

Rosenthal rules federal courts in Houston region with firm hand

By **Gabrielle Banks**, *Former Assistant Metro Editor*

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In her early days as a trial lawyer, Lee Rosenthal contemplated what it took to be a great judge.

You had to be thoughtful, efficient, compassionate, creative, practical and independent. But above all, she's often said, a judge had to be fair to all.

Decades later she taught a class for judges at Duke University with biographies of the greats - Justice Lewis F. Powell Jr. and Judge Learned Hand. Now presiding in Houston as chief judge over one of the busiest federal dockets in the country, she often recalls the judges who heard her cases in the late 1970s through the early 1990s - the outstanding ones and those who were flat-out awful.

"I saw how much good a good judge could do and how much worse a bad judge could make any case," said Rosenthal, 65. "I guess I'm grateful to both."

She brought her experience as a lawyer and 25 years on the federal bench to a series of high-profile cases last year that drew national attention.

Her rulings backed disenfranchised citizens and triggered bitter rebukes from local civic leaders in a Voting Rights Act challenge that upended the Pasadena city

elections and in a suit that led to sweeping revisions of the Harris County bail system.

Among the dizzying blur of 621 civil and criminal cases before her last year was the indictment of former U.S. Rep. Steve Stockman and two aides on charges they lied in campaign filings and helped Stockman solicit \$1.2 million under false pretenses.

And perhaps as significantly, Rosenthal has also made a mark in American law beyond her seat at the Rusk Street courthouse. She has lectured and taught about the justice system in five countries, sat by invitation on six circuit courts and risen to national prominence helping shape the rules by which courts will function in an increasingly technological society. She is considered a pioneering voice on how judges should handle troves of electronic evidence in the digital age.

Appointed in 1992 to the lifetime seat by Republican President George H.W. Bush, she has strived to be impartial and non-ideological, following the law and the facts where they lead, colleagues said.

Lawyers consistently rate her among the top jurists in the Houston Bar Association's annual poll, which grades judges on courtesy, timeliness, impartiality, decisiveness and knowledge of the law. That assessment carries over to appellate court, where official data shows her rulings are reversed at a significantly lower rate than other trial judges.

One high court jurist, Senior Judge Carolyn Dineen King of the 5th U.S. Circuit Court of Appeals, describes Rosenthal's rulings as "first rate" and "put together like a Swiss watch."

"There's no fat on them and there's also not likely to be any mistakes," she said.

Rosenthal declined Chronicle requests for an interview, but confirmed certain information by email. Details of her legal career and early life emerged in interviews with dozens of judges, former clerks, lawyers, academics, friends and family. Peers in the sprawling Southern District of Texas hit on similar themes, calling her rational, patient and impeccably prepared, with exceptional integrity, extraordinary intellect and boundless energy.

Even her harshest critics do not fault her dedication.

C. Robert Heath, the lawyer for Pasadena in the voting rights case, said the judge was attentive, clear and fair, even though he believes she was wrong in ruling against his client.

"People disagree on the law," he said. "She's a good judge."

Attorney John O'Neill, who defended 15 trial court judges in the bail lawsuit, said she is "a very bright and deeply involved jurist."

But that's where the praise stops.

"I also believe that her opinion in the Houston bail case is the most tragic of my 45-year legal career, causing unnecessary carnage in the entire criminal justice system of Harris County, including chaos and a massive increase in both non-appearance rates and crime," O'Neill said, adding that her 193-page ruling was "exhaustive but deeply at war with both the text of the Constitution and many years of Supreme Court precedent."

Becoming a judge

The eldest of three children, Lee Hyman was born in Indiana and grew up moving from one college town to the next as her father pursued jobs in academia. Her mother Ferne was a librarian. Holiday and birthday presents were usually books.

The judge's sister, Ann Root, said Lee was a very studious child, reading storybooks to her younger siblings and spending car trips glued to a book.

"Lee loved her books," Root said. "Often she would be sitting in the middle of all the chaos, I'd be playing with my brother and she would have her nose in a book."

At the dinner table, the family discussed literature and world news. Fairness and kindness were essential.

Rosenthal's father had been a Marine sergeant in Hawaii during World War II and was close enough to see pilots' faces as they dropped bombs on Pearl Harbor.

Harold Hyman became a historian, specializing in the Civil War and Reconstruction. He told his children the scariest moment of his life was as a demonstrator crossing the Edmund Pettus Bridge in Selma with Martin Luther King Jr. because he couldn't tell who his enemies were, Root said.

A job offer at Rice University brought the family to Houston for Lee's senior year at Bellaire High School. Her mother took a position at Rice as research librarian, where she worked for 35 years.

A year after moving to Houston, the Hymans left for a Fulbright stint in Japan and Lee, who graduated at 16, set off for the University of Chicago. She earned her bachelor's in philosophy and a law degree at the university.

She landed a coveted spot after graduation as a clerk for Chief Judge John R. Brown on the Fifth Circuit, who was known for trailblazing rulings during the civil rights era. Brown's willingness to risk vilification or harm in order to do what he believed was right resonated deeply with her. She has said she learned it was vital to be correct on the law and at the same time sensitive to the practical impact of a ruling.

Bill Barnett, a partner at Baker Botts where she landed next, recalled being surprised at the caliber of her work for someone right out of law school. Her analysis and writing were sharp and she was well-prepared, he said.

She tried civil cases and did appellate work for corporate clients in state and federal court. She made partner in 1985 and put her name in for judge in 1991.

By the time she took her oath as a federal judge, she and her husband, Gary Rosenthal, also a lawyer who is now a partner for a private equity firm, had four young daughters. The eldest now lives in Brookwood, a community for adults with functional disabilities that has been a hub for volunteerism among her extended family. The judge's next child served two tours in Afghanistan as an Army intelligence officer with the 82nd Airborne and now attends medical school. As for her twin daughters, one is in Denver working for the American Israel Public Affairs Committee, known as AIPAC, and the other is in Boston working on a graduate degree in art history.

From Enron to murder-for-hire

In 25 years of donning a black robe, Rosenthal has heard a broad range of criminal and civil matters of varying complexity and backed out of a few along the way. She was assigned 45 cases involving claims against Enron, but recused herself in 2002 because she had once owned stock in the company. She presided over the murder-for-hire trial of Robert Angleton, a River Oaks bookie acquitted in his wife's slaying.

In 2006, she ruled against the City of Houston and Harris County in an Americans With Disabilities Act lawsuit, ordering them to install sidewalk ramps at 34 intersections in Montrose that had been repaved in a transit project.

Rosenthal also presided over one of the most notorious human smuggling cases in U.S. history.

The case was transferred to Rosenthal from another court. After a trial a circuit court overturned her sentence, and Rosenthal re-sentenced Tyrone Williams, the truck driver involved a smuggling attempt that resulted in the deaths of 19 immigrants. He got 34 years in prison.

And in one of her most cited opinions, *Rimkus v. Cammarata*, Rosenthal laid a framework for courts to deal with spoliation - the destruction of evidence - in the digital era. She ruled that a person shouldn't be sanctioned for negligently losing data, saying that lawyers had to prove that data were lost or destroyed in bad faith.

In the Harris County bail case, her ruling resulted from a class action by indigent defendants who were held for days on minor charges, including a young mother who couldn't post \$2,500 after an arrest for driving with a suspended license. The case created a rift among county officials, with one judge, the sheriff, the district attorney and a county commissioner publicly siding with the indigent defendants.

But the majority on Commissioners Court opposed the suit and spent more than \$5 million fighting it. Their lawyers argued the county had reformed its bail protocol and the judges should maintain discretion to set bail rates.

Rosenthal reviewed videos of thousands of bail hearings, and ultimately concluded that the "wealth-based" system discriminated against poor defendants. Harris County's appeal to the 5th Circuit is pending.

In the voting rights case, Rosenthal ruled that Pasadena discriminated against Latinos when it changed the way it elected city council members. After reviewing

reams of election data, she found that Latino voters, many of whom lived on the poorly maintained north side of town, did not have an equal chance to elect officials who would represent their needs.

Looking at all sides

As chief judge, Rosenthal is the chief administrative officer of the court, overseeing its operations, the office of the Clerk of Court and serving as the judiciary's liaison to local, state and federal agencies.

Her fellow jurists have high praise.

"She's the judge we all aspire to be and the judge all lawyers aspire to appear in front of," said U.S. District Judge Gray H. Miller, a colleague in Houston.

Another Rusk Street denizen, Magistrate Judge Mary Milloy, noted her voracious appetite for reading and "ardent passion for the law."

"She's like the queen of the nerds when it comes to rules and procedure," she said.

U.S. District Judge Keith P. Ellison, who appeared before her as a lawyer, noted her fairness.

"You know when you're in Lee's court your client will get an absolutely level playing field - nobody starts with an advantage or a disadvantage," he said.

Beyond the courtroom, Rosenthal has taken on leadership roles in academia and at the prestigious American Law Institute, where she helped draft a model penal code on sexual assault. She was tapped by two chief justices of the Supreme Court, William Rehnquist and John Roberts, to chair advisory committees that craft and revise rules to help federal courts function fairly and efficiently.

"Lee's years in these committees had a permanent mark on how the federal courts around the United States operate," said David G. Campbell, a district court judge in Arizona who served with her on a civil rules committee.

She has demonstrated some of her most stellar work in this capacity, others said.

Attorney David Beck, who served with her on the standing committee overseeing all the federal court rules committees, recalled watching her mind at work during one distilled moment that showed the judge she's come to be.

About 30 of the greatest legal minds Beck ever worked with--judges, lawyers, academics--were having a very heated debate on a rule of civil procedure.

Rosenthal sat back and took it in. She chimed in once or twice to say something.

Then she sensed it was time for a resolution.

"In a very articulate way she laid out the pros and cons articulated by both sides," he said. "And then she said it seems ... that the reasonable position was X. She just laid it out, and that was what we did. There was no further debate."

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Gabrielle Banks was an assistant metro editor at Houston Chronicle, where she supervised a team of reporters covering inequity and communities of color. She previously reported on criminal justice and legal affairs for more than two decades, including staff work at the Houston Chronicle, the Pittsburgh Post-Gazette and The Los Angeles Times, and freelance work for The New York Times, The Mercury News, Newsday and The Miami Herald. She was on the Chronicle team that was a finalist for the Pulitzer Prize for its coverage of Hurricane Harvey. She has been a frequent guest

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