

SALUTING JUDGE PHILIP PRO'S QUARTER CENTURY OF NEVADA DISTRICT SERVICE

Carl Tobias*

United States District Judge Philip M. Pro recently assumed senior status after more than two dozen years of exemplary service—five as chief judge—on the U.S. District Court for the District of Nevada, the federal trial court that serves the entire state of Nevada. Everyone who knows Judge Pro understands that senior status will not mean semi-retirement for him because he will continue devoting his tremendous energy to assuring that the District of Nevada promptly, inexpensively, and fairly resolves the myriad challenging cases on its docket.

Judge Pro earned his Juris Doctor degree from Golden Gate University School of Law in 1972 and began his legal career as a clerk to the Honorable William P. Compton in the Eighth Judicial District Court in Las Vegas.¹ Thereafter, he served as a deputy public defender for Clark County from 1973–1975 and as an assistant United States attorney in Las Vegas and Reno from 1975–1977.² After briefly engaging in private practice as a partner at the Reno law firm of Semenza, Murphy, and Pro from 1977–1979, Judge Pro returned to the public sector for good by assuming a position as deputy attorney general for the State of Nevada in the Gaming Division from 1979–1980.³

Prior to his appointment as an article III judge, Judge Pro served for seven years as a U.S. magistrate judge.⁴ During that time he presided over the litigation regarding the MGM Grand fire in which 87 individuals perished.⁵ The MGM Grand fire litigation involved extensive pre-trial discovery for approximately 1,500 plaintiffs and nearly 150 defendants, and required approximately 140 weekly discovery hearings.⁶ Judge Pro received his commission as an arti-

* Carl Tobias, the Williams Chair in Law at the University of Richmond Law School, was a founding faculty member at the William S. Boyd School of Law, University of Nevada Las Vegas. He thanks Cristen Thayer and Angela Morrison for their assistance in researching this Article.

¹ U.S. DISTRICT COURT, DISTRICT OF NEVADA, STATE OF THE COURT 5 (2006), available at http://www.nvd.uscourts.gov/Files/DC_Report2006AALL.pdf [hereinafter STATE OF THE COURT].

² *Id.*

³ *Id.*

⁴ *Biography of Judge Philip M. Pro*, U.S. DISTRICT COURT DISTRICT OF NEVADA, <http://www.nvd.uscourts.gov/bio/PhilipMPro.aspx> (last visited Feb. 27, 2012).

⁵ Jane Morrison, *Memories of Deadly Hotel Fire Spark Feelings of Fear, Disgust*, LAS VEGAS REV. J., Jan. 26, 2008, at B1, available at <http://www.lvrj.com/news/14450937.html>.

⁶ *In re MGM Grand Hotel Fire Litig.*, 570 F. Supp. 913, 917–18 (D. Nev. 1983); E-mail from Judge Philip M. Pro to Kara_S_Rickey@nvd.uscourts.gov (Jan. 19, 2012, 16:10 PST) (on file with *Nevada Law Journal*).

cle III judge on July 23, 1987,⁷ six weeks after President Ronald Reagan nominated him.⁸ At that time, Judge Pro was one of the youngest federal judges to be appointed to the federal court in Nevada.

Over Judge Pro's lengthy tenure, Nevada's population increased⁹ and the District of Nevada's caseload soared.¹⁰ Indeed, for many of those years Nevada was the nation's fastest growing state¹¹ and its docket correspondingly skyrocketed.¹² However, the number of active judgeships that Congress authorized for the District of Nevada did not keep pace with population and caseload growth. Thus, over many years of Judge Pro's service the Nevada District had only four authorized judgeships to handle the exploding docket.¹³

Judge Pro has resolved thousands of matters, including criminal prosecutions involving drugs, weapons, robberies, and public corruption, as well as civil cases involving controversies concerning business contracts, disputes over social security payments and defense contracts, and tort issues such as personal injury actions over vehicle collisions—to name a few.

Some of the more notable cases that Judge Pro presided over include a suit by former workers at the Nevada nuclear test site against the federal government for radiation exposure at Area 51,¹⁴ the Sierra Club's suit against the federal government to halt the widening of U.S. 95,¹⁵ the civil and criminal suits against former Crazy Horse Too owner Rick Rizzolo,¹⁶ the multi-district

⁷ *Biography of Judge Philip M. Pro*, *supra* note 4.

⁸ 133 CONG. REC. 17557–58 (1987); *Replacement for Ousted Judge Gains Approval*, L.A. TIMES, June 24, 1987, at 1.16.

⁹ From 1990-2010, the population of Nevada increased by approximately 125 percent. *See Population of Counties by Decennial Census: 1900-1990*, U.S. CENSUS BUREAU (March 27, 1995), <http://www.census.gov/population/cencounts/nv190090.txt>; *Nevada State and County QuickFacts*, U.S. CENSUS BUREAU (Dec. 23, 2011), <http://quickfacts.census.gov/qfd/states/32000.html>.

¹⁰ The number of case filings increased by 57 percent from 1987 to 1999, years when the court had only four permanent judgeships. *See* ADMIN. OFFICE OF THE U.S. COURTS, 1991 FED. COURT MANAGEMENT STATISTICS 134 (1991); *Nevada Judicial Caseload Profile 1994-1999*, U.S. COURTS, <http://www.uscourts.gov/viewer.aspx?doc/cgi-bin/cmsd1999.pl> (last visited Feb. 27, 2012).

¹¹ *10 Fastest Growing States*, CNNMONEY, http://money.cnn.com/galleries/2010/pf/1012/gallery.fastest_growing_states/index.html (last visited Feb. 27, 2012).

¹² By 1999, the number of weighted case filings per judge was 845, the fourth highest in the nation. *Nevada Judicial Caseload Profile 1994-1999*, *supra* note 10.

¹³ U.S. COURTS, CHRONOLOGICAL HISTORY OF AUTHORIZED JUDGESHIPS IN U.S. DISTRICT COURTS 39, *available at* <http://www.uscourts.gov/JudgesAndJudgeships/Viewer.aspx?doc=/uscourts/JudgesJudgeships/docs/districtchronol.pdf>.

¹⁴ *Prescott v. United States*, 858 F. Supp. 1461 (D. Nev. 1994); *see also Lawsuit by Workers at Nuclear Site Fails*, N.Y. TIMES, July 24, 1994, at A11, *available at* <http://www.nytimes.com/1994/07/23/us/lawsuit-by-nuclear-test-site-workers-fails.html>.

¹⁵ *Sierra Club v. United States Dep't of Trans.*, 310 F. Supp 2d 1168 (D. Nev. 2004); *see also Omar Sofradzija, Sierra Club Settlement: Way Clear to Widen Freeway*, LAS VEGAS REV. J., June 28, 2005, at 1a, *available at* http://www.reviewjournal.com/lvrj_home/2005/Jun-28-Tue-2005/news/26792838.html.

¹⁶ *Henry v. Rizzolo*, No. 2:08-CV-00635, 2012 WL 2970958 (D. Nev. July 20, 2011); *United States v. Power Co.*, No. 2:06-CR-00186, 2008 WL 612207 (D. Nev. Feb. 28, 2008); *see also* Jeff German, *Rizzolo Headed Back to Prison*, LAS VEGAS REV. J., Jul. 21, 2011, at A1, *available at* <http://www.lvrj.com/news/prosecutors-ask-for-nine-month-sentence-for-former-strip-club-owner-rizzolo-125895718.html>.

litigation against Wal-Mart for wage and hour violations,¹⁷ and the trial and subsequent challenge to the jury award in the Tailhook sexual assault lawsuit.¹⁸ Judge Pro is also one of three Nevada District Court judges to serve in the new patent pilot program that was launched September 19, 2011.¹⁹ The jurist has presided over notable and groundbreaking intellectual property cases: the suit by the heirs of musician and songwriter Bob Marley against a company using his trademarked image,²⁰ the Lemelson patent case,²¹ and the now infamous Righthaven copyright suits.²² Judge Pro resolved these cases with the fairness and equanimity that are his hallmarks.

In 2002, Judge Pro assumed the important position of chief judge for the District of Nevada.²³ The chief judge has overall administrative responsibility for the district court's two busy divisions in Las Vegas and Reno. During Chief Judge Pro's tenure, the court experimented with numerous practices for resolving the ever-expanding docket,²⁴ and implemented the Case Management/Electronic Case Filing system (CM/ECF), ushering the court into the modern electronic age.²⁵ In 2009, Judge Pro completed his seven-year term as chief judge.²⁶

Judge Pro has served, and will undoubtedly continue to serve, on many committees and boards that promote the federal court system, the rule of law, and public citizenship. Chief Justice William Rehnquist appointed Judge Pro as the 1993–1998 chair of the Committee on the Administration of the Magistrate

¹⁷ In re Wal-Mart Wage and Hour Employment Practices Litigation, No. 2:06-CV-00225, 2008 WL 3179315 (D. Nev. June 20, 2008); *see also* *Wal-Mart Settles Wage Lawsuits*, THE BOSTON GLOBE, Nov. 3, 2009, at 8.

¹⁸ The incident occurred at the Hilton in Las Vegas during a convention of naval aviators in 1991. *Coughlin v. Tailhook Ass'n, Inc.*, 818 F. Supp. 1366, 1367 (D. Nev. 1993); *see also* Kenneth B. Noble, *Jury Selection in Tailhook Negligence Suit Begins in Nevada*, N.Y. TIMES, Sep. 13, 1994, at A16, available at <http://www.nytimes.com/1994/09/13/us/jury-selection-in-tailhook-negligence-suit-begins-in-nevada.html?scp=1&sq=Jury%20Selection%20in%20Tailhook%20Negligence%20Suit%20Begins%20in%20Nevada&st=cse>; *Judgment Cut for Tailhook Whistle-Blower*, N.Y. TIMES, March 13, 1995, at A16, available at <http://www.nytimes.com/1995/03/13/us/judgment-cut-for-tailhook-whistle-blower.html?scp=1&sq=Judgment%20Cut%20for%20Tailhook%20Whistle-Blower&st=cse>.

¹⁹ Pilot Program in Certain District Courts, Pub. L. No. 111-349, 124 Stat. 3674; Patent Pilot Program, Gen. Order No. 2011-03 (D. Nev. Sep. 19, 2011), available at <http://www.nvd.uscourts.gov/Files/General%20Order%202011-03.pdf>; *see also* Ryan Cobb, *Nevada Selected as Patent Pilot Program Jurisdiction*, NEV. LAWYER, Nov. 2011, at 12, 12–13.

²⁰ *Fifty-Six Hope Road Music, Ltd. v. A.V.E.L.A., Inc.*, 688 F. Supp. 2d 1148 (D. Nev. 2010).

²¹ *Symbol Technologies, Inc. v. Lemelson Med., Educ. & Research Found.*, 301 F. Supp. 2d 1147 (D. Nev. 2004); *see also* Teresa Riordan, *Patents; As Shown by Recent Cases Argued in the Courts, Properly Crediting an Inventor can be Murky Business*, N.Y. TIMES, Feb. 2, 2004, at C2, available at <http://www.nytimes.com/2004/02/02/business/patents-shown-recent-cases-argued-courts-properly-crediting-inventor-can-be.html>.

²² *Righthaven, LLC v. Hoehn*, 792 F. Supp. 2d 1138 (D. Nev. 2011); *see also* Steve Green, *Can Righthaven Survive Latest Legal Blow?*, THE LAS VEGAS SUN, Dec. 13, 2011, <http://www.lasvegassun.com/news/2011/dec/13/can-righthaven-survive-latest-legal-blow/>.

²³ *Biography of Judge Philip M. Pro*, *supra* note 4.

²⁴ *See generally* STATE OF THE COURT, *supra* note 1.

²⁵ *Id.* at 14.

²⁶ *Biography of Judge Philip M. Pro*, *supra* note 4.

Judges System of the Judicial Conference of the United States.²⁷ Chief Justice John Roberts appointed Judge Pro to the Board of the Federal Judicial Center from 2007–2011.²⁸ He served on the Board of Directors of the Federal Judges Association from 1992–2001, holding the vice president position from 1997–2001.²⁹ Judge Pro also served on the Ninth Circuit Court of Appeals Wellness Committee from 2001–2010, chairing the committee from 2005–2010, where he took an active role in addressing age and health-related issues and their effect on judicial performance.³⁰ He currently serves on the Ninth Circuit Capital Case Committee and is an active member of the Howard D. McKibben Nevada American Inn of Court.³¹

Judge Pro also served for several years on the Study Committee to Review the Nevada Rules of Civil Procedure. I had the honor of serving with him on that committee, which the Nevada Supreme Court appointed to evaluate the civil procedures applied in the Nevada district courts and make recommendations for how to more closely conform those procedures to the Federal Rules of Civil Procedure. Judge Pro provided perceptive insights, informed by decades of experience applying the Federal Rules, and while his input was always constructive he never presumed to instruct the committee on how to proceed.

Judge Pro is also actively involved in numerous international “Rule of Law” programs in the countries of Hungary, Republic of Georgia, Netherlands, Armenia, Azerbaijan, Kyrgyzstan, Malawi, Jordan, South Africa, Norway, and Spain.³² In March 2003 he was a co-moderator for the U.S. Department of Justice Colloquium for Iraqi Jurists in Washington, D.C.³³ Despite his many national and international responsibilities and activities, Judge Pro has maintained his commitment to educating and improving the legal community in Nevada. He played an important role in the establishment of the William S. Boyd School of Law at the University of Nevada, Las Vegas by advocating for its creation³⁴ and then serving on the advisory board and chairing the subcommittee that hired the school’s founding dean.³⁵ Judge Pro currently sits on the Law Advisory Committee for the law school³⁶ and the advisory board of the

²⁷ STATE OF THE COURT, *supra* note 1, at 5.

²⁸ *Board Membership*, FEDERAL JUDICIAL CENTER, [http://www.fjc.gov/public/pdf.nsf/lookup/FJC_Board.pdf/\\$file/FJC_Board.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/FJC_Board.pdf/$file/FJC_Board.pdf) (last visited Feb. 27, 2012); *History of the Federal Judiciary*, FEDERAL JUDICIAL CENTER, http://www.fjc.gov/history/home.nsf/page/landmark_18.html (last visited Feb. 27, 2012).

²⁹ STATE OF THE COURT, *supra* note 1, at 5.

³⁰ Hon. Philip M. Pro, *Taking Stock of the Wellness Initiative*, COURTING GOOD HEALTH, Spring 2006; Hon. Philip M. Pro, *Taking Stock of the Ninth Circuit Wellness Initiative*, COURTING GOOD HEALTH, Summer 2010, at 1; Richard Carlton, *Addressing Disability and Promoting Wellness in the Federal Courts*, JUDICATURE, July-Aug. 2006, at 29; STATE OF THE COURT, *supra* note 1, at 5.

³¹ *Biography of Judge Philip M. Pro*, *supra* note 4.

³² *Id.*

³³ *Id.*

³⁴ Philip M. Pro, *Law Makers Must Sanction Law School*, LAS VEGAS REV. J., Jan. 12, 1997, at E1e.

³⁵ Mary Berkheiser, *Law Education Comes to Nevada: The Creation of the William S. Boyd School of Law*, NEV. LAWYER, Sep. 2011, at 8.

³⁶ STATE OF THE COURT, *supra* note 1, at 5.

school's Saltman Center for Conflict Resolution.³⁷ He also contributes to the school in multiple other ways, including through his work with the Philip Pro Lectureship in Legal History, an annual lecture at the University of Nevada, Las Vegas by an internationally prominent scholar.³⁸

Throughout his career, Judge Pro has been committed to educating Nevada's youth about civic duties and has played a significant role as a mentor to many new and aspiring lawyers. Judge Pro has been involved with the *We, the People . . . the Citizen and the Constitution* program since the program's first year in Nevada in 1987.³⁹ The program promotes civic competence and responsibility among elementary and secondary students across the nation.⁴⁰ Furthermore, one of Judge Pro's greatest contributions to the legal field is his mentoring of the 34 law clerks and 90 externs who have passed through his chambers.⁴¹

Judge Philip Pro may be formally semi-retired after concluding nearly a quarter century of exemplary active public service resolving thousands of cases, including five years as chief judge smoothly administering one of the nation's busiest district courts. However, the jurist has clearly earned the public's gratitude for his tireless dedication to making the District of Nevada operate expeditiously, inexpensively, and fairly for all citizens.

³⁷ *Biography of Judge Philip M. Pro*, *supra* note 4.

³⁸ *Philip Pro Lectureship in Legal History with Frank Zimring, News and Events*, UNIV. OF NEV. LAS VEGAS, <http://law.unlv.edu/PhilipProLecture2012> (last visited Feb. 27, 2012).

³⁹ *We the People Inspires Students, Teachers, Judges, Center Correspondent E-News*, CENTER FOR CIVIC EDUCATION (June 7, 2010), <http://www.civiced.org/e-news/?p=129>; Kathleen J. England, *State Bar Programs Promote Civic-Mindedness*, LAS VEGAS REV. J., Nov. 29, 2009, at D4, available at <http://www.lvrj.com/opinion/state-bar-programs-promote-civic-mindedness-78063257.html>.

⁴⁰ *The Program, WE THE PEOPLE THE CONSTITUTION AND THE CITIZEN*, <http://new.civiced.org/wtp-the-program> (last visited Feb. 27, 2012).

⁴¹ E-mail from Judge Philip M. Pro to Cristen Thayer (Jan. 25, 2012 14:44 PST) (on file with *Nevada Law Journal*).