



# Hon. Ronald M. Gould

## Circuit Judge, U.S. Court of Appeals for the Ninth Circuit

by Ann E. Tweedy



*Ann E. Tweedy is a legal scholar focusing on tribal jurisdiction under federal law, tribal civil rights law, and sexuality and the law. Having previously taught full-time at law schools in the Midwest and California, she now serves as in-house counsel for the Muckleshoot Indian Tribe and as an adjunct professor for University of Tulsa's online Masters of Jurisprudence Program. She also serves on the board of both the Federal Bar Association's and the Washington State Bar Association's Indian Law Sections.*

**P**resident Bill Clinton appointed Judge Ronald M. Gould to the Ninth Circuit in 1999. Until his appointment, Judge Gould was a partner at Perkins Coie, having started there as an associate in 1975. After graduating from the University of Michigan Law School magna cum laude in 1973, Judge Gould clerked first for Hon. Wade H. McCree Jr. of the Sixth Circuit and then for U.S. Supreme Court Justice Potter Stewart. Having clerked for Judge Gould myself from 2001-2002, I was honored to have the opportunity to interview him for *The Federal Lawyer*.

I began by asking Judge Gould when he first wanted to become a lawyer. He noted that it wasn't something he had thought about in high school because he didn't know any lawyers then. Rather, it was in his junior year of college at the University of Pennsylvania that the idea first occurred to Judge Gould. He was thinking of applying to graduate school and got the idea for law school because his roommate was applying to law school at the time. Although he didn't fully understand what lawyers did at that point, fortunately he had an inkling that he could potentially "have a role doing something important for clients and society."

Fast forward to Judge Gould's appointment by President Clinton. I asked Judge Gould how his appointment came about, and it turns out that he had not even been seeking the appointment, at least initially. As he explains it, during a period when he was handling a complex antitrust case in Alaska:

I was in Anchorage taking a deposition at a giant conference table loaded with people when a receptionist came in and said, "There's someone on the phone for you." I said, "I can't really take the call right now because I'm busy on a deposition." The receptionist said, "I think you might want to take it, it's the White House."

Someone at the White House Counsel Office was calling Judge Gould to ask if he had recommendations for an attorney to fill an upcoming vacancy on the Ninth Circuit. After he named a couple of people, the caller



asked if he would be interested as well. While, until then, Judge Gould had never sought out an appointment, that experience "certainly sparked [his] interest." Ultimately, Judge M. Margaret McKeown was appointed to fill that vacancy, left open by Judge Jerome Farris's having taken senior status, and Judge Gould was appointed to fill the next vacancy, which was created when Judge Robert R. Beezer took senior status.

As a clerk for Judge Gould, I remember being very impressed with his open-mindedness, and this is also a characteristic that is mentioned in some of the other articles about him. I asked Judge Gould whether open-mindedness was a quality that he actively tried to foster in himself and why he thought it was important. He responded that he's "always thought it was important to keep an open mind, especially when . . . looking at legal issues, because other people often have valuable insights." He mentioned a motto that he tries to adhere to, which is posted on a plaque on his chambers wall:

In Study and Preparation: Diligence  
In Deliberation and Evaluation: Balance  
In Decision and Judgment: Justice  
In Explanation and Opinion: Clarity

He explained that open-mindedness comes into play in the second phase—after preparing diligently, a judge should consider both sides. He noted that this approach has practical benefits as well in relation to the process of sitting on a three-judge panel. He likened a panel to a miniature committee, where each judge lacks the power to do anything on his or her own, thus making it doubly important to carefully consider the opinions of the other judges. He added that he believes judges should keep an open mind until they've heard arguments on both sides and that, in addition to the parties' arguments, judges should consider the views of other judges, the briefs, and their clerks' analysis before "formulat[ing] their own judgment about what the law is and how it should be applied."

I asked Judge Gould which opinions he was most proud of, knowing that this would likely be a question he wouldn't want to answer. While I guessed right about his reaction to the question, his answer ultimately proved very wise and worthy of emulation. He first noted that he "tr[ies] not to think about being proud of certain things." He then related an anecdote from when he was a law clerk for Justice Stewart. He said that, at the time, he had been "very much engaged" with a case that he thought was "high profile" and "important." In relation to another case, he commented to Justice Stewart that this other case "wasn't as important as many of the others," and "Justice Stewart chastised me . . . , saying that I should keep in mind that every case is the most important in the world . . . for the parties." Because Judge Gould believes this is true, he "tr[ies] not to think of his favorite cases." He considers it "a better approach to just try to think what's the correct way a case should be decided if the law's established or, if the law's ambiguous, what's the best rule that should be adopted and then applying that."

My personal thought is that some of Judge Gould's most notable opinions involve issues of discrimination that could be hard for those who come from very privileged backgrounds to fully grasp. For example, his opinion in *Witt v. Department of Air Force*<sup>1</sup>, in which the Ninth Circuit held that the Air Force had to meet a heightened scrutiny standard to justify its decision to terminate an officer for homosexual activity, arguably sounded the death knell for the military's Don't Ask Don't Tell policy. Decided well before *United States v. Windsor* and *Obergefell v. Hodges*, the decision was extremely noteworthy when issued and remains remarkable in its careful adaptation of an intermediate scrutiny standard from an entirely different context, that of the government's attempt to forcibly administer antipsychotic medication. Other examples of important discrimination cases Judge Gould has authored include *Nichols v. Azteca Restaurant Enterprises*<sup>2</sup>, in which the panel reversed a summary judgment dismissal of an employee's claim of discrimination relating to his feminine appearance and male stereotyping, and two Title IX sex discrimination cases, *Emeldi v. University of Oregon*<sup>3</sup>, and *Ollier v. Sweetwater Union High School District*.<sup>4</sup>

I asked Judge Gould if he had personal experiences

that helped him understand the sorts of harm that can come from discrimination. He replied that he had "certainly encountered discrimination" in his youth, further explaining that, when he was growing up in the '50s and '60s in a suburb of St. Louis, the city at that time "was fairly segregated." He said that he was Jewish and that "all the Jewish people lived in my neighborhood, . . . all the Italians lived in another, and all the Polish people lived in their own." and that neither African-Americans nor Asians were integrated into the communities. He can remember being called names based on his religion.

Judge Gould further explained that, when he was in college, separation by race and religion was still in place. When preparing to apply to a fraternity in order to follow in his older brother's footsteps, Judge Gould suddenly realized that "there were two or three" that Jewish students could apply to "and a bunch of others . . . where they weren't wanted." He added that he is sure they were divided along racial lines at that time as well.

On a brighter note, Judge Gould explained that the legal profession "was opening" when he was practicing law. He recounts that he was the first Jewish partner at Perkins Coie, Judge McKeown was the first female partner, and that he remembers who the first African-American and Asian partners were as well. He sees this period as a time of great progress but acknowledges that there is still need for improvement.

I asked Judge Gould how being disabled has affected his judging (Judge Gould has multiple sclerosis and uses a wheelchair) and whether he had any advice for other disabled people. He said that he has "always considered disabilities as something that [he] should just adapt to" and has thought that he should "keep trying to achieve whatever the objective was." He noted that the Ninth Circuit has been very accommodating and, since 2007, has allowed him to appear by video rather than traveling to arguments in other states. He describes this arrangement as working very well, although he prefers to be on the bench in person, as he is when arguments are in Seattle.

In terms of advice for those who have disabilities, Judge Gould mentioned that he'd once heard that humans were the "most adaptable animal." He continued that "my advice would be [to] just concentrate on what you can do and don't worry about what you can't do, because usually with the tools available you can find a way to do almost anything, or at least you can come close." He further noted that he has had some outstanding law clerks with disabilities, including one who was blind, one who had only one leg, and a couple who were in wheelchairs. He said that "their success . . . helped reinforce in my mind that if people will focus on what they're able to do, then they can accomplish a lot."<sup>5</sup>

I asked Judge Gould about his heroes. Although he said he doesn't have time to think about heroes very much and that he doesn't operate by attaching himself to heroes, he named four: Chief Justice Marshall, Justice

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## Train Us

I'm probably not going to offer to pay you to do this, but I'd be really impressed if you offered to come out to the reservation to do some trainings. And I don't just mean for me. Yes, I need to understand the basics of federal Indian law to do my job. But I'm not the only one. My government employees could do their jobs better if they knew these basics. And my tribal members would be better off if they had more access to this knowledge. You practice federal Indian law, so you know it's an incredibly difficult subject. Think about how complicated and confusing it must be to live and work in Indian country for those who aren't lawyers.

Nor does it just have to be about federal Indian law. Some of it *should* be about federal Indian law: the boundaries of federal, state, and tribal jurisdiction; ICWA; the authority of federal, state, and tribal police in and out of Indian country; the difference between trust land and fee land. But some of it should be about tribal law. You'd be surprised, for instance, how many council members—and tribal members and staff—don't know of the existence of that tribal-housing ordinance that was enacted 35 years ago. You might also be surprised when you give a training and a tribal elder—the tribal secretary during the 1980s—informs *you* that *you* have forgotten about a tribal-housing ordinance that was enacted 35 years ago. Turns out, the only record was stored up in his attic. That's just how things were done back then, before the casino opened.

Finally, some of the training should be about basic legal subjects. What is separation of powers? What is a federal agency? What is the difference between a state court and a federal court? What is the difference between a trial court and an appellate court? Are we supposed to follow “Robert's Rules of Order” or “parliamentary procedure” when we run a meeting? (*Please*, by the way, dissuade us of the notion that we need a 600-plus page book to run a 60-minute, seven-person meeting. It would be helpful, though, if you provided a short list of simple and sensible rules of order.)

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Cardozo, Babe Ruth, and Seahawks quarterback Russell Wilson. He quipped that if he could pick one it would probably be Babe Ruth. Indeed, he has a small nook in his chambers devoted to Babe Ruth memorabilia.

Finally, I asked him what he likes best about being a judge. Judge Gould responded that he really likes “the whole package.” He enjoys thinking about “how the case should be decided for all the parties” and “trying to reach a result that is fair to everybody,” rather than simply advocating for a client. He also enjoys having the opportunity to confirm what the law is in cases where the law's ambiguous. He further noted that he likes “having great law clerks,” who come to him with “fresh ideas, . . . fresh ideals, and with recent legal training.” Because they are new to the law, “they're coming to the job in an idealistic way based on what they learned in school.” He added that “they really help me a lot.” ☺

## Endnotes

<sup>1</sup>Witt v. Dep't of Air Force, 527 F.3d 806 (9th Cir. 2008).

<sup>2</sup>Nichols v. Azteca Rest. Enter., 256 F.3d 864 (9th Cir. 2001).

<sup>3</sup>Emeldi v. University of Ore., 673 F.3d 1218, as amended 698 F.3d 715 (9th Cir. 2012).

## Pick Up the Phone

Come on, this one is obvious. And it's easy, too. When you're on the client side, you are astounded by how hard it can be to get your lawyer on the phone. For the moment, don't even think about how you're impacting the tribe. Just think about your own financial interest. You can't—and won't—get more work if I can't get you on the phone.

## Good Luck

Regardless of whether you are in private practice or are in-house counsel, representing a tribe is a form of public service. You might wish that the tribe's leadership didn't ask some of these things of you, but admit it: Few legal jobs provide so much opportunity to engage in fascinating, challenging, and—most importantly—meaningful work. ☺



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## Endnote

<sup>1</sup>See Developments in the Law: Indian Law, *Tribal Executive Branches: A Path to Tribal Constitutional Reform*, 129 HARV. L. REV. 1662 (2016).

<sup>4</sup>Ollier v. Sweetwater Union High Sch. Dist., 768 F.3d 843 (9th Cir. 2014).

<sup>5</sup>You can hear more from Judge Gould on this topic in an excellent short video called “Pathways to the Bench: U.S. Court of Appeals Judge Ronald M. Gould,” *available at* <https://www.youtube.com/watch?v=IDHupwtp5KQ>.