

LAW WEEK COLORADO

A Protector of the Court

Judge Richard Matsch remembered for the Oklahoma City bombing trials, his belief in the court system and running a tight courtroom

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Attorneys who had cases assigned to Judge Richard Matsch tend to remember a particular quirk about how he ran his courtroom: If you put your briefcase on the counsel tables,

chances were you wouldn't even get your bag all the way open before he lectured you. The formality of the courtroom setting was a sticking point for Matsch, who was known as much for his idiosyncratic procedural preferences and quick temper as his commitment to the fairness of the

court system during his four-and-a-half decades on Colorado's federal district bench. Putting personal belongings on his tables, in Matsch's view, disrespected the formality of the court, as inappropriate interrupting him or wearing shorts to trial.

"I always wore a white shirt in his courtroom with no cufflinks," said Littler Mendelson shareholder Darren Nadel, who said he otherwise has an affinity for colorful dress shirts and French cuffs when he goes to court. "I never wanted to look overly fancy and wanted to look pure business in his courtroom."

Matsch, perhaps most remembered for presiding over the Oklahoma City bombing trials of Timothy McVeigh and co-conspirator Terry Nichols, died May 26 at age 88. But having sat on Colorado's bench since his 1974 appointment by President Richard Nixon, he saw a number of other high-profile cases. In the mid-2000s Matsch oversaw a lawsuit filed by a hotel employee who accused Kobe Bryant of sexual assault. He presided over a 1987 case of two members of an anti-Semitic group accused of killing Jewish talk show host Alan Berg. In 2017, as a senior judge, he ruled Colorado's sex offender registry unconstitutional because its impact on offenders' ability to find work and housing is cruel and unusual punishment.

Matsch "purely and simply, was a trial judge. That was his highest and best calling," said Sean Connelly in an email, who was on the prosecution team for the Oklahoma City bombing trials. "He loved and honored the Sixth Amendment right of criminal defendants, and the Seventh Amend-



JUDGE RICHARD MATSCH

ment right of civil litigants, to trial by jury."

SHAKING OFF THE SHADOW OF THE SIMPSON TRIAL

Attorneys who had cases assigned to Matsch said he strongly believed in the judicial system's ability to function as it's intended as long as everyone subject to it receives fair, equal treatment. Lawyers on both the prosecution and defense sides of the Oklahoma City bombing trials said Matsch went out of his way to make sure McVeigh and Nichols got fair trials.

O.J. Simpson's 1995 murder trial was fresh on America's mind, and

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Matsch made a concerted effort to keep the bombing trial from turning into a lurid media circus like Simpson's trial became. Presiding Judge Lance Ito made controversial decisions such as allowing television broadcasts of the trial and himself appearing on *The Tonight Show* for interviews.

Matsch made one public appearance during the bombing trials. In a 2018 interview Matsch gave as part of an oral history series by the 10th Circuit, he recounted standing on the courthouse steps to answer questions for a few minutes on one afternoon in Oklahoma, before the case moved to Denver.

"It was important to recognize, all right, this is a trial; we have a lot of trials," Matsch said. "It's just another trial."

"He brought the concept of dignity and fairness back to the judicial system after the O.J. trial debacle," said Wheeler Trigg O'Donnell chair Mike O'Donnell. "I got to see the closing arguments, and he just handled everything in a way that protected the jurors and protected the rights of the defendants. It went from a spectacle in California, and it took a judge in Colorado to get back, in the eyes of the public, the dignity of the judicial system."

Matsch set the tone for the bombing trials from the outset when the case was assigned to him. The 10th Circuit Court of Appeals disqualified all federal judges in Oklahoma from presiding, and Matsch then moved the trial to Denver over further concerns McVeigh and Nichols wouldn't get a fair trial in Oklahoma because of the attention the case had already received. Michael Tigar, who led Nichols' defense team, said he sensed Matsch took offense at publicity that could have affected the trials' fairness.

"That set the tone for everything he did thereafter. He understood that the case was going to attract enormous publicity, but he was determined that the trial would take place, as much as possible, expeditiously and fairly," Tigar said. Matsch allowed only one camera in the courtroom, and for the proceedings to broadcast in closed circuit to Oklahoma City. He also issued a gag order for everyone in the case.

But if the reverberations of the Simpson trial's public nature weighed on Matsch's mind, he didn't cop to feeling the pressure. In his

oral history interviews, retired Judge A. Bruce Campbell asked him whether he sensed the "American trial process was itself on trial" in the bombing cases.

Matsch replied he didn't think about that. Instead, he said, he tried to instill on everybody involved it was just another day at the office.

"I stressed to everybody, this case is not about me ... So, I stood out on the courthouse steps on that afternoon and answered a few questions, but that was the last time I ever met with the press."

A WINDOW INTO HIS CHARACTER

The bombing trials comprised only two years in Matsch's 46 years as a federal judge. Though his characterization of the cases as "just another day at the office" may sound like an oversimplification, Matsch's approach to the bombing cases was a microcosm of his character as a jurist: Strict, private and unfailingly committed to keeping the trial process fair for both sides.

Matsch had a reputation in the legal community for his no-nonsense expectations for lawyers. He had a quick temper toward inefficiency and inadequate preparation. He favored allowing cases to resolve on their merits, rather than on technicalities.

He was also known for taking a more hands-on approach to the pre-trial process than other judges, delegating very little to magistrates. Attorneys said Matsch approached even scheduling conferences, normally procedural meetings between parties in a case to agree on pre-trial phases and set deadlines, as chances to have in-depth discussions with attorneys about their positions.

Hal Haddon, a founding member of Haddon Morgan and Foreman, said Matsch didn't hesitate to call out lawyers in proceedings when he felt their arguments weren't getting to the crux of their case.

"It wasn't a learning experience. It was an effort to get to the core of the issue," Haddon said "He was very strict and tough on lawyers, including me. He played no favorites." Haddon was on Nichols' capital punishment team but had cases in front of Matsch dating all the way back to 1966, Haddon's first year practicing and Matsch's first year as a bankruptcy referee.

OKLAHOMA CITY: A WINDOW INTO JUDICIAL CHARACTER

Judge Richard Matsch's approach to presiding over the Oklahoma City bombing trials was a window into his character as a judge: private, strict and driven by his commitment to keeping the trial process fair.

Decisions he made from the outset of the proceedings set the tone for ensuring the people involved did not contribute to sensationalizing the cases. Matsch declined to make public appearances during Timothy McVeigh's and Terry Nichols' trials, save for one afternoon when he met reporters for a few minutes outside the Oklahoma City courthouse. He granted a motion to relocate the trials to Denver because he felt public scrutiny in Oklahoma had already tainted their perceived fairness, and Matsch issued a gag order that applied to everyone involved in the trials. He told the attorneys not to try their cases in the press. According to Sean Connelly, at the time a prosecutor involved in the trials and appeals, Matsch "bent over backwards to accord every procedural protection" to McVeigh and Nichols.

Ray Martin, a partner at Wheeler Trigg O'Donnell, remembered one case that drove home the judge's impatience for what he perceived as a lack of respect for procedure.

Martin said the parties' pre-trial order was dozens of pages long and complex because they couldn't agree on what core issues should go to trial. With the courtroom's "walls shaking with [Matsch's] rage," Martin described, Matsch told the parties to get a typist and their toothbrushes because they couldn't leave the jury room until they came up with a pre-trial order they agreed on.

After about an hour, Martin said, Matsch came into the jury room, this time smiling and congenial, and asked if he'd caught their attention. He sent the parties home with instructions to submit a new pre-trial order in a few days.

Martin said Matsch was trying to teach the parties a lesson, that they could come up with a workable pre-trial order if they communicated.

"When he came into the jury room he could not have been more friendly and made it clear that he was trying to make his point, and he felt like coming across as agitated as he had would ... communicate the importance of our working cooperatively to narrow the issues in the case," Martin said.

Haddon said Matsch's presence commanded respect even from McVeigh. The moment Matsch announced McVeigh's death sentence is burned in Haddon's memory. When Matsch announced the sentence, "McVeigh stood ramrod straight, looked him in the eye and nodded." •

—Julia Cardi, JCardi@circuitmedia.com

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— Mike O'Donnell, commercial litigator