “Can you still spot the difference between a 1966 Ford Mustang hardtop and 1969 Ford Mustang Mach 1 as you overtake them late at night on Highway 101?” Judge Carroll replied, “I own a 1970 Ford Mustang. With the current power train configuration, I would probably spot the ’66 in my rear-view mirror as I was chasing the Mach 1 — and would definitely appreciate the difference between the two.” Zoom! **abi**

⁷ Read more about legal certification at abcworld.org. You can also prepare for the ABC exam, which is offered at several ABI events throughout the year, at abi.org/abcprep. A list of ABI’s upcoming events is available at abi.org/events.

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