

“Make Your Appearance, Counsel”

Remembering Judge Richard P. Matsch (1930–2019)

BY JIM CHALAT

It was a tough way for a new lawyer to learn how to try a case in federal court.

In 1977, shortly after I was admitted to the Colorado bar, I hung out on Denver’s South Pearl Street with lawyers Karen Mathis and Sandy Rothenberg. I did legal research and writing for them while picking up criminal defense appointments in Arapahoe and Clear Creek counties. Rothenberg would take me with her to a trial or a hearing. She explained to me where to sit and what to say, and she demonstrated excellence in the courtroom. Mathis managed the money. She showed me what a fee agreement looked like, emphasized that it was important to collect fees and to pay the bills, and taught me how to talk to clients. The rent was cheap. It was before gentrification.

In 1978, Rothenberg was appointed to the Denver District Court bench. The day before Sandy was “robbed,” she pointed to several overstuffed files and said I would have to co-counsel them with Mathis. One of them was unique and I would benefit from the experience of handling it, she said. It was a federal case alleging securities fraud. Our clients were a man named Christy and three of his friends. They alleged that in 1975 they had been duped by a man named Cambron into financing a company to build a new discotheque in Vail. The disco had gone down the tubes; our clients wanted their money back. With an easy grin, she explained that the case would be a learning experience for me. Federal court. Federal Rules of Procedure. Federal statutory claims. Federal judge.

At 1:30 p.m. on the appointed day for the pre-trial conference, I meandered into the Byron G. Rogers U.S. Courthouse at 17th Street and

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Stout in Denver and opened the courtroom door for my first appearance before the Honorable Richard P. Matsch. He had already taken the bench, impatiently drumming his fingers as I walked in; I was instantly disciplined for being late. I then put my briefcase on counsel’s table. “Take your case off the table,” he ordered. I began to sit down. “Make your appearance, counsel,” he commanded. I bumbled through my entry of appearance. At the table to my left was opposing counsel, Roger Thomasch. He

had recently left the Department of Justice to join Denver’s most prestigious litigation firm, Roath and Brega. Thomasch was smiling.

At one’s first appearance before Judge Matsch a lawyer would learn three cardinal rules.

First, be on time. In a voice that filled the courtroom, Judge Matsch would say: “We start on time in this courtroom, counsel.” As Coach Schembechler of Matsch’s beloved Wolverines would say: “Early is on time and on time is late.” If you were “on time” for Judge Matsch, that meant he was taking the bench while you were entering the courtroom, and his first act would be a blistering for not being at counsel’s table, ready to proceed.

Second, “Don’t speak unless spoken to.” Early in the pre-trial hearing, I unwisely said something while Judge Matsch was entering a procedural order. Judge Matsch: “If you are going to appear before this court young man, you will *not* interrupt me. *Is that clear?*”

Third, be prepared. Know the law. You could bet that Judge Matsch read the cases, statutes, and interpretative material. If your writing was sloppy, incomprehensible, and without a factual basis, he would say so loudly, and on the record. In *Christy v. Cambron*, we alleged violations of the federal securities laws: specifically Rule 10b-5 of the Securities and Exchange Commission, and Section 12(2) of the Securities Act of 1933. These were the most basic civil fraud contentions that could be made under federal statutory authority. But we were pushing the envelope. The *Christy* plaintiffs were all active participants in the setup and management of the disco. We claimed that as to Cambron, however, they were simply investors, and that Cambron’s material misrepresentations of fact and promise established the plaintiffs’ federal securities fraud claims.

Judge Matsch never made an ad hominem remark or reflected any bias or personal grudge. He never insulted a lawyer. But he vociferously criticized, when appropriate, a lawyer’s poor work, indifferent attitude, laziness, or ignorance. The worst thing a lawyer could do was to waste the court’s time.

At the heart of *Christy* was the money trail. Christy and his friends had put up \$90,000 to start up the disco with a planned opening

for the 1975–76 Vail ski season. They did not anticipate a fatal gondola accident, poor snow conditions, and construction delays. The disco quickly went broke. When Christy looked at the books, he found that Cambron had taken as a fee \$40,000 of the original cash investment. Cambron had also leased the furnishings, fixtures, and equipment for the disco; Christy testified that Cambron said he would buy them. We argued that Cambron had first stripped the business of its capital, and then had burdened it with heavy lease obligations. With no working capital and large payments due, the disco closed.

Our key exhibits were the checks showing the money that Cambron had paid himself. All I had to do, I thought, was put the checks into evidence and show them to the jury, and the case would be proven.

The trial began. Despite my inexperience, we were getting our evidence into the record. Mathis gave a brilliant opening statement. She took the testimony of Christy and the other investors. They testified as to what they paid in and what Cambron had told them he would do with the money. Our clients had jury appeal; one was a retired Army colonel. Our case was simple: Cambron took the money on the pretense that he would build the disco—but he paid himself instead.

Cambron took the stand, and it was up to me now to get the checks admitted for the jury. I stood up; in my hand were the actual checks returned with the bank statements. Out of nervousness I stumbled on my way to the podium, dropping the checks on the floor. Matsch loudly announced that I had to learn how to put in evidence *before* I came into his courtroom. At this point, I was on my knees on the floor of the courtroom picking up the checks. Judge Matsch, in a loud voice: “The way to present checks into evidence is to place them in chronological order on a sheet of paper and present them to the jury as marked evidence in an orderly manner. Why is that so hard?” Mercifully, Matsch excused the jury, and called for a short recess so that “counsel could get his presentation in order.”

Other helpful courtroom guidance from Judge Matsch: “Please ask a question, *wait* for the answer; *then* ask your next question.” And,

“*If I don’t understand this manner of presenting evidence, how do you expect our jury to understand it?*”

All good lessons from Judge Matsch: Know in advance how each piece of evidence will be admitted. Ask short questions to evoke brief but to-the-point answers. And, channeling the information technology revolution: Garbage-in equals garbage-out (GIGO) applies as well to a jury trial. Poor quality or incorrect input inevitably produces faulty output. Bad or mismanaged evidence produces bad verdicts.

We won *Christy*, only to see our jury verdict for economic and exemplary damages disappear in post-trial motion practice at the hands of Roger Thomasch’s incredibly talented, thorough, and experienced trial and appellate advocacy. Judge Matsch vacated the jury verdict on a motion for JNOV. The Court of Appeals for the Tenth Circuit affirmed Cambron’s win.¹ Our clients walked

away from federal court empty handed. Later, Mathis arranged a small settlement for them on their state court claims. That resolved their court costs and closed the file. Our clients were especially kind and understanding. For a young lawyer, it was beyond an honor to represent them.

Karen Mathis would later become the president of the American Bar Association and CEO and president of Big Brothers and Big Sisters of America.

The Honorable Sandra I. Rothenberg had a successful career as a Denver District Court judge and was then appointed to the Colorado Court of Appeals. In 2016 she was inducted into the Colorado Women’s Hall of Fame.

Roger Thomasch (1942–2017) became the chair of Ballard Spahr’s litigation department and managing partner of its Denver office. In 2017, he received the Lifetime Achievement Award from the American College of Trial Lawyers.

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Judge Matsch was an incomparable judge. In the years after *Christy*, his career was marked by the most difficult and high-profile cases in the United States, including the trial of anti-Semites charged with murdering the original shock-talk radio jock, Alan Berg; Denver's mandatory school busing; the nativity scene at the Denver City and County Building; the KKK's right to march on MLK day; and the Oklahoma City bombing trials of Nichols and McVeigh.

Over time, I tried several other cases before Judge Matsch and handled many other cases that concluded by settlement or motion. He and I would only meet otherwise in formal circumstances. On one occasion in a pre-trial conference, Judge Matsch went off the record and talked about his time with the Army and his experience playing football at a small community college. He wistfully recalled that those were less complex and, in some ways, happier times.

Except for a few meetings of the Faculty of Federal Advocates, we never saw Judge Matsch at a bar meeting. Twice I was asked to his chambers in the historic Byron White Courthouse—the renovated Denver Post Office. His rooms were paneled in dark wood, law reports lined the walls, notepads and federal reporters lay in stacks, western artwork and images taken by Edward Curtis decorated the walls. I regret never asking his permission to take his photograph.

Judge Matsch set an example for hard work, fact-based inquiry, efficiency, brilliance, and excellence. Today, we see polarization and outright political influence being exerted on the federal bench through selective appointments based on vested interests rather than judicial ability. The work ethic and lack of bias or interest demonstrated by Judge Matsch are sorely missed. Perhaps his passing will be cause for a renewed interest in the fairness, rather than the political

affiliations, of our federal judges, and for the institutional quality of his judicial abilities.

I never was paid a fee for my work on *Christy*. However, I received something more valuable: training from a tough-minded judge devoted to the highest legal principles, excellence, fairness, and a love of the law. 



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NOTE

1. *Christy v. Cambron*, 710 F.2d 669 (10th Cir. 1983).

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