Approved For Release 2010/07/26 : CIA-RDP90-00494R001100710041-3

IN HAWAII

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Judge Yearns for Less Talk in Courts

Need Is for More Federal Judges, Plus Some Curbs on 'Oral Elocution'

By Charles Memminger
Star-Bulletin Writer

If U.S. Judge Harold Fong has his way, lawyers will be doing a lot less talking in federal courts here.

The problem is that there are too many cases and not enough judges to allow lawyers the unlimited "elocution" during hearings on the numerous motions that are heard daily.

"I have found that Hawaii is probably one of the most liberal districts, at least in the 9th Circuit if not, in fact, in the country, which allows oral elocution almost as a matter of right," Fong said.

Fong made his comments yesterday during one of the few interviews he has given since he was appointed to the federal bench three years ago.

Sitting at his desk on the fourth floor of the federal courthouse, Fong discussed a number of problems and issues he faces as chief judge of the federal district court.

HIS MAIN problem is the small number of judges here. Officially, he is the only active federal judge in Hawaii. U.S. Judges Samuel King and Martin Pence both are on senior status, which means they work when they want to. And even though King and Pence both keep full calendars most of the year, there still is too much work.

Some of the slack is taken up by visiting judges, but Fong said the problem is the slow pace at which two judgeship vacancies are being filled.

Until they are, Fong said he has to take other measures to make sure things run smoothly. The best way to ease the burden is for lawyers to do less talking, Fong said.

"One of my main concerns right now is changing our rules to limit, maybe even severely limit, the oral elocution (of attorneys)," he said.

Lawyers state their positions in writing but generally are allowed also to address the judge in person and often cover ground already stated in the documents. Under Fong's proposed change, many motions would be decided just on the information in the documents.

In the meantime, Fong has to sit back and wonder when his courts will be brought up to full staff. He said he only knows of one possible nomination which is "going forward" in consideration.

HE WOULD not say who that person is, but the Star-Bulletin reported in June that Albert Moon Jr. has been undergoing a background check preliminary to an appointment as a federal judge.

Fong said he finds the situation "distressing" because one position has been open for more than a year and the second has been available since King retired in December. But Fong said there is little he can do to help the process along.

"Judge King, Judge Pence and myself have agreed among ourselves to stay out of the selection process," Fong said. "That means the process of either recommending that a name go forward . . . or that we exercise any kind of a veto. First of all, we don't have that power and second, we shouldn't ethically do so. What we do have the power to do is give our opinions about the three areas that we should be concerned with: integrity, judicial competence and judicial temperament."

Fong conceded that the judgeship appointments are a matter of politics "because a politician has to make the choice."

FEDERAL judges are appointed by the president for life but have to be approved by the U.S. Senate.

While the system is political, Fong said that once a person becomes a judge, his political affiliation becomes less important. The irony of the situation is that the political party pushes its candidate for judgeship but once the person is appointed, he can no longer support the party locally, Fong said.

"It almost seems to be a slap in their face to say, 'Thank you but don't call me any longer because now that I've gotten this lifetime job you can't get at me unless I commit some malfeasance,'" Fong said.

It was a steady climb with very few setbacks that carried Fong to his position as Hawaii's chief federal judge.

He was graduated from St. Louis High School and the University of Southern California. In 1960, he was named a member of Pi Sigma Alpha, a national political science honor society.

After graduating from the University of Michigan Law School, Fong returned to Hawaii and joined the Hawaii Bar Association in 1965. Fong jumped into Island legal and political life with a flare. He put in a stint with the city prosecutor's office, was elected chairman of the Oahu Young Republicans in 1969. At the age of 31 he was sworn in as an assistant U.S. attorney.

IT WAS WITH that job that Fong first became involved with the prosecution of major organized crime figures in the state.

His prosecution of Wilford "Nappy" Pulawa resulted in the longest prison sentence ever handed down in a tax case — 24 years. That was later reduced to 15 years and some people, even government attorneys, seemed to forget that that was Fong's case.

In a recent court hearing, Fong energetically, and to some observers, somewhat angrily, reminded attorneys on the Federal Organized Crime Strike Force that they were not breaking new ground in their prosecution.

"My remark (to the attorneys) was a recollection on my part that, in the Pulawa case, that case was worked up by me," Fong said. "When I became U.S. attorney I took it upon myself to actually try that case and I only asked the strike force . . . to come in to handle the documentary evidence. I was the one who questioned (crime figures) Clarence Handa and Roy Ryder and Sharkey Fellez and the like.

"When I left the U.S. attorney's office it was funny when I read in the paper how the strike force said that this was their case and that they were the ones who instigated it."

FONG HAS been involved in very little controversy over the years. His only major brush came during the Kukui Plaza investigation in 1977.

Mayor Frank Fasi had been indicted by a state grand jury on bribery charges and the state attorney general, Ronald Amemiya, also had asked Fong as U.S. attorney to seek a federal indictment.

Instead, Fong got a mail and wire fraud indictment against Hal Hansen, the late Kukui Plaza developer who state prosecutors hoped would be their key witness against Fasi.

Fong denied that the Hansen indictment was an attempt by him to protect the mayor, as some had said.

Hansen later refused to testify and charges against Fasi were dropped.

Fong resigned from the U.S. attorney's office in 1977 after Jimmy Carter, a Democrat, was elected president.

Five years later President Reagan nominated Fong for the U.S. District Court judgeship. After months of delay in his confirmation, Fong was sworn in as Hawaii's second full-time federal judge on July 6, 1982. He credited the Kukui Plaza controversy as one of the reasons his confirmation was held up.

Fong says now that his background as a prosecutor has helped him to become fairer as a judge.

"BECAUSE I had a background in prosecution, I made a more conscientious effort to . . . give a fair shake to defense counsel and defendants," he said.

His methods have been successful. The 9th U.S. Circuit Court of Appeals has yet to overturn any of his judgments in criminal cases. He also has not been overturned in sentences he has imposed or in the manner in which he handled trials.

"There have been reversals on rulings, motions and the like," he said, but otherwise, his record is good.

As chief judge, Fong is responsible for the smooth running of the courts. He has agreed to try a new sophisticated audio recording system in one courtroom because of a shortage of court reporters.

He said "somebody in Washington" decides how many of the stenographers can be hired here and that there are not enough. The new recording system will allow a court record to be made without a traditional court reporter, he said.

Judge Harold Fong
Needs more judges

Fong doesn't envision cameras moving into Hawaii's federal courts anytime soon, as they have in the state courts. He said the decision is up to the chief justice of the U.S., who has said "no" to cameras.

Fong said he would like to see the results of the state test of cameras in the courts before he makes up his mind on using them in federal courts.

It is clear, however, that the first things Fong would like to see coming into his courtrooms are not cameras, but more judges.

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