

# JUDGE DAVID HITTNER: ALL IN THE FAMILY

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A ringing phone in 1986 would signal the pivotal point in my legal career.

“Lynne, this is David Hittner,” the caller said. “Now that I am moving over to the federal court, would you be my co-author on the summary judgment article?”

He was offering a dream chance to a young appellate lawyer to work on the law review article referred to as the “Bible on Summary Judgments.” What I failed then to appreciate was that, more important than his wonderful invitation, I had just been adopted into the best legal family in Texas.

“Adoption” is the description Judge Sharon McCally gave of the experience of joining the David Hittner circle. “The word ‘mentor’ has become the popular word,” explains the state district court judge. “It’s not enough to describe Judge. You are adopted. You are part of his family, so wherever you go and however you grow, he is a part of your future.”

She is on the long list of people who owe their finest achievements to the energetic lobbying and coaching of Judge Hittner. Ask any of us about him, and we tell you stories of humor, of caring, and of learning. Young and old. Friends and law clerks. Judges and advocates. We will all speak with voices of awe, gratitude—and love.

Lawyer Diana Marshall puts it this way: “A mentor could be anyone who sets a good example, so the word hardly captures the full force of the impact Judge Hittner has had on the lives of so many,

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including mine. He has an enormous dedication and loyalty to the groups he chooses as his associates—witness his lifetime dedication to the Boy Scouts of America, his twenty-four years of teaching ‘Saturday Morning in Court’ and, of course, his seventeen years of service as the bass player in (lawyer band) The Texas Barflies.”

Another of his salient characteristics is enthusiasm, notes former Texas Supreme Court Chief Justice Tom Phillips. Enthusiasm translates into success, explains Judge Phillips, because success will come if you are committed and enjoy what you are working on. Judge Hittner is committed to and enjoys being a teacher and a trial judge.

### TEACHER

There are legions of people who have benefitted from Judge Hittner’s guidance. “He likes doing things for other people without telling anyone, so a lot of people don’t know a lot of the things he has done for people,” says lawyer Alan Rosenthal. “Frankly, he does not care if other people know what he does because he’s not doing it for that reason.”

“David is as considerate and generous a human being as I have ever known,” agrees lawyer Linda Addison. “He seeks opportunities to help friends at all stages in their lives and careers, from those still in law school to those of us established in the profession.”

High on this list of beneficiaries are his law clerks. They love to tell stories about “Judge.” For example, he has a buzzer button under his bench that he presses to call the clerks to the courtroom. More times than not, he is not summoning them for assistance, but to take advantage of a learning opportunity: to witness a lawyer making a compelling closing argument, giving a lousy cross-examination, or dressing inappropriately. He teaches his law clerks by example, good or bad.

He engages his law clerks not only about the merits, but also the effectiveness of the advocacy. He also includes them in post-verdict discussions with jurors to show them how people perceive information and are persuaded—or not persuaded.

“As a clerk, Judge takes a personal interest in both our personal and professional development in the law,” says current law clerk Kate

Blaine. “He is interested in what we are doing and in us.”

Judge McCally, who was his fifth law clerk, echoes the same sentiment. “He felt the most important job I had as a law clerk was to learn. He was more caring about my education than what I could provide to him as a law clerk. Judge did not just talk to me about the law, but also talked about what makes a good lawyer.”

His efforts are far from limited to his law clerks. Lawyer Linda Addison recounts the time he invited her to speak at a naturalization ceremony over which he was presiding. “He honored my parents, who are immigrants, by putting them on the program, seating them on the stage and introducing them. It meant a great deal to them and to me.”

Diana Marshall once asked him why he took so much of his time to advise and promote others, and he jokingly told her that even a federal judge needs to have at least one friend. She recounts him saying, “On the day I see someone get the reward they deserve, at least I will like me!”

Everyone in his large “adopted” family will tell you that he revels in their success and is incapable of envy. Alan Rosenthal explains, “He has directed a lot of his aspirations to helping other people. He enjoys that as much as anything he accomplishes himself.”

When former law clerk Kent Rutter called Judge Hittner to report that he made partner, Judge Hittner proclaimed that his greatest pleasures over the past several months had been witnessing the successes of his former clerks, with Judge McCally winning election, and Rutter and former clerk Jeff Golub being named partner in their firms.

Judge Phillips calls him a “perpetual cheerleader” and notes he never takes himself too seriously. “That’s what makes him such an endearing creature.”

#### TRUE TRIAL JUDGE

No doubt part of his passion for teaching comes from his love, as he would describe it, of “mixing it up” at the trial level. In terms of true “trial judges,” one would be hard-pressed to find any judge, anywhere, who is more willing to try cases.

Former clerk Eric Nichols observes: “During the entire time that he has been a judge, Judge Hittner’s court has always been a true ‘trial court.’ In these days when many are warning about the ‘vanishing jury trial,’ Judge has always placed an emphasis on the fact that our system of justice necessarily depends on the adversarial process. He recognized that the adversarial process can work, not just through the filing and processing of paper, but through the active involvement of juries and the oral advocacy of lawyers. During his tenure both as a state judge and a federal judge, Judge received several inquiries regarding appointments to state and federal appellate benches, but each time he respectfully declined such consideration due to his zeal for the trial court.”

Eric recounts the lessons he learned about trying cases. “As any lawyer who has appeared before him can state, he has helped to raise the level of advocacy and professionalism by emphasizing the need to be prepared to argue all aspects of a case no matter what the motion is on the docket, to be professional, to be directly responsive to a court’s questions, and to be persuasive without being obnoxious or arrogant.”

Eric quotes Judge Hittner as saying, “I never divert from having good lawyers come in and, shall we say, push on all sides intellectually. That is why I have oral argument. Then I will know what to go back and maybe start reading and digging through as you give me the leads as to what is the most relevant matter in the paper.”

Oral argument before Judge Hittner, to put it mildly, is interactive. He has helped raise the level of advocacy by guiding lawyers when they are not clear or when they are unresponsive to his inquiries. If they are making their point, Judge Hittner’s indicator, in case it would not otherwise be obvious, is the simple phrase “Go on.”

He brings the action of the courtroom to his conferences with his clerks, where he drills them with questions and calls on them to defend their conclusions. “He challenges us,” says current clerk Blaine. “We present things orally, and he forces us to think on our feet. He is always giving us trial craft tips. We learn to always be prepared, know our case, and to give the court deference and respect.”

## CONTINUING LEGAL EDUCATOR

Through his remarkable skills as a Continuing Education speaker and program developer, Judge Hittner mentors on a large scale. It is another way he helps other people professionally.

He has won awards from the American, State and Houston Bars for his innovations in Continuing Legal Education. Through his CLE efforts, he has helped thousands of lawyers. “I can’t tell you the number of times I have heard people say, ‘I learned that at a Saturday Morning in Court program,’ ” notes Alan Rosenthal.

“Saturday Morning in Court” is his signature program that he has presented all over the country. It began while he was a state district judge. The innovative course featured him and his court staff concentrating on the most practical advice for presenting a case. The course was so popular the sponsors had to turn people away. Ultimately, he expanded the concept and organized the course for different venues and for appeals courts—all featuring the judges and their staff members.

He also leveraged the course as an opportunity to give young people, including his clerks and the clerks and staff members of other courts, the chance to speak and obtain exposure to large audiences. His unerring advice to us: The most important quality of a good speaker is, what else, enthusiasm.

## WHAT MOTIVATES JUDGE HITTNER?

Enthusiasm and family. They are key to understanding Judge Hittner. Alan Rosenthal addresses both, “He celebrates the achievements of other people in an enthusiastic fashion that is matched only by the enthusiasm he has in the accomplishments of his own children.”

One of his children recounts that Judge Hittner’s father died when he was only 15 years old and that his uncle paid his way to college and law school. “That’s where he gets his commitment,” says son George Hittner. George, a lawyer, explains that if not for his uncle, Judge Hittner would not have been able to secure a higher education at New York University. He regards it as an important obligation to return to others the help he got from his family and from

others.

Coming to Houston upon leaving the Army also shaped his personality. “He was young, a New Yorker and Jewish,” says George. “He had to throw the doors open, so the few mentors he had took him under their wings and helped him get established. He will say that he is who he is because of Texas and the opportunities here. He tries to give back.”

George concludes his analysis: “He’s intensely loyal. He’s loyal to the core. It’s part of his personality. Having lost his father during his teens, my father realized the concepts of loyalty and family are key.”

#### A MAN OF INTEGRITY

People who know him well, see him set a high standard of personal integrity.

Alan Rosenthal remembers that soon after they became friends, Alan had a case before Judge Hittner and worried that their friendship might cause a problem. Judge Hittner’s response: “Let me ask you this, will it be a problem for you when I rule against you? I’m going to call it the way I see it. If that will hurt our friendship, I’ll recuse myself. If you can handle my ruling against you when I think you’re wrong, then that’s fine.”

Says Alan, “And we left it on that basis.”

Diana Marshall sums things up this way: “His life is a lesson on commitment—he chooses what he feels is right to do, and he does it with utter, complete devotion.”

Not surprising to any of us whose lives he has touched, he was the person Judge McCally called on her way to the courthouse on her first day as a state district judge. I asked her why she called him. “We had to reach out and touch each other. Who else would I talk to?”

Indeed.