

New Law Reveals Some Very Old Suits in Judges' Closets

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In the final days of October, federal judges gave up some of their deepest, darkest secrets.

Under a new federal law requiring judges to publicly reveal their oldest undecided cases, several judges listed dozens of aging lawsuits—including a few in which individuals have been waiting more than three years for justice.

And the winners, please.

U.S. District Judge Thomas Penfield Jackson, of Marion Barry trial fame, holds the record for the oldest bench trial—March, 1988—in which no decision has been reached. Jackson also reported 20 motions from 1989 that he has yet to decide.

Honorable mentions in the oldest-living-bench-trial category go to Judges Thomas Hogan and Stanley Harris. Hogan, who missed the title by a hair, had two trials dating back to 1988—one of which he decided days after the reports were filed. Harris scored with a 1988 trial in an employment discrimination case involving a professor from the University of the District of Columbia. Harris's opinion in the case was filed last Friday.

Surprised at the, ah, record-holders?

Some lawyers wondered at the absence of Judge John Garrett Penn, who is almost a legend at the courthouse for tardiness.

There is a simple explanation. Penn is late filing his lateness report.

Not to worry. A spokesman for Penn, who is slated to become chief judge next year, promises it's on the way. Does this sound familiar?

Judge Norma Holloway Johnson also was a no-show last month when reports were due. She did not return calls about her plans on the lateness front.

Certainly there was not much incentive to file, with no sanctions for scofflaws in the new measure.

For years, federal judges have reported internally on the state of their calendars. But the reports were so top-secret that many judges never knew for sure what their colleagues were up to—or not up to, as the case may be.

But last year Congress decided to shed a little sunshine on these lifetime appointees to the federal bench.

A sentence, slipped into a 1990 bill designed to speed civil trials, required the administrative



bench trials of more than six-month vintage that are before federal judges.

Privately some judges fumed. Publicly, there was little they could do.

"It was hard to oppose it," said Alan Morrison of the Public Citizen Litigation Group, one of the measure's biggest boosters. "It didn't cost any money. The work was being done anyway, and it might speed things up."

That, at any rate, is Morrison's fervent wish. "There is nothing but public pressure that can be brought to bear to get them to decide old cases," he said.

So now, more of the scorecard.

The judges reporting clean records were Charles R. Richey, George H. Revercomb and Stanley Sporkin, and senior judges Oliver Gasch, June L. Green and Thomas A. Flannery.

The other judges had mixed records: no trial decisions pending from 1988, but a sprinkling of pending 1989 motions and generous helpings of decisions left dangling since last year.

Lawyers were shocked to find Judge Gerhard Gesell, one of the court's speed demons, reporting even one case. Turns out it involves a pending motion in a case on appeal and out of Gesell's hands.

once the record is complete trouble me," said Jackson. "I simply try to get to them in the order of the urgency I think they represent."

Of his two 1988 bench trials, Hogan said. "I'm not going to say I'm busy in criminal [trials] . . . Everybody's busy, but I have no excuses."

Chief Judge Aubrey Robinson Jr., who reported a handful of old motions and no aging bench trials, alluded to the crush of drug cases swamping the courthouse since 1989. When it comes to speeding civil cases, Robinson said the public reporting rule "is not going to make a particle of difference. It may even get worse. You can't be in two places at once."

As for decisions pending after three years, Robinson could offer no explanation. "There may well be some justification for it," he said. "but I know of none."

Some judges warned of a dark side to the disclosures: Publicity-conscious judges might mete out quick but sloppy justice, just to avoid embarrassment.

But lawyers seemed willing to take their chances, if the law would blast certain judges out of their torpor.

And one judge at the court had more cynical concerns.

"It's easy," he said, "to fudge the reports."

industry, reported six motions pending from 1990; two from 1991.

One lawyer, called about an ancient case, allowed that lawsuits "are not like good red wine. They don't improve with age." But most were loath to discuss the judge's aging laundry: "Hey, I gotta practice before this guy," pleaded one lawyer.

Gary Thomas Brown, who represents the UDC professor in the employment discrimination case that had been pending before Harris, spoke up, sort of. After gushing over what "a gentleman" Harris is, Brown added, "Recently my client has become rather anxious. I mean, it has been three years."

The oldest cases were a mixed bag. They included requests by union and public interest lawyers for fees after successful suits against the government and Freedom of Information Act cases—both said to be among the judges' least favorite matters.

The bench trial before Jackson involved a former Department of the Army lawyer who alleged her civil rights were violated when she was demoted and later fired. The lawyer, who was seeking reinstatement and back pay, has since moved to Alabama and started a new job.

The judges with the oldest cases didn't hide under the bench.