



MARK ROBERT HALPER / For the Daily Journal

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New Judge Shakes Up the Status Quo

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the older, more cantankerous judges haven't had. Though he rules the courtroom tightly, he doesn't condescend to out-of-towners like some old-timers do. He takes the same approach, whether attorneys come from North Hollywood, as I do, or Santa Barbara."

James Mangione, who represented the defense in that case, agreed. "I came up from San Diego, and his whole courtroom [staff] was very nice," said Mangione of Brownwood, Rice & Zurawski. "I wasn't home-towned."

"If this is his first foray into serious cases, I think he is going to do very well," Mangione added.

But while many attorneys welcome Ochoa as a long overdue addition to the South County Superior Court, his detractors are less pleased. They complain he is arrogant, moves his calendar too slowly, doesn't read the cases and is often late taking the bench.

"He is a highly political person whose primary goal is his own self-aggrandizement," said Santa Barbara Deputy Public Defender C. Michael Ganschow, who appears before the judge regularly. "He doesn't prepare and is often ignorant of the contents of a file before the case is called."

Another lawyer, who asked not to be named, said during a recent sentencing hearing Ochoa announced in court he hadn't had time to read the motions and asked the attorney handling the case to tell him what it was about. Even some attorneys who had few complaints acknowledged he is slow to move his calendar.

"He is used to having a lot of time to handle the many activities he's involved in, both as a judge and a concerned citizen in the community, and I don't think he has realized how much more work there is as a Superior Court judge, so a lot of things get short shrift," another lawyer, who asked for anonymity, said. "There's no question he's a hardworking man. He's not lazy, just way overextended."

Supporters, however, note the judge tackled one of the court's heaviest case-loads last year. Moreover, two judges were out sick for much of the time, forcing everyone to double up. Ochoa's calendar alone included criminal and civil trials, family law, probate and the weekly drug court.

"There are some very difficult, esoteric issues in these cases," observed Mangione. "To be able to master all of these is very hard."

Others say any criticism is far outweighed by the benefits he has brought to the court and community.

"He has done a lot of good things, particularly in starting the drug court in Santa Barbara," said Deputy Public Defender Rick Barron. "He has a real understanding of addicts. I've represented people for 10 years who were committed junkies, and I have seen them turned around based on the drug court."

"For me, the bottom line is my client," added Michael McGrath, a deputy public defender who has appeared before Ochoa in Municipal and Superior courts. "I think he listens and gives thoughtful readings. If I have to spend more time in court to get that done, I will do it."

Ochoa acknowledged the learning

Profile

Frank J. Ochoa

Judge

Santa Barbara Superior Court

Elected: November 1996

Career Highlights: Santa Barbara Municipal Court judge, 1983-96; executive director, Legal Aid Foundation of Santa Barbara County Inc., 1980-83; directing attorney, Legal Services of Northern California Inc., 1975-80, Yolo/Sacramento counties; intern, Sacramento district attorney's office, fall 1974; intern, Colorado state public defender's office, summer 1974; intern Sacramento Concilio's Centro Legal, 1973-74

Law School: UC Davis, 1975

Age: 47

often continued. So, in order to make maximum use of his time, he prefers to reserve it for those cases he's sure will proceed. But, he added, he would "never sentence somebody without reading the probation report."

Nor, he added, would he sacrifice justice for speed. He recalled one case in which he ordered further investigation of a woman on probation for welfare fraud. While it delayed proceedings, investigators discovered the state had recouped too much money and owed her a refund. Ochoa said it taught him that "sometimes you have to take time to do things right ... and not, just as a matter of rote, take things on the surface."

"I would rather be that way than to short shrift matters," he said.

Besides weekends, Ochoa said he also takes work home in the evening, where he and his wife, nighttime TV newscaster Paula Lopez, juggle baby-sitting duties for their 3-year-old toddler.

Their photos, along with pictures of Ochoa's two sons, ages 19 and 21 from a previous marriage, adorn his chambers. There's also a photo of his niece, Ellen Ochoa, the first Hispanic woman in the U.S. space program. Ochoa says he's much prouder of her achievement than the fact that he is the court's first Hispanic judge in this century.

Born in Long Beach, Ochoa traces his roots back to the Spanish land grant era. One of four brothers, he first aspired to become a teacher like his father, who taught high school Spanish. But, being active in Democratic politics, he decided to study law instead, as a way to make an impact on people's lives.

He earned a bachelor's degree in English and history in 1972 from the University of California, Santa Barbara and a law degree in 1975 from UC Davis. During law school, he interned at the Colorado state public defender's office and the Sacramento district attorney's office.

After graduating, Ochoa joined the Sacramento-based Legal Services of Northern California Inc., later becoming its directing attorney. In 1980, he became executive director of the Legal Aid Foundation of Santa Barbara County. In 1983, at age 32, he was appointed to the municipal bench by Gov. Jerry Brown, making him the youngest judge

the right to take race into account in its admissions criteria. The case involved a claim by Allan Bakke, a white man, that he was denied admission to UC Davis medical school because of reverse discrimination.

Ochoa also represented a coalition of law students and civil rights groups which unsuccessfully tried to intervene on behalf of UC Davis in *De Ronde v. Regents of the University of California*, 28 Cal.3d 875 (1981). In that case, the California Supreme Court ruled the university did not discriminate against Glen DeRonde, a white student denied admission to law school under a policy that gave preference to minority applicants.

In his campaign for Superior Court, Ochoa drew on his civil rights background, noting also that in the early 1980s he wrote the county's affirmative action guidelines and policies restricting sexual harassment in the workplace. Those accomplishments, together with being better known in the South County than his opponent, North County Municipal Court Judge Barbara Beck, garnered him 55 percent of the vote in the November run-off.

His civil rights background also is evident in court, where he has a liberal policy toward allowing cameras. In a recent high-profile, gang-related murder case, for example, Ochoa let cameras in with some restrictions.

"I know a lot of judges are skittish about having cameras in courts," said Ochoa, who chairs the Santa Barbara Bench/Bar Media Committee. "But I still think that in most cases the public needs to know what goes on in court. Unless it's an aberrant case, it's incumbent on the judge to allow access."

Sitting in his chambers at the landmark Spanish courthouse, Ochoa, 47, can gaze across the street to the two-story utilitarian Municipal Court building where he spent his first 13 years on the bench. Sometimes, he misses it, particularly his old courtroom, which he designed himself, with a corner bench and handicap ramp for easy access.

But the move has been rejuvenating, he said, giving him an opportunity to learn new areas of law.

This year's job as presiding judge is no exception. By tradition, the top administrative post also includes presiding over juvenile, mental health and the small claims appeals calendars.

In addition, Ochoa continues to reserve Friday afternoons for his weekly drug court, or Substance Abuse Treatment Court, as he likes to call it. Created in 1994 while he was still a Municipal Court judge, the program allows those eligible to have charges dropped if they complete treatment. After he left the Municipal Court, the program fell into disfavor with some of his former colleagues and faced extinction due to funding cuts. So, Ochoa added it to his own Superior Court case-load.

If that's not enough, this year he's added another substance-abuse court to his schedule. Also based on one he began in Municipal Court, this program targets convicted felons, allowing them to receive probation as a condition of treatment.

Additionally, Ochoa would like to introduce a drug and alcohol diversion program in juvenile court. He's also looking into another program for juvenile court that would allow victims to

Dispute Tests Key Provision Under NAFTA

D.C. Firm Applies for Investment Protection

By Mark Thompson

Special to the Daily Journal

For evidence that legal disputes are king on increasingly global proportions, consider a Newport Beach waste-disposal company that is pressing a claim against the government of Mexico. This is being adjudicated by a multinational panel that includes a British law professor in a proceeding set in Vancouver, British Columbia.

The company's case is the first to be brought under an investment protection provision tucked into the sweeping North American Free Trade Agreement. Some legal scholars consider the provision to be the most significant one in the pact. Until now, it has also been one of the most obscure.

The provision prohibits the governments of the three NAFTA nations — the United States, Canada and Mexico — from violating the due process rights of investors from the other countries. The dispute resolution mechanism is notable in that it is multilateral in scope, a departure from the more common application of investment treaties negotiated directly between two countries.

What makes the pending NAFTA dispute even more significant is that the American claimant in the case, Metalclad Corp., was reluctant to launch the proceedings in the first place.

Complaints

Under the free trade agreement, Mexico's federal government is the party responsible for paying any judgment, requiring it to be the direct target of the dispute. But Grant Kesler, Metalclad's chief executive officer, acknowledged that he has no complaints about the conduct of Mexican national government officials. Indeed, they have shared in Metalclad's frustration with the actions of Horacio Sanchez Uncueta, who blocked the operation of one of the company's hazardous-waste facilities while serving as governor of the Mexican state of San Luis Potosi. Sanchez, who no longer holds office, dispatched state police officers in 1995 to prevent the facility from opening, after which he declared the site an ecological preserve. Metalclad operates facilities in eight Mexican states.

Despite their reluctance to litigate, Kesler and his company's lawyers insist that Mexico will wind up benefiting from NAFTA's dispute process by reminding outside investors that government officials won't take their property without adequate compensation.

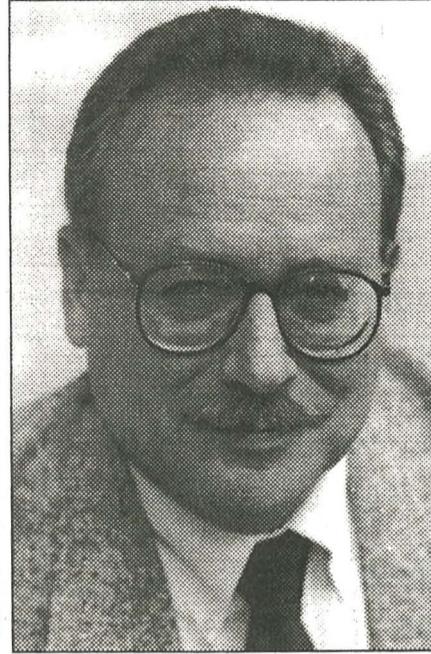
"If we lose the case, the major loser will be Mexico," said Kesler. "If we get sued, who else is going to take the risk of going down there?"

Escape

A chief advantage of the NAFTA dispute-resolution system is that the loser can't escape a judgment.

"There's no appeal from a NAFTA arbitration. You have to pay it," said Kesler, who is a lawyer by training. "If they don't, we have the right to attach Mexi-

Profile



Frank J. Ochoa
Judge
Santa Barbara Superior Court

Status Quo Ends At Santa Barbara Superior Court

Judge's Election Draws Praise, Grips, But Is Sure To Mark New Judicial Era

By Susan McRae

Daily Journal Staff Writer

SANTA BARBARA — With his election to Santa Barbara Superior Court 15 months ago, Frank Ochoa seems certain to shake up the status quo of the South County, which hadn't seen a change for 13 years.

Since his swearing in last January, Ochoa has been joined by two more new members, altering by half the make-up of the six-judge bench. And more retirements are anticipated in the months ahead.

"With the changes in the judiciary, it's time to look at all the court processes, to do an examination of ourselves and seek ways to improve," Ochoa said during an interview. "With new judges on board, it's a good time for all that to occur. It's going to be an exciting, very interesting time for this court."

As this year's presiding judge, Ochoa looks forward to overseeing those improvements. Even before taking over the top administrative post, he began making changes, including expanding the court's civil settlement masters program and adding a weekly drug court.

Sole practitioner Gerald I. Kroll, who chairs the Santa Barbara County Bar Association's civil litigation section and has worked closely with Ochoa on the settlement masters program, said the judge brings "a very calming, soothing, evenhanded approach" to his job.

"The fact that he's this year's PJ is terrific," Kroll said.

Added plaintiffs' attorney Kevin H. Park of Mercer & Zinder, who tried a multimillion-dollar personal injury suit before Ochoa last September that resulted in a defense verdict: "In Santa Barbara court, he brings a humility that some of

New Residents' Right to Equal Aid Is Upheld

9th Circuit Rejects State's Appeal Under Federal Welfare Law

'Rotten Piece of Fish'

By Pamela A. MacLean

Daily Journal Staff Writer

SAN FRANCISCO — In the first appellate ruling of its kind in the country, a federal appeals court Wednesday rejected on equal protection grounds California's effort to reduce welfare grants to newcomers from other states that paid less than California in benefits.

The 9th U.S. Circuit Court of Appeals upheld a lower-court injunction blocking the law — and thus became the first federal circuit to reject use of the 1996 federal welfare reform law to allow states to lower welfare benefits based on residency, *Roe v. Anderson*, 98 Daily Journal D.A.R. 981.

Judge Betty B. Fletcher, writing for the unanimous three-judge panel, concluded that the challengers of the law showed the two-tier welfare system was likely to be found an unconstitutional infringement of the right to travel or migrate in violation of the equal protection clause of the U.S. Constitution.

Justified by Varying Costs

Fletcher said the injunction was justified because the newcomers faced a higher cost of living in California and the relatively lower assistance level "threatened them with imminent deprivation of the basic necessities of life."

Fletcher was joined by Judges Thomas G. Nelson and Robert Whaley of Washington, sitting by designation.

At least 12 states have passed legislation affecting welfare eligibility based on state residency requirements in the wake of the sweeping 1996 reforms aimed at reducing welfare dependency and expenditures.

But such residency-based measures have been consistently struck down in lower courts thus far, according to Clare Pastore, staff attorney for the Western Center on Law and Poverty in Los Angeles.

Next Appellate Test

The issue is on appeal in the 3rd U.S. Circuit Court of Appeals, in *Maldonado v. Houston*, and in state courts in New Jersey and Rhode Island. Smaller benefits have been struck down by a federal judge in Pennsylvania and by state judges in New York and Minnesota, according to the Welfare Law Center in New York City. Washington state has a similar suit pending that may be affected by Wednesday's ruling.

Corinne Chee, a spokeswoman for the state Department of Social Services, said the state will appeal to the U.S. Supreme Court.

"We are not surprised the 9th Circuit ruled against us. We expected all along that the issue would ultimately be decided by the Supreme Court," she said.

Chee said the state was fully authorized by Congress under the federal wel-