

VERDICTS & SETTLEMENTS

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Neutral by Nature

Former Judge James L. Warren puts his reputation as an independent deep thinker to work in the settlement world.

By Susan McRae

Daily Journal Staff Writer

James L. Warren was barely a year into his appointment on the San Francisco County Superior Court when he landed his first big case.

The assignment involved the consolidation of a flurry of lawsuits against gun sellers and manufacturers in the wake of a 1993 shooting spree at a local law firm. Nine people died in the rampage, including the gunman.

"I can still remember the presiding judge calling me in one day and saying, 'Hey, Jim, you are just the guy to do this.'"

"I thought, 'Wow, a new judge getting such an important case.'"

It wasn't long, Warren said, before he realized the case was a political hot potato that everyone else had passed on, and he got it by default.

Initially, Warren overruled defense demurrers which allowed the suits against the gun maker to proceed. Later, the same defendants moved for summary judgment and Warren granted the motion, finding the plaintiffs failed to prove the Florida weapons manufacturer had violated California law.

The ruling, upheld by the state Supreme Court, became the first of many significant decisions during his 12 years on the bench — from finding the ban on gay marriage unconstitutional to dismissing murder charges against a local lawyer whose dogs mauled a neighbor to death.

His decisions marked him as a fierce, independent thinker unbound by any doctrinaire approach or popular opinion on either side.

Lawyers said those are traits that serve him well in his current role at JAMS, where he's been a neutral since 2006.

"He's very thoughtful, thinks deeply about things and truly is unencumbered by any dogmatic baggage," said long-time friend Nanci L. Clarence of Clarence Dyer & Cohen LLP. "You always wonder if his slightly mavericky side will work in the settlement world, and it seems to be working well."

The grandson of U.S. Chief Justice Earl Warren, the younger Warren said he's always been extremely careful to avoid being perceived as trading on his family name — so much so that when a news-

paper article mentioned the fact, many former colleagues at Pillsbury Winthrop Shaw Pittman LLP were astonished.

While Warren acknowledged he was influenced by his grandfather, he said that when choosing the legal profession for himself, he made sure it was based on his own desire. To test his choice, he said, he objectively looked at the pros and cons and decided the case on its merits, the same technique he would use later as a lawyer, a judge and a neutral.

"There was no following in [my grandfather's] footsteps," Warren said. "That would be the height of hubris. He was an American icon, and you don't try to compare yourself."

Only two other relatives in Warren's large extended family, an uncle and a niece, have gone into the legal profession. Warren's father was a real estate broker; his mother was a homemaker and champion tennis player.

After graduating in 1966 from UC Berkeley, Warren was drafted into the Army. He served as an officer in Germany, working undercover in military intelligence. Upon his discharge, he enrolled at Hofstra University School of Law, graduating in 1973 and joining the Wall Street firm Rogers & Wells LLP. Two years later, he moved to Pillsbury, making partner in 1981 and specializing in intellectual property and complex litigation.

Warren left the firm in 1993 to become senior counsel at Pacific Bell Telephone Co. A year later, Gov. Pete Wilson appointed him to the bench.

His decision to leave the court in 2006 was serendipity, he said. He was 62 at the time and knew he'd never make the required 20 years for full retirement. His clerk had just retired and his court reporter was thinking about retiring. He'd been solicited by JAMS for some time.

"I thought this is as good a time as any," Warren said. "It's not going to get any better."

Joining JAMS was like attending a class reunion. There were only about 5 neutrals in the San Francisco office of the ADR provider whom he didn't know.

Although Warren is based in San Francisco, he often travels around the state and the country for hearings. In the past five years, he's served as a mediator,



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arbitrator and discovery referee, enjoying success in all three areas.

He recently was chairman of a three-member arbitration panel that decided a \$1 billion dispute between two companies. Because of the streamlined process, he said, the case lasted six months from filing to finish, something that would have taken years if it had gone to court, not to mention the escalating costs.

"One of the reasons trials take so long is because disputes manufacture themselves [into more disputes] during the discovery process," he said. "It becomes a fight. If you don't have time to [dwell on] all that, you can focus on things that matter."

Warren has had similar success with mediations, resolving cases deemed impossible to settle. He credits his achievement to three tenets: persistence; no never means no; and his belief that lawyers are paid to lie to mediators about the amount of money they're seeking or will pay.

One memorable mediation involved 35 people from a number of banks and businesses around the world. The 4-year-old dispute had gone through three failed settlement attempts, and there was no reason to believe this time would be different. But Warren was game to try and pulled out a technique he'd found helpful in other disputes.

He had all of the principals go into a room by themselves with no lawyers present and discuss the ideas they'd been battling around for the past years. It worked.

"There was no trial date looming, nothing in particular to bring them together," Warren said. "They just felt it was time to do it again — and shazam."

Another time, Warren flew to Louisville, KY to conduct a mediation between massive distilleries. The session went from 9 a.m. the first day to

Hon. James L. Warren (Ret.)

Affiliation: JAMS

Location: San Francisco

Areas of specialty:

Intellectual property, antitrust, complex commercial litigation

4 a.m. the following day before resolving. A week later, he received a package in the mail containing a special reserve bottle of distilled whiskey. A handwritten note in gold ink on the label read, "How did you do this?" The bottle sits unopened in his office, a tribute to work well done.

Warren, who is divorced and has two adult children, teaches mediation one day a week at the University of San Francisco School of Law. He's also a self-described "opera nut" and said whenever he's in a new city, the first thing he does is check out the opera schedule.

He extended his musical interests to the San Francisco Choral Society, for which he served as director for a time and sang bass baritone.

Said Kay Lucas of The Lucas Law Firm in San Francisco, "He came up with the idea of having [holiday] concerts that have become a tradition."

Here are some lawyers who've used Warren's services: Susan Harriman, Keker & Van Nest LLP, San Francisco; Allen Steyer, Steyer Lowenthal Boodrookas Alvarez & Smith LLP, San Francisco; James L. Hunt, Bingham McCutchen LLP, San Francisco; William I. Edlund, Bartko, Zankel, Tarrant & Miller PC, San Francisco; Charles Hansen, Wendel, Rosen, Black & Dean LLP, San Francisco; Andrew J. Gray IV, Morgan, Lewis & Bockius LLP, Palo Alto