

The Trial Lawyer

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An Extraordinary Life "Just Happens"

by Rebecca Grey

Judge Katherine Feinstein

An Extraordinary Life "Just Happens"

"I'm very boring, actually. I am!" So claimed the Assistant Presiding Judge of the San Francisco Superior Court, and SFTLA's Trial Judge of the Year for 2009, Katherine Feinstein. As I turned my recorder on, she thumped her hands on her conference table, gave me a beautiful smile and demanded, "Tell me about you!" Judge Feinstein's modesty can get in the way of the hapless judicial profiler.

Judge Feinstein came to the bench after a lifetime in the front row of some of the most significant local, state and national dramas to happen in the last 30 years. Despite being part of a famous, influential and storied family, Judge Feinstein is unpretentious, gracious and clear-headed. "Life just happens to you," she said. "You can be as proactive as you want to be, but life happens to you." It turns out that the extraordinary life that happens

standing in line to sign up for classes on the first day of college at UC Berkeley, when she saw the other kids in line for chemistry. "I thought, I can't do this!" She graduated Phi Beta Kappa with a degree in political science.

Her exemplary college career was thrown temporarily off course when she took a leave the year her father became ill with cancer and passed away. This was 1978, the same year that her mother, then the President of the San Francisco Board of Supervisors, was thrust into mayoralship - and the national spotlight - by the assassination of Mayor George Moscone and Harvey Milk. Judge Feinstein refers to that period as, "the year San Francisco went truly insane."

In keeping with the "life just happens to you" approach, Feinstein applied to law school on a fluke. "I applied with a girlfriend and we said, okay, if we both get in, we'll go.

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opened to Judge Feinstein, combined with her unflappable humility, make for a great judicial temperament.

Judge Feinstein is the only child of Dianne Feinstein and Jack Berman. Berman and Feinstein met and married when they worked together in the District Attorneys' office in the late 1950s, and were divorced when Judge Feinstein was a toddler. When Judge Feinstein was five, her mother married renowned surgeon Dr. Bertram Feinstein, the man Judge Feinstein considers her dad.

Dr. Feinstein was not the only strong medical influence in her family. Judge Feinstein's maternal grandfather - himself the son of Polish immigrants - was a nationally known surgeon and is often recognized as the first Jewish person tenured at UCSF Medical Center. Judge Feinstein was initially attracted to a career in medicine. In a typically self-effacing anecdote, she described

"We both got in and she decided to become a massage therapist instead."

She hated it. "It was just heinous, hellacious, horrible!" Why was law school so bad? "Pennoyer v. Neff," drawled the judge, rolling her eyes. "Who understands Pennoyer v. Neff?! If you want to really rock somebody, and have them question every synapse in their brain, have them read Pennoyer v. Neff."

Undeterred by the complexities of quasi in rem jurisdiction, Judge Feinstein's legal career began as a trial lawyer in the DA's office. "Day one, you're trying a case," she said. "You are picking a jury your first week on the job. This experience gave me a real respect for and love of the courtroom." Looking a little wistful, she said, "Regardless of the assignment that I have been in as a judge, I liked trying cases best of all."

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She left the DA's office after several years, in part, because "It was not conducive to the kind of home life I wanted to have. I can really work a lot. I can work to the exclusion of almost everything else." After a brief stint doing labor law at Carroll Burdick, and a sabbatical to work on her mother's 1990 gubernatorial campaign, she turned to the kind of law that she describes as her "calling," juvenile dependency law. Well-suited to her caring personality and her aptitude for advocacy, she relished the challenge of representing children as their appointed lawyer.

Appointed to the San Francisco Superior Court bench by Gov. Gray Davis in 2000, Judge Feinstein has served in delinquencies, family law, the Hall of Justice, and as supervising judge of the Unified Family Court. It was apparent to the many in the family law bar that not only her previous experience, but her attitude made her a uniquely gifted family law judge. Pam Pierson, name partner at Pierson, Coats, Palash & Paul, said that Judge Feinstein's "enthusiasm was evident from the beginning. She wanted to learn about material, engage with the bar, and made a point of learning work we do and the law with which we deal."

She currently maintains a steady back-to-back civil trial assignment and as Assistant Presiding Judge, she does "whatever the PJ tells me to do." In 2011, Judge Feinstein will succeed Judge James McBride as Presiding Judge, "Unless I'm indicted for a felony or something."

What makes her a popular judge is the combination of enthusiasm with an easy, but undeniable authority. In his introduction to Judge Feinstein as Trial Judge of the Year at SFTLA's 2009 dinner, Sandy Cipinko said of her, "If you break the rules, that's it."



After a nine-day auto injury trial in her court last year, he should know. "She is very sweet and very nice, but there is line of fairness that is harder than steel."

"She has a very strong sense of what a trial should look like," said Judge McBride. "She runs a very tight ship, very polite but firm and very good with a jury."

Her courtroom style demonstrates that being polite and strong are far from opposites. Judge McBride noted that although she "is not afraid to ask a blunt question," she is "extremely polite, a throwback to a former era. She'll wear a hat and gloves downtown if she could get away with it." Judge Feinstein expects the same conduct from lawyers. "I do tell all of the attorneys that come before me for trial that I place a very high value on civility,

courtesy and demeanor and that I don't allow banter or quips between counsel or derogatory comments."

Judge Feinstein is notoriously hard working. This work includes not only managing a trial department - she was picking a jury in an asbestos case with dozens of defendants the day I jury your first week on the job, as well as the work required of an Assistant Presiding Judge and her duties as Vice Chair on the Commission for Judicial Performance. "She's got a lot of irons in the fire," observed Judge McBride.

This hard work showed when Sandy Cipinko was trying his own case in her courtroom. Cipinko and his co-counsel had exhaustively briefed a particularly thorny - and case-critical - issue regarding future wages. In ruling in their favor, Judge Feinstein made a clear record

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of the case authority, including her own research. "She had her own friffin' case that we found not found!" said Cipinko.

One thing Judge Feinstein is lacking is a sense of self-seriousness. Her sense of humor is obvious. "Oh, I have a funny San Francisco story!" she started, and then pointed a manicured finger at my recorder saying, "but turn that off first." It was funny. And unprintable.

The judge's palpable respect for the system extends to juries. She does permit jury questionnaires and she does allow voir dire. "If there

has been a questionnaire, I'm going to be much stricter in terms of time, because the whole theory behind a questionnaire is that the questions get asked and answered." She does not usually allow attorneys to question jurors one by one. Although "tough on challenges for cause," according to Sandy Cipinko, "As long as you're not pounding and repeating, she'll let you have the time you need."

One thing that brings her obvious joy, particularly as the mother of a thriving teenage daughter, is the changing opportunities for women. As a young lawyer, she described encountering, "sexism from judges, witnesses, other lawyers, from really out there." Beaming, she contrasted her own feelings of self-doubt as a young woman lawyer with her daughter's self-confidence, "the thought that she couldn't do what-

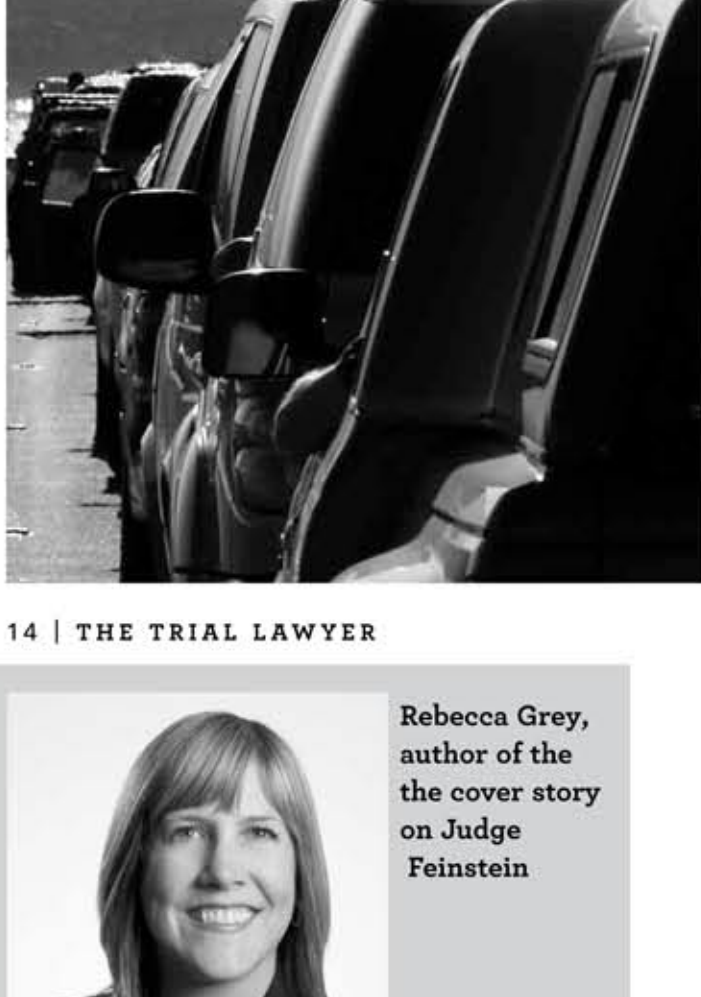
ever she wants to do in the future has not entered her mind, at least because of gender, and that's something I'm pretty proud of."

All lawyers want smart, hard-working judges who control their courtrooms and enforce a culture of fairness and civility. Judge Feinstein has those qualities in abundance, but her love of trial is what makes her a great judge. "The world is playing out before your eyes. I like seeing real people. I like watching witnesses testify. I find it fascinating to see how juries read witnesses and interpret evidence, it's really like watching an opera or a play unfold."

As we ended the interview, Judge Feinstein linked my arm with hers to walk me out of her chambers, leaned in conspiratorially and said, "Call me if you need something to spice it up." ■

Hon. Feinstein with Hon. Donald Mitchell

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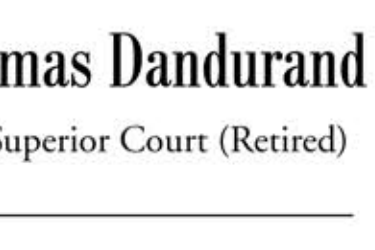
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Rebecca Grey,
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Rebecca Grey, a partner at Pillsbury & Levinson, LLP, focuses exclusively on representing individual insurance policyholders in insurance bad faith, insurance coverage and ERISA matters. Her practice includes negotiation and litigation on behalf of clients in disputes with their insurers arising from employer-provided and private health, life and disability insurance, long-term care insurance, as well as in disputes regarding the duty to defend, excess judgments and property casualty insurance.

Judge Thomas Dandurand

San Francisco Superior Court (Retired)

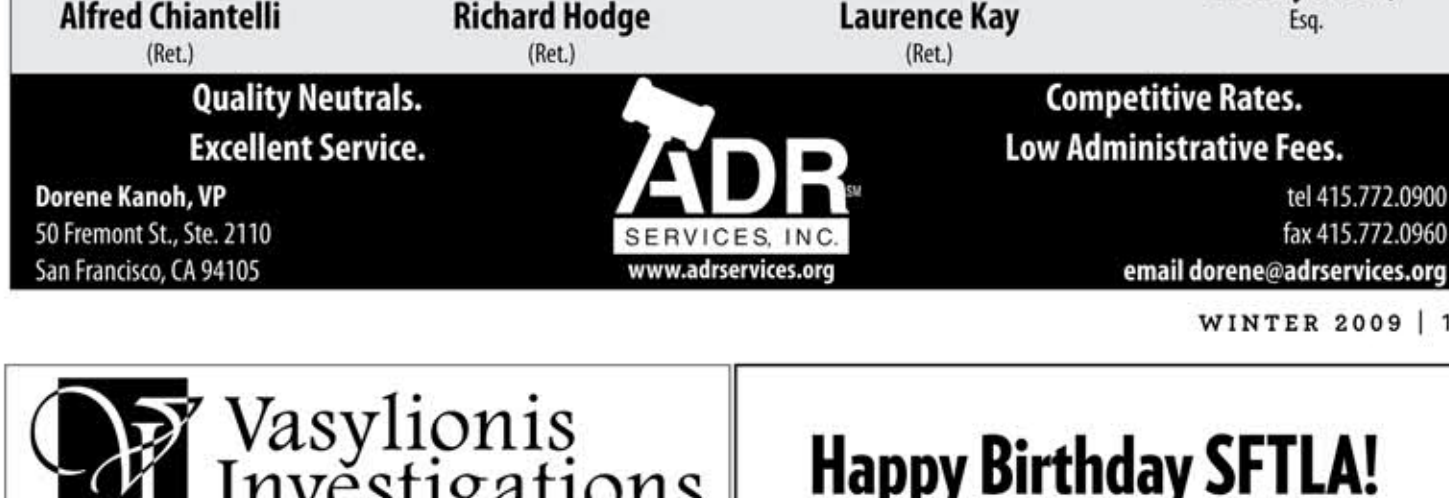
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