Hon. Rodney Gilstrap

U.S. District Judge for the Eastern District of Texas

by Eric Tautfest and Jared Hoggan

Eric Tautfest and Jared Hoggan practice intellectual property litigation and licensing in the Dallas office of Gray Reed & McGraw, LLC, focusing on patent litigation in the Eastern District of Texas.

While he usually tells venire panels that, "I was born in Florida, but I got to Texas as soon as I could," Judge Rodney Gilstrap has spent the past 35 years integrating into his community in East Texas, first as an attorney and then as a judge. He raised his children and maintained his beehives in Marshall, a small East Texas town.

Gilstrap grew up in Pensacola, Fla. As a boy, he was actively involved in Boy Scouts, starting as a Cub Scout, working his way to Eagle Scout, and then adding a Bronze Palm. The Eagle Scout award is a level of distinction achieved by fewer than 2 percent of all Scouts. Scouting played such an important part in his life that he impressed its importance onto his own son, who also achieved the rank of Eagle Scout, and surpassed his father by adding a Gold and Silver Palm.

Gilstrap ended up in Texas as a result of his academic choices. During his final high school years, Gilstrap's parents gave him a choice. He could attend any school he desired, but if he wanted them to pay his tuition, he would have to go to a Baptist university (since he had been raised in a Baptist family). When he asked where the largest Baptist school in the world was located, they pointed him toward Baylor University in Waco, Texas, where he earned his degree and met his wife.

During his senior year of undergraduate studies, without a clear post-graduation plan, he walked into the law school building and set up a meeting with the dean. After a 10-minute conversation, the dean said, "You need to go take the LSAT, and if you don't absolutely blow it, we will save you a spot in the next class." He finished law school in 27 months, while he and his wife lived off her school teacher salary.

After graduating from law school, Gilstrap preferred to build a family and a law practice in a small-town environment. He found himself in Marshall, a town with 25,000 residents. There, he practiced law for 30 years and raised two children before being nominated to the federal bench by President Barack Obama.

Despite his years in Marshall, Gilstrap almost

ended up a few hundred miles to the west in Sherman, a town north of Dallas. In early 2009, Judge Thad Hartfield in the Beaumont Division of the Eastern District of Texas announced he would take senior status, creating a job opening in the busy district for which Gilstrap expressed an interest. Unbeknownst to Gilstrap, during the selection process, the district moved the duty station for the vacancy from Beaumont to Sherman. Then, in the summer of 2010, Gilstrap was asked to interview with Sens. John Cornyn and Kay Bailey Hutchinson. Just before his scheduled interview, Judge T. John Ward in Marshall announced he would be leaving the bench a year later. Although Gilstrap indicated he would serve in any division, the senators recommended to President Obama that Gilstrap fill what was then the Marshall future vacancy. However, because the Marshall vacancy was not yet open, the White House preferred nominating Gilstrap for the existing open position in Sherman. The issue was resolved when the district moved the Sherman opening to Marshall and the future vacancy of Judge Ward's seat to Sherman. Gilstrap was then nominated and later confirmed as the U.S. district judge for the Eastern District of Texas in Marshall.

FEDEX 1116
Fedex Corp. v. Valtrus Innovations Ltd.
IPR2025-01490

A Believer of the Jury System

While many judges often experience citizens either not showing up for jury duty or trying some way to get out of it, Gilstrap's history with jurors in Marshall is quite the opposite. He says people in his district take it seriously, something very important to Gilstrap. "They consider it an important part of their duty as citizens to serve," he said. "They show up on time, and when they are selected, they don't come up with excuses to get out of it."

Gilstrap understands the commitment it takes to be a juror, the time spent away from work and family and the drive of as much as 60 miles some of his jury members make to the courthouse each morning. So he makes an effort to show his appreciation at the end of trial. "When I receive a verdict and discharge the jury, I always ask [the jurors] to allow me the privilege of meeting them in the jury room before they leave the building, so I can shake each hand and thank them by name for their service," Gilstrap said. He also presents each juror with a certificate recognizing their service.

When asked about a national movement to remove patent trials, which tend to be very technical and very dense, from the jury system, Gilstrap confirmed that he is an unapologetic supporter of the jury system. "I don't accept the view that patent cases, by their nature, are beyond the grasp of lay juries," he said. "And as long as we're going to have the kind of complex litigation resolved by juries in other areas of the law, I see no support for patent law being so different and so unique that we should divorce ourselves from a system that served us well for over 200 years." To Gilstrap, the consuming public who drive the market for patented products ought to have a place at the table when deciding these important issues. He also believes that direct involvement by ordinary citizens in our system of self-government (through jury service) directly benefits our democracy.

Gilstrap believes that juries almost always come to the right verdict. However, that doesn't always mean he agrees with the jury's decision. "I've presided over cases where the jury came to a result that was supported by evidence on the record, and I wasn't going to disturb that verdict," he said. "But I knew that if I had been on the jury, I would have reached a different result. However, I'm not here to impose my personal views into the system. That's not my job."

Of the 40 to 50 jury trials he's tried in his five years as Federal District Court Judge, he's overturned just one jury verdict by judgment as a matter of law, reflecting his trust in juries' decisions.

Practice Tips

When asked about practice tips for attorneys coming to trial in his court, Gilstrap said they should be straightforward and genuine. An older lawyer who influenced and mentored Gilstrap as a young lawyer taught him that lawsuits are a "race for credibility" with the court and the jury, and he still believes that credibility is the most important factor for any practicing lawyer. "The worst thing you can do before a jury is try to be something you are not. Juries can sniff out insincerity," he said. "Quirky is fine if that really is you." He has seen effective and credible lawyers in his court from all over the country, with all types of appearances and accents. In the end, what matters to the jury is credibility.

Gilstrap recommends that attorneys from outside East Texas will find value with good local counsel at trial. Even counsel admitted to practice in the Eastern District of Texas who office in other areas of the state have a tendency to hire local counsel for Marshall trials. Gilstrap understands why, since he worked as local counsel for years before ascending to the bench. He said local counsel do not help a party get treated any differently by the court or jurors, but they are more likely to know the local judge and jury's attitudes and preferences. During his first jury trial after taking the bench, Gilstrap was surprised to see about 15 lawyers attending in the courtroom who had nothing to do with the case at hand. When he later asked why they were there, they told him they were there to watch him; they wanted to know the size and location of his "strike zone" on various issues. It is this type insight that local counsel can provide to outside attorneys to assist them in trial decision-making.

Although Gilstrap admits he is likely more formal in court than some judges, he said he is a big believer in the integrity of the judicial institution and the requisite decorum that it mandates. Because of the significant patent docket in the Eastern District, Judge Gilstrap's courtroom is frequently visited by attorneys from all over the country, many of whom quickly discover his preferences and courtroom rules. For example, he does not like lawyers to use first names only on the record, which can create both confusion and inject an informal tone in otherwise serious proceedings. He also does not like lawyers walking around the courtroom without leave from the bench. If an attorney wants to get up from the counsel table to distribute witness binders, for example, he or she should ask permission from Gilstrap.

In advance of trial, Gilstrap requires each side to prepare a notebook for each member of the jury. For example, in a patent case, the notebook will contain copies of the patents in suit; a chart showing the disputed patent terms and resulting constructions developed through the Markman process; a three-hole punched legal pad for note-taking; and separate pages with a headshot for each testifying witness identified by name so the jurors, as they make notes and later deliberate, can have a reference of who gave that particular testimony. He also directs that a "non-clicking" pen be included.

During trial, Gilstrap is sometimes frustrated by the overused objection that an expert witness is testifying beyond the scope of his or her report. When that objection is made, Gilstrap explained, he has to send the jury out so he can view the report and deal with the objection. This process is disruptive and unavoidably breaks the flow of evidence, he said. "If it is warranted, it is warranted, but if I sense that someone is making that objection without a reasonable basis and they are doing it repetitively, I've been known to be sure it costs them," he admitted.

The majority of patent jury trials in Gilstrap's court are conducted in approximately a week's time, which may surprise some litigators. But Gilstrap attributes the shortened timeframe to a combination of efficient, well-prepared attorneys and long trial days. His courtroom hours look a little different than others around the country. While some judges start their trial days at 10 a.m. and end at 4 p.m., Gilstrap's trials start at 8:30 a.m. each day and usually go until 6 p.m., with disputes being heard from 7:30 a.m. to 8:30 a.m. before the trial day begins. This results in trials finishing sooner than typical patent cases in other venues. He also does not break trials with a day reserved for other court business. Once a trial starts, it continues unbroken to conclusion. Gilstrap says that many of his jurors prefer longer trial days if it means fewer days away from work or home, especially since many of the jurors travel considerable distances to sit in his court. To maximize efficiency, he limits the amount of time for each side to present evidence. "I think that the discipline of

continued on page 23

Gilstrap Profile *continued from page 17*

enforcing reasonable time limits forces lawyers to stop worrying about putting everything in[to a case] and focus on what is really important," he said. As a result, he has found that attorneys are forced to prioritize and "leave out all the distracting things that without limits they would be unable to keep themselves from putting into the case." Although timed trials often make attorneys practicing in his court nervous, Gilstrap has found that it in most cases attorneys don't use all of the time he allots.

Diversification of Law Clerks

Because Gilstrap believes it is important to have a range of perspectives in his chamber, he makes a conscious effort to do two things when hiring law clerks. First, despite his patent-heavy docket, he makes sure to hire some clerks with engineering or science backgrounds and some with liberal arts backgrounds. "Engineers look at the world a little differently than English majors do and neither one is perfect and sufficient by itself, and I think it is good to have the diversity of viewpoints," he said.

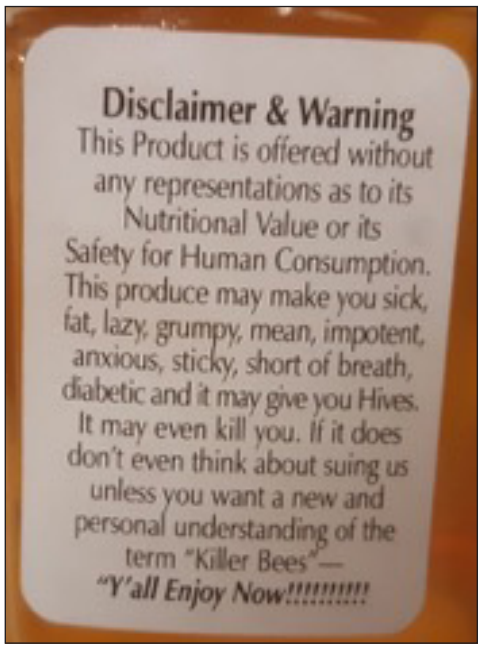
Second, he staggers his hiring. In the summers, he fills half of his law clerk positions with new graduates. Six months later, he fills the remaining half with people who have two or three years of law firm experience, resulting in a mix of perspectives that he finds beneficial. "I try to keep the broadest and most diverse perspectives in chambers that I can," he said. "The more viewpoints you take into account, the better the result you come out with at the end."

Livestock With Wings

Like a significant portion of the population in rural East Texas, Gilstrap owns livestock. But unlike many of his friends and neighbors who own cattle, horses, and other hooved animals, Gilstrap has taken a different approach and keeps livestock with wings, as he likes to call his bees. He has been an amateur beekeeper for about 10 years.

Gilstrap got into beekeeping as a result of his childhood experiences in Florida. "I had an uncle who had a couple of beehives around his house, and we used to get jars of honey from him, and as a young boy, I thought it was neat." Gilstrap did not think about it again until after he was married and had children of his own, and he thought back to his fond memories of his uncle's beehives and honey. In addition, it was a hobby that worked well with the demanding schedule of a busy attorney with a family. "The beauty of beekeeping is it really is just 'keeping' the bees. They really take care of everything," he said. "All you really have to do is show up every once in a while and check on them and then come and take the harvest that they worked so hard to create. They don't get sick, I never call the vet in the middle of the night, and I never have to worry about them on the weekends."

Gilstrap has a strong appreciation for the ingenuity and work ethic of his "flying livestock." "Bees are fascinating animals." On hot summer afternoons, which can easily break 100 degrees in Marshall, Gilstrap has found the entrances to the beehives swarming with bees, with bees on one half of the entrance facing out and bees on the other half facing in, all flapping their wings furiously. He said the bees are circulating air, with half pushing cooler outside air in and the other half pulling the hot air out.



Gilstrap's own brand of honey from his hardworking bees, complete with disclaimer.

Despite this appreciation for bees and his own work ethic, Gilstrap does not envy his bees. "I don't believe in reincarnation, but if I did, I would not want to come back as a honeybee. They do nothing but work from the day they are born until the day they drop dead." Gilstrap gives his honey away to select friends, family, and colleagues. He said with a smile, "If I were to put a price on it, you could never afford it."

Success in the Greatest Job in the World

Gilstrap says he wouldn't hesitate to tell anyone that he has the best job in the world. At a judicial conference for the Fifth Circuit Court of Appeals several years ago, Gilstrap remembers a former law clerk of a recently deceased judge giving a statement in his memory. The former clerk quoted the judge as saying, "If God had known how good these jobs were, He would have saved one for Himself." Gilstrap said that "I have thought about that ever since, and I subscribe to that view. It is a great job. It is demanding, and it is consequential, and it is important, but to the extent that this court discharges its obligation, moves its docket, and gives the public fair and reasonable access to justice and the resolution of disputes, that is success in my view." Achieving that level of success is a challenge, but Gilstrap and his staff dedicate themselves to this effort each day, and regardless of what happens, "we do it all again the next day." ☉