

ID\_482 RN 77, Spring 23

Kern County's Judge  
Thomas S. Clark  
By Kevin Singer\*

Recently, I had the honor of interviewing the Honorable Judge Thomas S. Clark, who is the Supervising Civil Judge of the Kern County Superior Court.

Below are excerpts from our interview.

Question ("Q"): I see that you were born and raised in Bakersfield. What were some of your fondest memories growing up in Bakersfield?

Answer ("A"): Small-town nature of the town. People were extraordinarily friendly and trusting. Many people would leave their homes and cars unlocked. I considered my parents to be overly strict, but as children we were given freedoms almost unimaginable in today's society. For example, I would often go on hours-long bicycle rides into the countryside, sometimes with other children and sometimes alone. Our parents would have only the vaguest idea where we were—only when we were expected home. I don't recall any particular fear about children being kidnapped, abused or killed.

Q: Did you know from early age that you were going to pursue law?

A: Yes most definitely. At least from the 7th grade, if not earlier. My mother had been a legal secretary before she retired to raise a family. She greatly missed working in the legal system and she encouraged me---a lot. I was named after a long-deceased grandfather, but my mother occasionally told me that she was also influenced by a prominent attorney general and Supreme Court Justice, Tom C. Clark. I suspect there was some truth to the story.

From that point onward, I never wavered in my focus on the legal profession. By the time I was in law school I focused on real property, real property financing and development and construction issues, but I had a hard time deciding whether I wanted to practice in the real estate development and construction area, or if I wanted to be a full-time litigator.

Q: Was there a specific reason you chose to attend University of Southern California undergraduate?

A: I was fortunate to receive a National Merit scholarship and a California State scholarship.

The National Merit scholarship would pay my tuition at any university in the country. The California State scholarship would pay my tuition at any university in California.

Although my parents wanted me to experience living in a different part of the country (and in particular wanted me to apply to Notre Dame, Harvard, Yale or Princeton) I had no desire to go out of state.

For one thing, I was younger than my classmates and was an immature 17-year old and I just did not want to be far from home. I focused almost entirely on Stanford and UCLA.

I was not familiar with USC. My father was a UCLA graduate and had nothing nice to say about USC. I decided at one point my senior year to stay in Southern California because it rained all 3 times I visited the Stanford campus (pretty shallow reasoning). At that point, 3 or 4 months before the start of my freshman year, I felt my only alternative was UCLA. But, as much as I liked UCLA, the closer I came to enrollment, the more intimidated I became at the size of the university and the number of students.

Shortly before the start of the semester, I visited the USC campus for the very first time, at the suggestion of an aunt. It was much smaller in area and in number of students and I was, thus, attracted to the school. I stopped by the Registrar's office and, much to my surprise, was admitted on the basis of the oral application. The fact that I was verbally accepted (which would never happen today) really impressed this 17-year old boy.

So, for some pretty shallow and spur-of-the-moment reasons, I attended USC. As so often happens with college students, the school that I attended grew to be a great fit. I was very well-treated as a student. I sometimes characterize that period of my life as a time when I was well-treated and conditioned to be a future donor by the university.

Q: I see you continued on at University of Southern California Gould School of Law. Was that your top pick and was there a professor who made a lasting impact on you and why?

A: That was the only law school I applied to (which was a pretty foolish strategy.) I intended to practice in the Los Angeles area, and there had been a recent study (from several years prior) showing that approximately 75% of the Los Angeles County judges were USC graduates---at least that's the way I remember the numbers. I had no aspirations to be a judge, but I took that as evidence that a USC law degree carried with it a certain amount of prestige in Los Angeles. Also, in my years as an undergraduate, I had been well-conditioned to be an enthusiastic USC supporter (and future donor).

I had many fine young professors at USC, many of whom went on to establish great nation-wide reputations at schools like Yale and the University of Chicago. The professors I enjoyed the most were those who based their classes on economic underpinnings. They include Richard Epstein (torts) and Christopher Stone (contracts).

However, the most influential by far was Robert Ellickson, from whom I took Land Development, Land Financing and various construction-related classes. He had personal experience working for a large developer-builder before he became a professor. He had some extreme views about the role of government in land use decisions. He felt that the government should have essentially no role, including zoning issues. He felt that the economic marketplace and landowners could be trusted to determine the best use of their land. He believed that landowners would rarely make decisions that did not support the highest and best use of their land. His other recurrent theme is that private arbitration and mediation is a far more efficient method of resolving disputes. He did not always have a high view of the cost, efficiency and fairness of results in the court system.

He is in his 80's, has written a number of books and law review articles on both subjects, spent most of his career teaching at Yale, and the last time I looked he was still teaching part time at Yale and part time at University of Chicago.

Q: I see you started working in 1973 working for Income Equities Corporation. What type of business were they in and what were your responsibilities while working there? Was there any important lessons you learned while working for this company?

A: Income Equities was a newly formed business. One of the founders was a recent USC Law School graduate and 2 of the Board members were USC Law School professors. The professors recommended me for a part-time paralegal position while I was in law school and I remained with the company after I passed the bar exam.

Income Equities was in the real estate development business, but the position involved many tax and securities issues, since we raised hundreds of million dollars from investors through

public offerings. We used the funds raised to build or acquire and rehabilitate low income housing, leveraged by a low interest (government-subsidized) 90% loan. The investors obtained tremendous tax shelter benefits equal to 5-10 times the amount of their investment.

HUD and Congress identified a critical shortage of low income housing and offered tremendous incentives in order to draw private capital into this market because they did not or could not get budget approval for taxpayer funds to provide additional housing. Congress approved and enacted a tax provision which allowed for depreciation of the entire building over a 5 year period. The investment and resulting tax deduction was risk-free and audit-proof because it was a totally legitimate program.

However, after a few years, government analysts calculated and Congress determined that if the government had collected all the tax revenue that our clients had avoided paying, the additional revenues would have been sufficient to fund construction and acquisition of 3-4 times the number of housing units that were actually provided by private developers under this program. The program was discontinued.

My job was primarily to locate potential properties across the country (primarily on the East Coast), negotiate the terms of acquisition and close escrow. To these ends, I negotiated and drafted between 50-100 limited partnership agreements to take title to these buildings. I also participated in drafting SEC registration statements and handling corporate housekeeping for 100 + corporations and numerous limited partnerships which we created to handle the investments and real estate title.

I was extremely very well-compensated----3-4 times the salaries paid to associates at the largest law firms at the time.

I did learn a valuable lesson about how difficult it can be to maintain your objectivity when you are in-house counsel. After 3 years of not really being exposed to other views, the "company culture" mindset slowly crept in. I said "no" a lot more in my first year than during my third year. It is a slow process, but you can find yourself being less objective and making poor decisions, not out of a conscious desire to please your client, but because you have lost perspective and have lost exposure to any competing views other than the prevailing "company culture" mindset.

Q: In 1975, you left Income Equities Corporation to become a Deputy District Attorney for Kern County. What inspired this change and what types of cases did you specialize in prosecuting?

A: I had always had trouble deciding whether I wanted to be a litigator or in the real estate development business. I finally decided that I wanted to be a litigator and was willing to take a huge pay cut to get litigation experience. I was burned out on Beverly Hills and the securities business by then, as well, and wanted to make a change. Getting prosecutor jobs was difficult at that point in time. I had received an informal verbal offer from the Kern County District Attorney, so I took him up on the offer and relocated to my home town.

Q: In 1978 you left the District Attorney's Office and returned to private practice at Arrache, Clark and Potter. Why did you your decide to go into private practice and what were the areas of law you worked in most? Was there an area of law that you enjoyed working in the most?

A: My plan was always to go into private practice after I gained litigation experience at the District Attorney's office. I actually stayed at the D.A.'s office longer than I planned because I enjoyed the adrenaline-generating aspect of being in trial on close to a daily basis.

Most of my litigation practice was related to the real estate and construction industries. Most of my clients were builders, developers, banks and real estate brokers. I litigated numerous disputes involving real estate brokers and I defended quite a number of construction defect cases. I also was retained on several occasions as an expert witness on legal malpractice and real estate matters.

However, my favorite areas of practice were (1) representing property owners in eminent domain trials and (2) defending white collar criminals (tax fraud and various other white collar offenses).

In eminent domain cases my sympathies tended to be with the property owner (although I occasionally represented government entities on the other side). I don't think I ever lost an eminent domain case, and I tried a lot of them. In several instances I achieved verdicts millions of dollars above the government's appraisals and acquisition offers.

White collar criminal defense was not a large part of my practice. I looked at it more as a hobby. I was attracted to it because a large proportion of those cases went to trial; because (in those days) a good and creative defense attorney who understood financial statements and bank records had an advantage over prosecutors who were not very familiar with financial and business records. (That has since changed; almost every prosecutor's office now has a division with experienced and knowledgeable specialists with respect to financial evidence).

Q: Since your 2010 appointment, what types of cases have you been primarily handling?

A: I was assigned for one year to the superior court in Mojave, where I pretty much handled everything. I did traffic court, criminal calendar and arraignments, civil trials and criminal felony trials.

I spent approximately one year presiding over misdemeanor criminal trials and approximately five years presiding over felony criminal trials. I am currently presiding civil judge, and have spent the last six years presiding over major civil trials and handling law and motion matters on a daily basis from the 1100+ civil litigation cases currently assigned to me.

I expect to retain this assignment for the rest of my career.

My staff and I try to make Dept. 17 a "litigator-friendly" court. I feel that we do a good job of making lawyers comfortable and to make things convenient for them (even anticipating their needs). However, I always caution lawyers that my first priority is the comfort and convenience of the jurors. I am a member of a very efficient team including an outstanding research lawyer and a great and extraordinarily personable courtroom clerk. Both have been with me for years and, I absolutely could not handle my excessive caseload without them.

Q: What are your general thoughts on appointing Court Receivers? And, What are some of the factors that persuade you to appointment of Court Receiver or Partition Referees?

A: As a former, but active, litigator I often appeared requesting or opposing the appointment of a Court Receiver, so I believe I have a pretty good understanding as to whether or not such an appointment is appropriate.

There are a significant number of civil cases where the business or other asset in dispute is in the hands of one party during the litigation. In some instances, the parties behave honorably, but it is not uncommon that the party in possession is motivated to run the business into the ground, or to sell or encumber the assets in dispute.

I would not automatically appoint a Court Receiver when one party is in possession of the disputed asset or even when the party in possession has a motive to mishandle the contested

asset. However, when (as does happen regularly) there is a real and present danger that the other party will damage or depreciate the asset or its value, it is appropriate to appoint a Court Receiver, the sooner the better.

There are other circumstances where there are good reasons to appoint a Receiver. I have appointed Court Receivers several times after the death of a business owner where none of the potential beneficiaries or family members possess the skill or desire to operate the business, while the parties (and sometimes the Receiver) are searching for a purchaser.

Real estate and other asset partition actions also provide opportunities for a Receivership, especially where one or more of the owners does not want to cooperate with the sale. In these circumstances, we often appoint receivers with the power to obtain appraisals, list the asset for sale, and consummate an actual sale.

Q: What qualifications do you like to see in the receivers that you appoint to your cases?

A: I first ask both sides to suggest a Receiver. If both sides can agree on a Receiver, it often eliminates or minimizes disputes parties often have over operating or other decisions made by the Receiver.

I evaluate potential Receivers (whether nominated or left to my discretion) looking for practical experience in running or managing a business for his or her own account (if a Receiver with these qualifications is available). I find that Receivers with a prior background in business or banking are desirable candidates. I also look for a record of successfully handling and closing previous work as a Receiver or Trustee, experience in accounting, a positive reputation in the community for honesty and trustworthiness, and an ability to qualify for bonding.

Kern County is still generally a smaller county. As such, most judges are familiar with the reputation, skills and track record of potential Receivers. This is helpful.

I would say that the most important matters I look at (pretty much in order) are: (1) prior experience in business, finance and/or accounting. (2) reputation in the community; and (3) experience in handling duties as a Trustee or Receiver AND a record of closing receiverships on a cost-effective and timely basis.

Q: What are your thoughts on ex parte motions appoint a receiver?

A: Many times the threatened damage has already commenced and it is essential to apply ex parte to obtain a quicker appointment. I have, at times, even found the circumstances compelling enough to waive the necessity of prior notice to the other party and make appointments based upon an ex parte, no notice application.

Often times, rather than issuing the requested ex parte relief, I will shorten time for response, set a deadline for receipt of written opposition, and set a hearing 3-5 days later.

Q: On motions to appoint receivers, what types of arguments tend to be most persuasive to convince you to appointment a court receiver?

A: Arguments backed up by strong evidence (typically provided by Declarations and documentation) that damage has occurred, and that the amount and nature of the damage is either irreparable or substantial.

Q: What is the most common mistake you see in motions to appoint a receiver?

A: Defects in notice and (after having presented evidence of damage) failure to address and support the idea that immediate intervention by a Receiver is necessary and cannot wait to be heard by a noticed motion. A related failure that I sometime encounter is an attorney failing to

support (with supporting evidence in an admissible form) his or her assumption or conclusion that more damage will occur in the future, absent such intervention.

Q: What is your position on receivers bringing ex parte motions when there are urgent issues that could impact the receivership estate?

A: Generally, I take such actions initiated by receivers very seriously, because the Receiver's position is usually neutral and uninfluenced by attempts by litigants to secure some unearned strategy advantage and generally uninfluenced by the emotions of the battling parties.

Q: When do you want to see receivers who are not attorneys retain counsel?

A: Virtually every time, especially when the litigating parties (and/or counsel) demonstrate a continuing inability to behave courteously and civilly.

Q: What is the one piece of advice you'd like to share with anyone that is going to appear before your Department?

A: In the following order:

1. Be clear and concise in your moving and responding papers in describing what you are asking the Court to do and why the Court is authorized to grant that relief.
2. Know the facts about your case and the present dispute. Most attorneys who have appeared before me know, that I will frequently interrupt an attorney's argument to ask questions and to seek clarification. Know your case well enough that you can answer questions without delay.
3. Although it does not happen often, do not send an associate or appearance counsel who is not familiar with the case, the history of the case, or current facts.

Q: What do you like to do when you are not working as a Judge?

A: I continue to be a very strong and active supporter of the University of Southern California and their law school and football program. I have been very active in the Alumni Association, and have mentored some students and student-athletes (especially those who are considering law school). I have been a football season ticket holder for 51 or 52 years. I rarely miss a home game and try to travel to at least 1-2 road games. Some people consider my level of involvement with USC to be extreme.

I have some very good friends of years-long standing. I enjoy socializing with them for dinner and/or drinks.

A few years ago, I would have said (1) skiing; (2) spending time with my grandchildren and attending their sports activities; and (3) traveling, especially when I could take my grandchildren to Europe.

Today, my priorities have changed because my body is too beat-up due to too many orthopedic ski injuries and I am seriously out of shape. Also, by next year, all 3 of my grandchildren will be away at college.

I truly enjoy my job and find it rewarding, but, presently, a significant amount of my "free" time is taken up in preparing rulings and opinions on court trials and motions that I have under submission, and preparing for the next day's law and motions (with the assistance of a truly outstanding research lawyer).

I enjoy some travel (but I don't have time to travel as much or as far as I would like). I try to spend some weekends at my beach house, relaxing, reading and watching movies, but I don't get there as often as I would like.

When and if I retire, I would like to spend some more time traveling (especially if I have opportunities to take one or more of my grandchildren). However, I enjoy my job and have no plans to retire. I consider my job to be a service to the community, which supported my law practice so well. I intend to continue working unless I develop a health problem, which would interfere with my performance.

\*Kevin Singer is the President of Receivership Specialists with offices throughout the Southwest. Mr. Singer has been a Court Appointed Officer in over 490 cases in the last 23 years.