

## Judicial Profile

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# Hon. Cormac J. Carney U.S. District Judge, Central District of California

JUDGE CORMAC J. CARNEY'S judicial approach is best illustrated by a statement he made in open court at the conclusion of the highly anticipated trial of an executive of Broadcom Corp.:

I find that the government has intimidated and improperly influenced the three witnesses critical to Mr. Ruehle's defense. The cumulative effect of that misconduct has distorted the truth-finding process and compromised the integrity of the trial. To submit this case to the jury would make a mockery of Mr. Ruehle's constitutional right to compulsory process and a fair trial. The Sixth Amendment to the United States Constitution guarantees the accused the right to compulsory process for witnesses in his defense. For this constitutional right to have true meaning, the government must not do anything to intimidate or improperly influence witnesses. Sadly, the government did so in this case.

See Reporter's Transcript of Proceedings, *United States v. Ruehle*, No. SACR 08-00139-CJC (C.D. Cal. Dec. 15, 2009).

Judge Carney's decision to dismiss the criminal stock options backdating charges that had been filed against William Ruehle, Broadcom's former chief financial officer, stunned the packed courtroom that had appeared daily in the two-month trial. Judge Carney's accompanying dismissals of the charges against the other Broadcom executives on these same grounds made further front-page headlines and gripped national attention.

Perhaps the decisions were not that surprising coming, as they did, from a man who answers "the Constitution" when asked who his boss is. Indeed, perhaps his rulings were perfectly fitting for a judge who joined the federal bench to help give the Constitution meaning in people's lives. When praised for the rulings, Judge Carney responded in his typically humble fashion: "The wisdom, the brilliance was in the framers of our Constitution. I'm just doing my job."

Judge Carney's path to a distinguished judicial career had a different start than most others do: it



began with a football. The son of doctors who had emigrated from Ireland in the 1950s, Judge Carney was born in Detroit. His parents eventually moved him and his three siblings to Long Beach, Calif., where Judge Carney was raised. His childhood included taking annual summer trips to Ireland and playing football. At an early age, he developed a love for the sport and the fearlessness and competition associated with it. Football consumed him both physically and mentally. "All I wanted to do was play football," he recalls. After graduating from St. Anthony's High School, he opted to follow an older brother's footsteps and joined the Air Force Academy in Colorado Springs. It was an interesting choice, considering his aversion to heights and tendency toward motion sickness. But the Air Force Academy allowed Judge Carney to pursue his passion, and he started as a wide receiver on the school's varsity team.

His achievements on the football field at the Air Force Academy did not go unnoticed, and after he spent one year with the academy's Falcons, other universities began courting Judge Carney. He decided

it was time to return to Southern California and chose to continue his studies—and football dreams—at the University of California at Los Angeles. His outstanding record as a football star grew. In 1981 and 1982, Judge Carney was named to the All-Pac 10 Conference teams, and he was integral to UCLA's victory in the Rose Bowl in 1983. During each of his three years at UCLA, he was the team leader in receiving, and he concluded his career with the Bruins as the school's all-time leading receiver, with over 100 receptions for nearly 2,000 yards. But Judge Carney's perseverance was not limited to football. He won two all-American academic awards and was nominated for a Rhodes scholarship. In 1983, he graduated from UCLA, cum laude, with a degree in psychology.

Despite the fact that he was starting to feel the impact of football on his body (he had already separated his shoulder three times), Judge Carney was not yet ready to give up the pigskin. After graduation, he was picked up by the New York Giants, but he was cut from the team roster shortly thereafter. He persevered and moved to the now defunct United States Football League, where he started as a wide receiver for the Memphis Showboats in 1984. By this time, however, Judge Carney's passion for football had begun to wane, and he was considering alternative career options. Wanting to pursue something that integrated his interests in philosophy and morality, the distinction between right and wrong, and public service, he contemplated becoming a police officer, joining the military, or getting a law degree. Admission to Harvard University Law School and an NCAA Postgraduate Scholarship led him to plunge into the field of law.

Another life-altering decision, however, still loomed ahead for Judge Carney. At the same time that he was admitted to Harvard, another major opportunity came knocking. The San Francisco 49ers (with Joe Montana as the starting quarterback at the time) made overtures to Judge Carney, trying to recruit him; thus, a career in the NFL was within his grasp. Judge Carney chose Harvard, however, and never looked back. Football, he says, "was incredibly kind to me. It has opened up many doors." And while his UCLA helmet still sits on a shelf in his chambers—a reminder of his passion for the game and the lesson that hard work can lead to great achievements—playing professional football was no longer his dream.

Judge Carney began law school in fall 1984. It was there that he met his future wife and best friend, Mary Beth Fagerson, a fellow classmate. He laughingly tells the story of how their relationship started as a business transaction—she would type the law school papers he wrote. Judge Carney reflects on his marriage and children, considering them his greatest contributions to the world, and he admiringly credits his wife for their close family and children's accomplishments. "It is by them that I will be remembered," he notes modestly.

It was also at Harvard Law School that Judge Carney found what he calls his "true calling." From the minute he entered law school, he wanted to be a federal judge. Federal judges have an "enormous power to help people," he says, the ability to "take on the bullies and fight cowardice." Although he had spent his football career avoiding the bench, Judge Carney's new goal was to get a seat on one.

After graduating from law school in 1987, Judge Carney joined Latham & Watkins LLP, where he practiced business litigation in the firm's Orange County and Chicago offices. In 1991, he moved to O'Melveny & Myers LLP, where he continued to practice business litigation for the next decade in Orange County, becoming a partner and working alongside colleagues like former Secretary of State Warren Christopher. Judge Carney honed his skills as a trial lawyer with a considerable amount of time spent in courtrooms, and he built a roster of clients that included various Fortune 500 companies. At the entrance to Judge Carney's chambers hangs a comic strip sequence of the Cormac character from "Peanuts," drawn by Charles Schulz, a longtime client and friend. The judge considers it a treasured gift.

Speaking about his days in private practice, Judge Carney's eyes shine brightly when he discusses trials: the adversarial process, the adrenaline rush, the fight for the rights of one's clients. Neither the thrill of the competition nor the illustriousness of private practice diverted him from his goal of becoming a federal judge, however. As he told the *Daily Journal* upon his appointment to the federal bench, "In the role of a judge, you see people's greatest accomplishments, and you see people's greatest tragedies." Those daily interactions with people and the opportunity to make a difference in their lives was what Judge Carney wanted.

Judge Carney first began to witness those accomplishments and tragedies when he was appointed to the California state trial bench in 2001 by Gov. Gray Davis, who learned about Carney from Judge Frederick P. Horn, the assistant presiding Judge of Orange County at the time, before whom Judge Carney had appeared. Judge Carney's short tenure on the state court bench included both criminal and civil assignments. His early statements to the *Daily Journal* about his experience on the criminal bench reflect the generally positive outlook he still carries today: "I think it is an opportunity to do the right thing, when you are dealing not with a bad person but with a person who has done bad things."

After serving on the state bench for barely a year, Judge Carney was tapped for the federal bench by President George W. Bush, who nominated the judge in early 2003. The Senate Judiciary Committee approved his nomination unanimously, and the Senate confirmed the appointment on April 7, 2003. Only 43 years old at the time, Judge Carney was one of the youngest judges ever selected to sit as a district judge

in the Central District of California. When questioned about the uniqueness of having been appointed to the state bench by a Democratic governor and to the federal bench by a Republican president, Judge Carney smiles. “Football,” he answers, “it transcends politics.” However, it is more likely that his appointments were the result of his extensive résumé, inquisitive mind, keen intelligence, work ethic, and dependable integrity. He describes himself as “nonpartisan” and more interested in doing what is right and helping people than he is in political leanings. Judge Carney’s guide is the U.S. Constitution, he says: “all our basic natural rights come from the Constitution.”

It is this judicial philosophy—a commitment to helping people and upholding the Constitution’s core values—that defines many of Judge Carney’s cases and rulings. Although he is proud of his decisions in the *Rueble* case, other headline-making criminal defendants have appeared before him. In 2006, Judge Carney sentenced James Lewis Jr., who was charged with running a Ponzi scheme that defrauded 1,600 investors of \$311 million, to the maximum sentence of 30 years in prison after Lewis pleaded guilty to one count of mail fraud and one count of money laundering. Judge Carney also ordered Lewis to pay \$156 million in restitution. At the sentencing hearing, Judge Carney described the Ponzi scheme, one of the largest in U.S. history, as a “crime against humanity,” which had left many elderly investors destitute. Judge Carney also presided over the trial of Dongfan “Greg” Chung, issuing a memorandum of decision on July 14, 2009, finding the 73-year-old engineer guilty on six counts of economic espionage and related charges for his actions as an agent for the People’s Republic of China. This was the first conviction ever under the Economic Espionage Act of 1996, and Chung was sentenced to 15 years in prison.

Civil matters also make up much of Judge Carney’s docket, posing complex legal and ethical issues. He takes a particular interest in civil rights cases. In August 2003, Judge Carney issued a preliminary injunction barring the city of Santa Ana from counting votes related to a neighborhood traffic plan; he concluded that the plaintiffs had shown a probability of success on their Equal Protection claim. Later, he ordered the city to remove traffic barriers it had installed that separated two city neighborhoods. He found the election implementing the traffic barriers constitutionally flawed in that it allowed hierarchies in voting based on whether the potential voter was a resident of an apartment or a single-family residence. Judge Carney’s one-page minute order was succinct: “Under our Constitution, the vote of a resident in a Spartan apartment means just as much as the vote of a resident in a majestic single family home.” Judge Carney also oversaw the 2005 civil rights trial brought by three former Los Angeles police officers who alleged that they had been falsely arrested and prosecuted as part of the Rampart corruption scandal. Each

of the officers was awarded \$5,000,001 following the jury trial (a ruling that was upheld on appeal). Judge Carney lists this case as one of his most memorable trials, a vindication for police officers who had been wrongly accused.

All of Judge Carney’s memorable cases cannot be cited, although a quick search reveals an interesting docket. Perhaps the truest measure of his career is the dignity he provides to each person appearing before him as well as the care he gives to each case, even with an ever-growing docket and judicial shortage in the Central District of California. Judge Carney treats each case before him with conscientiousness and gives each case his full attention, recognizing the power and responsibility that come with a lifetime appointment.

Even though it takes no more than a few minutes of sitting with Judge Carney and discussing his cases to realize that he has a true passion for doing right, protecting people from harm, and upholding justice, there are a few other topics that engender a serious response from him. One issue is his concern for legal ethics and the sanctity of the attorney-client privilege; another issue is the escalation of hostility, emotions, and rhetoric he sees displayed by attorneys. “I long for the days when it was a profession,” he states simply. In a recent presentation to young lawyers for the Association of Business Trial Lawyers, Judge Carney discussed professionalism and provided samples of the increasing rancor and personal attacks expressed by attorneys in pleadings submitted to the court and even in the courtroom. He reminded the young attorneys of the privilege of practicing law and the importance of respecting one’s peers and the judicial system. He constantly demonstrates a commitment to that mission, and his reputation for ensuring civility in the courtroom is well known in Orange County.

During his decade-long tenure on the bench Judge Carney has quickly garnered a reputation as a decisive judge with a strongly tuned sense of fairness. Counsel from both sides of the bar commend his judicial temperament and commitment to the law. Calling the district court the “trenches of justice,” Judge Carney sits on the bench, with hard work his motto, the Constitution his compass, and his passion for making an impact on people’s lives unwavering—even if, on occasion, doing his job makes headlines.

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