Motion to Dismiss

Should Judge Lynne Hufnagel be benched? Ask the bankrupt cabbies, bullied witnesses and banished lawyers who've tasted her bitter brand of justice.

By Alan Prendergast
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Attorney Tom Handley remembers the case: a hand-to-hand drug deal behind Argonaut Liquors on East Colfax. Another lawyer in his office had worked out a routine plea bargain with the prosecutor that would have given their client a low-level felony conviction and probation. But before the deal could be sealed, back in the final weeks of 1994, Denver's District Court judges rotated courtrooms, and the case landed in the lap of the Honorable Lynne Marie Hufnagel. Handley, a public defender since 1990, had never appeared in front of Judge Hufnagel before. He quickly learned that Hufnagel doesn't simply sign off on sentencing agreements; many judges don't, in fact, but Hufnagel is particularly protective of her right to decide what a sentence should be. She told Handley his client could either withdraw his guilty plea or affirm it, without any promises as to the consequences.

The defendant balked. Handley told the judge his client would rather take his chances at trial--and was met with an icy glare from the bench. "That made her angry, obviously," Handley says. "The control thing is really big in that courtroom."

Handley and Hufnagel then got into a testy exchange over how quickly a trial had to be scheduled in order not to violate the six-month "speedy trial" requirement. "She said it was up to me to decide what the trial date would be," Handley recalls. "That's not true. Finally, she said to me--this was Friday--'All right, I'll see you Monday for trial.'

"I worked all weekend. We had a motions hearing on Monday, and we started trial on Tuesday. My client was acquitted. And it made her so angry! You could tell she was upset about it. I think she even called in sick the next day."

Handley could take little comfort in the victory. Public defenders, like judges and prosecutors, are assigned to certain courtrooms, and he knew that he would be seeing plenty of Hufnagel in the future. "That was the moment that I knew," he says, "that I was in a lot of trouble in that courtroom."

A few weeks ago Handley found himself in even deeper trouble. He was one of fifteen attorneys who'd participated in a phone survey concerning Hufnagel conducted by the Denver Judicial Performance Commission, a state-sponsored, independent panel that evaluates judges up for a public vote of retention. (In Colorado, district judges must receive a 50 percent "retain" vote in the general election every six years to remain on the bench.) Although the survey was supposed to be confidential, Hufnagel was able to identify Handley when she reviewed the survey results based on some commentary he'd provided about one of his many disputes with the judge over the past two years. On the Friday before Labor Day, she summoned Handley's supervisor, deputy state public defender Cyrus Callum, to her chambers.

"She said, 'I want him out of here by Tuesday,'" Callum says. "Then she said something like, 'If he's not happy about being in here, there are five or six other courtrooms that he could go to.'"

Given the circumstances, Handley says, Hufnagel was right to recuse herself from hearing any more cases in which he's involved. But he also believes that the way it was done--a private meeting with his boss, followed by summary banishment without appeal--says volumes about the "judicial temperament" of the woman many attorneys regard as the most feared judge on Denver's bench. "This whole thing demonstrates why it was recommended that she not be retained," he says.

Handley isn't the first attorney to be barred from practicing in Hufnagel's courtroom, but he may be the last. For the first time in its six-year history, the commission has recommended that two Denver judges not be retained in the November election: Lynne Hufnagel and County Judge Celeste C de Baca. The commission's findings have been embraced and reviled in Denver legal circles, but it's the sharply negative evaluation of Hufnagel--a savvy veteran who's presided over numerous controversial, high-profile cases during her fifteen years on the bench--that has generated the most debate.

Although Hufnagel received a strong approval rating from jurors and some courthouse personnel, the commission concluded that she is "seriously deficient in important areas of judicial performance." Attorneys surveyed ranked her high on her knowledge of the law, independence and efficiency, but they gave her generally low marks for her sense of justice, compassion, courtesy and other characteristics relating to judicial decorum.

In 1990--the last time she was up for a retention vote--Hufnagel received similarly dismal appraisals and acknowledged to the commission that "some lawyers and law enforcement officers view her as arrogant, discourteous, impatient and otherwise lacking in judicial temperament." She stated that she was "committed to working on those problems" and received a 5-4 recommendation for retention. But this time around, the ten-member commission (none of whom served on the 1990 panel) concluded that "the serious deficiencies recognized in 1990 remain...[and] are far below any reasonable norm that should be expected of a district judge."

Judge Hufnagel declined Westword's request for an interview. But various supporters--including several prosecutors, fellow judges and Denver Post columnist Bob Ewegen--have rallied in her defense, charging the commission with flawed research, a bias against women judges and worse. With Hufnagel's blessing, former prosecutor Stan Garnett and Boulder assistant district attorney Bill Wise (who's married to Denver prosecutor Diane Balkin) have formed a committee to campaign for her retention. They claim that the negative report is the work of "a handful of criminal-defense attorneys" who want to boot the judge because of her tough sentencing record.

Garnett contends that the commission relied heavily on its phone survey of attorneys, including Handley, which was weighted two-to-one in favor of defense attorneys: five public defenders, five prosecutors and five private attorneys who'd represented defendants in Hufnagel's criminal cases. "If we're going to have a commission evaluating how judges are doing, we need to be sure they're doing surveys in a statistically appropriate manner," says Garnett, who heads the litigation department at Brownstein, Hyatt, Farber & Strickland, one of the city's most powerful law firms. "The public has a right to know what they're basing it on."

But Greg Fasing, the chair of the Denver Judicial Performance Commission, says it's "utter nonsense" to characterize the report as the work of the defense bar. Four of the panel's ten members are lawyers--including Fasing, a former assistant attorney general--but none are criminal-defense attorneys. Phone surveys were conducted as part of the research on Hufnagel and C de Baca because of a computer glitch involving written questionnaires sent out earlier this year to attorneys, Fasing explains, but the survey was only a "minor tool" used in the overall evaluation--which also involved observing court proceedings, interviewing judges and inviting them to submit self-evaluations.

"If that telephone survey had not occurred, I don't think that would have had any effect on the vote," he says. "Every judge was treated exactly the same. There was no distortion, no twisting of the results. Judge Hufnagel wasn't singled out in any way."

For the most part, Fasing points out, the panel's inquiries prompted it to recommend retention, even in the case of jurists with less than spotless records, such as Paul Markson (a district judge convicted of drunk driving in 1994) and Andrew Armatas (a county judge who filed for bankruptcy in 1995). Hufnagel's poor rating is consistent not only with the 1990 report but with the results of written attorney surveys conducted in 1992 and 1994--neither of which were used in compiling the latest report, at Hufnagel's request.

Not surprisingly, her colleagues have closed ranks in support of Hufnagel, the current president of the Colorado Trial Judges Council. Three weeks ago Fasing attempted to have a one-page summary of the commission's recommendations distributed around the Denver City and County Building. The move was protested by attorneys hired by C de Baca and Hufnagel, who argued that the commission's own rules permitted only the full "narrative profiles" of judges to be circulated; Chief Judge Connie Peterson, a close friend of Hufnagel's, refused to allow the sheet in the courthouse, claiming that it amounted to "campaigning."

Fasing then requested that the court administrator make copies of the profiles with the summary attached as a kind of table of contents. But court personnel whited out the offending summary--prompting a heated letter from Fasing to Judge Peterson decrying the effort to censor the commission.

Her defenders say that even if the report's characterization of Hufnagel as rude and autocratic is accurate, that's no reason to throw her off the bench. "She doesn't suffer fools lightly, but I think she's good," says former prosecutor Nathan Chambers. "There are judges who don't take charge, who let lawyers do whatever the hell they want--and these people invariably get high ratings."

"She's chewed my butt out on numerous occasions, but I usually deserved it," adds ex-deputy district attorney Bill Buckley. "I think she's getting a bum rap. There are judges who shouldn't be on the bench --not because of temperament, but because they don't know the law and they can't make decisions. There's a lot worse things going on than her being a little bit rude to lawyers."

Her critics, though, insist there's more to Hufnagel's bad rating than a little bit of rudeness or even her supposedly tough sentencing, which is more lenient in some cases than her nickname--"Hang 'em High Hufnagel" --suggests. The problem, they say, has to do with a judge who possesses not simply a mean streak but a disturbing habit of prejudging cases; a judge who mocks, intimidates and humiliates lawyers and witnesses in front of juries in order to get the verdict she wants; a judge whose vaunted efficiency masks a snarling impatience with proper procedures designed to protect the rights of litigants; and worst of all, a judge who has exceeded her authority on numerous occasions, leading to costly appeals, reversals and untold misery for the parties involved.

Several attorneys declined to comment on their experiences with Hufnagel, citing fear of retaliation the next time they appear in her courtroom. Others, though, point to matters of record in various civil and divorce cases--including one notorious example, in which a struggling taxi company was held virtually hostage in her court for almost three years--as proof that the controversy isn't just about how Hufnagel deals with criminals. The real issue, they say, is her brand of justice.

"Fair? She's about as fair as a rattlesnake," says one attorney. "You never know who she's going to hit next. If she found out I was talking to you, I'd be finished."

Public defender Handley figures he has nothing left to lose by speaking out. "I represent people, a lot of times, who've done awful things," he says. "And I know some people think defense lawyers are sleazy, and therefore, anything you do to them is good. But where are we, as a society, if we have people on the bench who don't trust jurors to sort out the facts and are manipulating the process to secure the outcome they want? Why should we let that happen?"

Whatever else one might say about Lynne Hufnagel, she has her own mind. The prosecutor who got cold feet in her courtroom eleven years ago found out just how independent she could be. So did the defendant, Christopher Rodriguez.

Along with his brother Frank, Chris Rodriguez had been charged with first-degree murder in the heinous stabbing death of bookkeeper Lorraine Martelli. Two days into jury deliberations, both sides came to Hufnagel with an eleventh-hour plea bargain: Chris Rodriguez would plead guilty to all counts in return for a sentence of life in prison plus 72 years, thereby dodging the gas chamber. The prosecution was fearful that the jury might come back with something less or that the case would be on appeal forever.

Hufnagel turned them down cold. No appeals court would affirm such a plea, she said, given the "duress" Rodriguez was under while waiting for the verdict. On this occasion, the judge did indeed trust the jury to come through, even when the prosecution didn't. As it turned out, the jury refused to hand down a sentence of death--that would be Frank's fate--but did find Chris guilty of murder, kidnapping and sexual assault. Hufnagel gave him life plus eighty-eight years.

Such calls have earned Hufnagel a reputation for the kind of decisiveness one expects from a judge. She's always exhibited a towering self-confidence on the bench, as well as a marked intolerance for lawyers she considers ill-prepared or not well-versed in case law. That attitude may stem from her own background as a hardworking litigator--she was a Legal Aid Society staff attorney, a juvenile-court referee and a prosecutor in Jefferson County before Governor Richard Lamm appointed her to Denver District Court in 1981--but in any event, it has earned her admirers on both sides of the courtroom.

"She's one of the brighter judges on the bench," insists ex-prosecutor Buckley. "Sometimes she's a little harsh with people, but on balance, the cases move along fairly swiftly. You know she's going to be decisive and not take everything under advisement, like some judges do."

"I've found her to be prepared to torque off either side," says John Tatum, a defense attorney who's appeared in Hufnagel's court on several occasions. "When she's been abrupt or impatient with me, it's typically been a situation in which she's already studied the issue."

Others, though, say that Hufnagel's manner can be intimidating--bullying, even--particularly in criminal cases in which she seems to have formed strong opinions about the defendant's guilt. Keith Gross was a young public defender when he got crosswise with the judge in the early 1980s over a case of sexual assault on a child. Representing the man charged with the crime, Gross wanted to introduce evidence that the victim's mother had a boyfriend who was a likely alternate suspect, but Hufnagel ruled against him repeatedly.

"She was incredibly fierce about it," recalls Gross, who's now in private practice. "She kept blocking [the defense], lecturing me in front of the jury to stay out of that area, threatening to hold me in contempt if I went further."

The trial ended in a hung jury. After his client was convicted in a second trial, Judge Hufnagel "basically 86'd me from her courtroom," Gross says. "She said something like, 'You're not going to practice in this court anymore.'"

Noting the similarities between his banishment and that of Handley, Gross adds, "I'm upset that she's still doing the same garbage. I wish the public defender's office had come to my defense, but they reassigned me to another courtroom."

Sex crimes involving children are invariably among the most emotional and difficult cases to try, but for Hufnagel they have been a particular ordeal. For years she made a practice of escorting child victims to and from the witness stand, putting her arm around them and comforting them, over defense objections that such special treatment by the presiding judge could have a prejudicial effect on

jurors. In 1989 the Colorado Court of Appeals ruled that such actions "could have been perceived by the jurors as an indication that the trial judge believed in the credibility of the children who were testifying" and reversed the sex-assault conviction of Frank Travis Green.

The ruling prompted at least four other reversals of child-molester convictions in Hufnagel's court on similar grounds. Critics say the episode shows how Hufnagel's insistence on doing things her way can have the opposite effect of what was intended: The reversals raised the prospect that the victims she'd sought to comfort might have to testify all over again. As far as can be determined, though, the cases were subsequently plea-bargained, with little or no change in the sentences received.

Buckley believes the Court of Appeals did Hufnagel wrong in this instance. "Any intelligent juror is going to decide the child's credibility on what he says, not on what the judge does," he says.

Rowe Stayton, a defense attorney who specializes in sex-assault cases--including one in Hufnagel's court that was reversed because of the Green decision--says Hufnagel shouldn't have escorted the children personally, but her error was no worse than that of others. "I have never seen any other judge do that," he says, "but I've seen other judges do things to calm children. You expect that. No one wants to treat the child roughly."

Her defenders say the child-molestation cases demonstrate that Hufnagel displays compassion toward victims in her courtroom; when attorneys complain that she lacks a sense of compassion, they say, they're really whining about her brusque treatment of criminal defendants and their lawyers.

"I think there is a certain amount of sexism in the attack on Judge Hufnagel," says Stan Garnett. "The type of demanding behavior that can be put up with by most of the bar out of a Richard Matsch or a Dick Spriggs--people will object to that coming out of a Lynne Hufnagel. It's so subjective to say 'no compassion.'"

Yet her record suggests that Hufnagel isn't always the tough-on-crime crusader her boosters make her out to be. She is best known for the long sentences she's meted out to a handful of violent criminals, including Chris Rodriguez and Quintin Wortham, the Capitol Hill rapist, who got 376 years from her--not once, but twice. (Ordered by a higher court to reconsider the 1988 sentence, Hufnagel gave him the same figure in 1994.) But in practical terms, such whammies are no more punitive than a sentence of life without parole, and Hufnagel has had her moments of leniency, too.

Tatum notes that all three of the major criminal trials he was involved with before Hufnagel resulted in sentences favorable to the defense. One was the case of Michael Mueller, an honor student charged with being an accomplice to murder; in 1989 the judge disappointed the victim's family by sentencing Mueller to six years' probation, including two years of home detention and a requirement that he graduate from college.

More recently, Hufnagel sentenced gang leader Michael Asberry to a term of probation in an anti-gang program in California for an assault on a Denver police officer, despite a long history of arrests and a prior felony conviction. "I'm saving your life or a police officer from dying," Hufnagel told the 27-year-old Crip last year.

Prosecutors and cops were outraged. In August Asberry was arrested in Los Angeles for carrying a concealed weapon, earning Hufnagel a scolding from the ever-hawkish Ken Hamblin, who accused the judge of being an egg-sucking liberal: "In the case of Asberry, Judge Hufnagel, the death he ultimately causes will be your legal legacy to this community," Hamblin wrote in his Post column.

But if Hufnagel is sometimes not so tough on defendants, she can be hell on attorneys--and witnesses. Accountant Thomas Myers appeared before the judge only once, in the early 1990s, and that was enough for him.

"It was unique, I'd say," says Myers, whose firm specializes in providing litigation consulting services. "I've testified in dozens of cases, and I've never had that experience before or since. She was just so incredibly rude and so abrupt, so intimidating."

Myers had been called as an expert witness in a dispute over a promissory note, but he says he "never got a chance to offer any intelligible testimony," because Hufnagel kept interrupting him. "She went on some kind of diatribe on expert witnesses, very personal and derogatory," he says. "I was shocked. I've seen irascible judges before, but never to this extent. There was such clear animosity, such venom. And she didn't even know what my position was."

Although he doesn't know what ultimately happened in that case, Myers supports the commission's recommendation that Hufnagel be voted off the bench. "There's a certain amount of respect you have to accord someone of her stature," he says, "but she doesn't comport herself in a manner that fosters that kind of respect. Her conduct denigrates the whole concept of an impartial judge."

Alack of impartiality is probably the most frequent--and serious--charge raised against Hufnagel. Criminal and civil attorneys alike complain about her tendency to go on and off the record so that the official transcript reflects an incomplete version of what happened in a case; her visible impatience with attorneys who want to "make a record" of their objections for appeal purposes; and the kind of leeway she seems to grant favored practitioners in making their case.

In one such instance, she chided the defense for being "overly sensitive" for objecting to several remarks made by prosecutor Craig Silverman in his closing argument, insinuating that a man accused of burglary had a long history as a thief and that even the defense attorney didn't believe in her own case. Although Hufnagel eventually sustained some objections to Silverman's increasingly prejudicial remarks, an appeals court reversed the conviction.

"There are many subtleties to the way she can influence a jury," says public defender Handley. "I have made a record before when she has turned her back to me. I've had to make certain objections on the record in open court because she won't allow me to approach the bench. She's hoping she can wear you down by the glares, by shouting you down when you want to make a record.

"Now, when I make a record and she has her back to me, how important does the jury think my record is about what happened? They probably think, 'This is some greasy defense lawyer; the judge isn't even listening.'"

Hufnagel does enjoy a strong rapport with jurors; she drafted the jury-reform legislation that established one-day/one-trial juror service in Denver and raised the pay for jurors from $3 to $50 per day. But Handley believes she goes out of her way to sway them by requesting that attorneys waive their right to appear when the jury is first called in--thereby giving her more time alone with them--and by other tactics, such as torpedoing efforts to dismiss jurors "for cause," something attorneys routinely try to do during the selection process by eliciting a series of responses from candidates that reveal their underlying biases.

"She'll say, 'Ma'am, this lawyer just asked you a series of leading questions'--in other words, this guy just put words in your mouth," he says. "Then she'll ask a series of questions as leading as anything an attorney might ask. Not only has she rehabilitated the juror, she's shown the whole panel that you are not to be trusted."

Handley also takes issue with the judge's practice of quizzing plea-bargaining defendants on the details of their crimes. Virtually all judges will ask a defendant if he agrees with the facts as presented by the prosecution before accepting a guilty plea, but Hufnagel is known for conducting exacting inquiries into the accused's behavior and motives. A guilty plea involves some waiver of the right against self-incrimination, Handley notes, but he describes Hufnagel's interrogations as a "rub-your-nose-in-it approach" that can prolong a case rather than settle it.

"If she isn't satisfied with their rendition of what happened, she'll say something smug, like, 'Oh, it looks like you need a trial,'" he says. "Or she'll refer to the defense, in open court, as 'crazy' for exercising the right to go to trial."

In one case, Handley recalls, he represented a man who'd been charged in a domestic dispute with violating a restraining order and burglarizing his ex-wife's house. Based on the evidence she saw, Hufnagel didn't see the case as complicated, he says, but Handley's client was adamant that he didn't commit the burglary.

"We go to a motions hearing, and the judge was, I thought, extremely rude," Handley says. "She was mocking me and the motions I filed and asking me why I couldn't be more like Bob Ransome or Larry Posner--lawyers she likes. She asks my client if he wants the [plea] offer, and he says he didn't do anything. And she got angry with that. 'Oh. You didn't do anything. Fine.' She was mocking his decision to go to trial."

The case was tried by another judge, who reversed Hufnagel's decision to allow evidence of earlier violent acts by the defendant unrelated to the burglary charge. At trial, Handley's client was able to provide a strong alibi for the time of the burglary. "The jury was out ten minutes before they acquitted him," Handley says. "She had totally prejudged the situation."

One startling example of the judge taking an active, somewhat prosecutorial role occurred this past summer, in the course of an otherwise minor case of a Hispanic man charged with purchasing food stamps illegally. The man managed to post his $2,500 bail, but Judge Hufnagel ordered him held in the Denver County Jail pending clarification of his immigration status. Holding a suspect without bond, particularly in a nonviolent offense, is unusual, to say the least; defense attorney Jim Castle obtained an order from the Colorado Supreme Court requiring Hufnagel to show cause within five days why his client should not be released. When Hufnagel didn't respond to the order, the Supreme Court ordered the man's release on bond. Hufnagel then doubled the amount of the bond.

In court filings, Castle charged that Hufnagel's office contacted the bondsman in the case, who then asked to be excused from the bond arrangement. (The bondsman, Joe Moreno, says he doesn't recall the court clerk contacting him but had heard from other sources that the defendant might jump bond.) Castle also claimed that Hufnagel personally contacted federal immigration authorities in an effort to have his client held for deportation, then raised the bond to $5,000 over the objections of both the defense and the district attorney.

"The Court's actions, taken as a whole, indicate that the Court is treating aliens differently than citizens in her courtroom," Castle wrote, asking that Hufnagel step down from hearing the case. "The Court's active and extrajudicial role in attempting to obtain the desired detention suggests that the Court is biased and prejudiced against aliens."

Hufnagel declined to recuse herself, which would have required her to certify the case (and the grounds for her recusal) to the Supreme Court. Instead, she "voluntarily" reassigned it to another courtroom while acting in the stead of Chief Criminal Judge Warren Martin, who happened to be out of town that day. ("The result's the same, but that way you don't have to admit you were unfair to anybody," Castle notes.) Castle's client eventually made the higher bond and received probation from another judge; according to Castle, he's still in town and working on his visa problems.

But claims of bias arising out of the case don't stop there. On the same day that Hufnagel learned that the higher court had ruled against her on the bond issue, a trial began in her courtroom in which Castle's wife, public defender Lisabeth Castle, was representing a man charged with assaulting a police officer. According to a motion filed by Liz Castle, Hufnagel abruptly reversed herself on key rulings she'd already made, hampering the defense's case.

"The Court repeatedly chastised defense counsel Lisabeth Castle for having to take up matters...after she had spent all morning with other hearings," Castle wrote, asking Hufnagel to recuse herself.

"Defense counsel believes that the Court was making reference to the confrontation with her husband Mr. James Castle and is unfairly impeding the defense for actions taken by her husband." Hufnagel refused to disqualify herself from hearing the assault case, but a hung jury produced a mistrial. The case was subsequently assigned to another judge.

Some litigants in civil cases say that the judge can also display her animosity through inaction, refusing to rule on a crucial motion or even a judgment for months, despite her much-touted reputation for efficiency. She kept local private eye Robert "Pete" Peterson twisting in the wind for more than fifteen months after his bench trial before finding him guilty of trespass and invading the privacy of an oilman he was hired to investigate, assessing damages in excess of $120,000. The case is currently on appeal, and Peterson has become one of Hufnagel's most outspoken critics--"I hate her guts," he says simply.

Attorney David Mintz recalls a curious conversation with the judge in the course of representing a woman injured in an auto accident. "In chambers, Judge Hufnagel let me know that the last 20 to 25 accident cases in her courtroom had all been defense verdicts," Mintz says. "She couldn't understand why the plaintiffs kept losing in her courtroom. I had my own ideas why that might be so, but since we were in the middle of trial, I didn't think it was appropriate to comment."

Much to Mintz's surprise, the jury found in his client's favor, awarding over $100,000 for her injuries. But Hufnagel refused to enter the judgment until the two sides resolved a dispute over a $7,000 award for future medical expenses. "I considered what she was doing as putting pressure on us to go to the defense and cut some deal," Mintz says. "Our client was really poor, really hurt, and needed the money desperately, but we didn't think there was any basis in law to reduce the verdict."

Six months later the defendant's insurance company called him and asked him to pick up a check for the full amount; Mintz assumes the company didn't want to leave the clock ticking on the interest on the judgment, regardless of the court's inaction. Court records indicate that Hufnagel signed the judgment only after the attorneys sought to file a document indicating that the amount had already been paid to the defendant.

A glacial judicial process was also at work when the Colorado Chiropractic Association went to court to challenge the state's new workers' compensation law in 1992. At the conclusion of the two-day bench trial, Hufnagel acknowledged that the case raised important constitutional issues and indicated that she'd try to reach a decision in a matter of weeks. Over the next two years, chiropractors' attorney Tom Overton sent several letters to the court respectfully requesting a ruling or at least a status conference, to no avail.

By the time a decision was finally rendered, in favor of the state, more than 26 months had passed since trial, and circumstances had changed so significantly that Overton's clients decided not to appeal. "The Court apologizes for the delay in issuing this opinion," Hufnagel wrote tersely, offering no further explanation.

"We did everything possible to encourage a quick ruling," Overton says now. "Everybody wanted a ruling, including the attorney general's office. Had we got a quick one, we would have taken it up on appeal, but other cases beat us there."

Justice delayed may have amounted to justice denied in the divorce case of a local attorney, too. Hufnagel acquired the protracted case in the spring of 1991, during her stint on the domestic bench. The attorney's cancer-ridden wife died in August of that year. Hufnagel awarded her $80,000 in maintenance and attorney's fees the following summer. In 1994 the Colorado Court of Appeals threw out the award, reasoning that you can't award alimony and fees to the dearly departed.

In other civil cases, Hufnagel has demonstrated a penchant for sealing files from public view--although she's choosy about which litigants deserve such treatment. For example, she has denied the requests of some male lawyers to keep their divorce cases private, even quipping that attorneys don't

like to have the public know how little, rather than how much, they make; but she has readily sealed the divorce files of certain well-connected Denverites at the parties' request, including the divorce of city attorney Dan Muse and that of her colleague Judge Armatas. Last year she even sealed the terms of settlement in a condemnation case involving a substantial portion of the land the city acquired for Denver International Airport, on the grounds that the seller's right to privacy outweighed the public's interest in knowing what the city was paying for DIA land.

Secrecy has also been an issue in some of Hufnagel's criminal cases. Last May nineteen-year-old Robert Gurle, a three-time felon with a long juvenile record, was facing anywhere from 10 to 32 years for pulling a gun on a state trooper during a traffic stop. On the day of sentencing, much of Hufnagel's docket had been transferred to another courtroom because of an ongoing trial, but Tom Handley says that Hufnagel decided to keep the Gurle case in her court after conferring with the prosecutor--while Gurle's attorney, who happened to be Handley, was waiting in the other courtroom for the case to be called.

At sentencing, Handley attempted to object to what he considered an improper, off-the-record meeting between judge and prosecutor, with no defense counsel present. Hufnagel cut him off.

"This is my case, Mr. Handley," she snapped. "Please tell me if you have any additions or corrections."

Hufnagel gave Gurle thirty years. Handley concedes that it was Hufnagel's prerogative to keep the case and that the sentence fell within the guidelines for the offense. "She's right, it was her case," he says. "But I can't imagine being able to approach Judge Hufnagel and say, 'Can I talk to you in private about this case?' No way. I told her I was real concerned about this ex parte [one-sided] communication. Unfortunately, I was shouted down."

The Gurle case is now on appeal.

A trial judge hears hundreds of cases a year, and even the best of them suffer their share of reversals. But certain controversial decisions have a way of haunting a judge long after the matters at hand have dropped out of the headlines. Lance Ito will always be known as the judge who let the O.J. Simpson case careen out of control. Richard Matsch's stock will rise or fall depending on what happens in the Oklahoma City bombing trial. And Lynne Hufnagel may ultimately be remembered, not for giving Quintin Wortham 376 years, but for sentencing Denver's Yellow Cab company to almost three years in the custody of attorney Karen Mathis.

Her critics point to the Yellow Cab debacle as Exhibit A in the case against Hufnagel. No other matter before her has prompted such a wide range of charges leveled at the judge--charges of abuse of authority, bias, secret communications, unconscionable delays, high-handed and ruinous decision-making--or stirred up such a staggering array of lawsuits and unresolved questions in its wake. Hufnagel's handling of the civil case, which began as a relatively minor dispute over seating a board of directors, earned her the lasting enmity of hundreds of Denver cabbies and stinging rebukes from two federal judges, and the aftershocks of her decisions are still being felt in the city's legal community.

"It was like a kangaroo court," says Alan Cowley, a Yellow Cab driver who was the lead plaintiff in the lawsuit. "We went to court over an election dispute, and we lost the company. I feel terribly robbed."

In 1991 Cowley and other drivers for the Yellow Cab Cooperative Association filed suit against a rival faction, claiming fraud and improper conduct in the election of YCCA's board of directors. The company, which had been purchased by the drivers and operated as a cooperative since 1978, had a long history of financial mismanagement and political infighting among various groups within the organization. By the luck of the draw, the case was assigned to Judge Hufnagel's courtroom.

After several days of tense, packed hearings, the parties still hadn't reached agreement as to who was going to run the company. Hufnagel's way of settling the argument was to appoint a temporary receiver to manage YCCA's assets. The person she chose for the job was Denver attorney Karen

Mathis, who'd overseen dozens of other receiverships and had worked as an officer of Hufnagel's court before in a guardian ad litem proceeding.

Several drivers say they were "shocked" by Hufnagel's decision. Receiverships are usually instituted in foreclosure actions, to protect a secured creditor's interest and pay off debts in an equitable manner. YCCA had a mountain of debt, but no creditor had requested a receiver; nor had the drivers. Yet none of the parties formally objected to Mathis's appointment at the time, since they figured she would only be around long enough to conduct a fair election of a new board of directors.

They were mistaken. Although the receiver had never run a cab company before, Hufnagel's order gave Mathis extremely broad powers to manage YCCA, including the ability to hire and fire, to sell assets and to pay creditors or leave them hanging. It also allowed her to hire her own law firm to assist her in running the business. With Mathis's personal legal meter ticking at $170 an hour and a bevy of other attorneys on board to help the beleaguered cabbies through their crisis, it wasn't long before the Mathis Law Firm was extracting an average of $10,000 a week from the financially strapped company. And nothing could stop the hemorrhaging but another order from Judge Hufnagel--an order that was never issued.

The drivers soon figured out that their company no longer belonged to them. Under Mathis's supervision, a new board of directors was elected in July 1991, three months into the receivership, but they were allowed to serve only in an advisory capacity; Judge Hufnagel refused to seat them, saying they weren't "ready" yet. At the same time, Mathis set about implementing a new driver's contract that many YCCA members considered ruinous; those who refused to sign were fired, including one of the new boardmembers. Most of the fired drivers owned their own cabs and took their business to competing taxi companies, a move that had a significant impact on the size of YCCA's fleet and its revenues.

Throughout it all, Hufnagel backed her receiver at every turn. She routinely approved Mathis's fee requests and sealed YCCA financial information from public view, so that even the board-elect had no clue as to the company's economic state; minutes of board meetings were sealed, too. When Mathis complained of "acts of violence" against the company and widespread "miking"--the disruption of radio communications by drivers holding their mikes open--Hufnagel issued a temporary restraining order authorizing Yellow Cab employees to go on private property, seize company equipment and impound the cabs of mutinous drivers. (After the city attorney's office expressed qualms about enforcing such an order, Hufnagel toned it down considerably.) And when drivers tried to challenge Mathis's continuing reign, they found her harder to remove than an unwanted tattoo; one motion to dismiss the receiver languished in Hufnagel's court for eighteen months before she got around to denying it.

Cowley says he and other members of YCCA's board of directors were "pretty well intimidated" by Mathis and her evident strong support from the judge. Early in the receivership, Mathis told several boardmembers she'd run into the judge by chance at the Esquire Theatre and discussed the case with her; before long, rumors were spreading that Mathis and Hufnagel were meeting secretly to plot the company's fate.

Mathis has denied ever holding such meetings, but in a recent deposition she stated that the judge called her approximately once a month "and asked questions about the conduct of the business." In most court proceedings, such ex parte discussions would be strictly forbidden; whether they were proper or not, Yellow Cab's elected but powerless leaders were under the impression that they had nowhere to go for relief. As the situation deteriorated, boardmembers complained that they were being threatened with contempt or defamation charges for protesting the receiver's policies.

"I can blame Karen Mathis to a point for what happened, but I have to blame Lynne Hufnagel, too," says Leroy Jones, a fired YCCA driver who joined with other exiles to launch the Freedom Cab

Company. "She should have curtailed the receiver's powers instead of continuing to expand them. Karen Mathis would never have been able to do what she did without Lynne Hufnagel's help."

In the summer of 1993, more than two years after her appointment, Mathis proposed selling Yellow Cab's assets to three Florida cab tycoons for $1.1 million in cash and another $1 million over seven years. Somehow the focus of the receivership had shifted from conducting an election to a fire sale of the company ("End of the Road," August 25, 1993). Creditors, drivers and even a majority of the board of directors filed objections to the sale, which amounted to a liquidation that would leave the co-op stuck with the debts and little else.

Hufnagel, though, approved the sale. Figuring they had nothing left to lose, the YCCA board filed a petition for reorganization with Denver's federal bankruptcy court. The petition listed the company's assets and liabilities as "unknown."

Mathis fought the bankruptcy action, apparently with the judge's blessing. (She also billed YCCA nearly $50,000 for her efforts and those of an attorney she hired to represent her, which, boardmembers claimed, amounted to using the owners' money to keep them from regaining control of their company.) But in early 1994, after extensive testimony, U.S. Bankruptcy Court Judge Donald Cordova issued a stay suspending the receivership, blocking the sale and, for all practical purposes, removing the case from Hufnagel's court.

"The owners of the co-op should be allowed to decide for themselves what the future of this company should be," Cordova said. "This Court has some concerns about due-process issues."

Judge Cordova found it "curious" that what was supposed to have been a short-term receivership had lasted a total of 32 months, during which time Mathis and her law firm charged the company roughly $1.3 million in fees and expenses while paying off only $140,000 in pre-receivership debt owed to creditors. As he saw it, YCCA was denied due process in Hufnagel's court because its elected board of directors was never seated, it had no representation before the court, and it was, "in essence, disenfranchised by the Court's order."

Cordova was also troubled by the way in which Judge Hufnagel approved Mathis's fees without issuing proper notice to other parties. Half the time, Hufnagel would issue an order setting a time limit to object to the fees that was signed the same day as the order approving the fees--effectively denying the drivers and their creditors an opportunity to object. Mathis explained that the judge would send out an unsigned draft of the order to certain litigants ahead of time, but an unsigned order has no legal effect, and many interested parties received no notice whatsoever. The process, Cordova noted, "makes absolutely no sense at all."

Bankruptcy Judge Sidney Brooks went even further. Brooks, who presided over YCCA's subsequent lawsuit against Mathis in an effort to recover her fees, issued a scathing opinion that touched on many of the irregularities of Hufnagel's handling of the case.

"The record presented to this Court is absolutely devoid of reasons, persuasive or otherwise, as to why the elected board of directors was not seated and why the receivership was allowed to last as long as it did," Brooks wrote. He considered the "extraordinary and questionable procedure" for approving the receiver's fees to be "unseemly streamlined, almost invisible, and encased in mystery; it was a judicial process on automatic pilot."

In theory, Mathis's position was similar to that of a bankruptcy trustee, Brooks noted, but her appointment "appears to have been accomplished without advance notice, full disclosure, accountability, opportunity to object, or other procedural safeguards" afforded by bankruptcy laws--not to mention the potential conflict of interest in hiring her own law firm, something a trustee is permitted to do only under unique circumstances.

In a written declaration submitted to Judge Cordova, Judge Hufnagel defended her appointment of Mathis and the proposed sale as in the best interest of the company. "I exercised proper control over this proceeding and over my appointed Receiver's conduct and fees," she insisted. But her avowal has done little to spare her receiver from the wrath of angry creditors and drivers in the two years since the stormy receivership ended.

Mathis recently reached a tentative settlement with YCCA in the fee dispute, agreeing to repay $140,000 and to drop her counterclaims against the company. She faces another lawsuit in December from a woman injured by a Yellow Cab driver in an auto accident; the woman, who has a $2 million judgment against YCCA she's been unable to collect because of the bankruptcy action, claims that the receiver failed to acquire adequate insurance for the company and breached her fiduciary duties. Last month Mathis, who has denied any liability, told the woman's attorneys that the Mathis Law Firm is no longer a "functioning law firm" and that she's gone to work for a firm owned by two former associates.

As for Yellow Cab, its long journey through bankruptcy court is almost over, thanks to a sale to investors for $2 million and a pledge to pump another $2 million into improving operations. But since the company was at least $2 million in the hole at the time it filed bankruptcy, the co-op's owners will receive nothing from the sale. Still, court documents indicate that the company's creditors will receive more out of the transaction than they would have gotten out of the assets sale that Mathis had proposed.

By the time Yellow Cab staggered out of Hufnagel's court and into bankruptcy, "the company was in much worse shape than when the receiver took over, both in operations performance and in cash flow," says former YCCA general manager Clark Trammell, who shepherded the company through the reorganization. "It was a very dark period for Yellow Cab."

Leroy Jones traces the company's collapse back to Hufnagel's decision to appoint a receiver five years ago. "There was no justification for it, no legal basis that I could see," he says. "I think she's a discredit to her profession. If I had to judge judges on her ability, they wouldn't be worth the gum on my shoe."

Some people just want to throw out all the rascals, nuke 'em, let God sort them out. In recent years judicial-retention elections in the metro area have hovered around a 70 percent "retain" vote, regardless of who the judge might be.

"Obviously, 30 percent of the voters are flipping 'no' levers on all of them," says Greg Fasing of the Denver Judicial Performance Commission, "and that's just wrong."

Fasing says that's one reason the legislature created the commission--to provide voters with independent, unblinking appraisals of otherwise faceless judges. Not simply to single out judges who shouldn't be retained, he adds, but to let voters know about "the good work most judges are doing."

In the commission's world of standard questionnaires and randomly selected respondents, a judicial approval rating of 70 percent is considered soft. The vast majority of Denver's district court judges routinely receive a thumbs-up from 80 percent or more of the attorneys polled, and even stronger numbers from jurors and courthouse personnel. By that benchmark, Lynne Hufnagel's attorney evaluations in 1992 and 1994--the last two times statistically valid written surveys were conducted on her performance--were abysmal. In 1992, during her stint in divorce court, her "retain" rating from attorneys was barely above 40 percent; in 1994, it crept to 52 percent.

Lynne Hufnagel doesn't think the commission has been fair to her. In August, when she appeared before Fasing's panel for a third and final interview, she brought with her a prepared statement expressing her concerns about fairness and due process. She was "shocked" by the preliminary draft she'd received of the panel's evaluation of her, she said, and had already endured a "nightmarish two months" of wrangling with the group over its report, during which she'd felt compelled to hire a lawyer for only the second time in her life.

The commission wasn't following its own rules, she insisted. No police officers had been asked about her performance, she noted, although the rules call for them to be surveyed, too. (No such surveys were conducted for any Denver district judge; law enforcement surveys were done in county court, but Fasing suggests the state may have lacked the funds to prepare them for all the judges.) The 1992 and 1994 surveys shouldn't be used, she reasoned, because the attorney sampling couldn't be "replicated" by the commission's statistician, Joyce Sterling. (Sterling, a law professor at the University of Denver, says the methodology of the surveys from those years is valid and can be replicated; it's the same list of respondents that can't be reproduced.) And Hufnagel questioned whether the phone surveys that were used in place of written questionnaires in 1996 reflected "a balanced cross-section of persons who have had professional contact with me."

The judge pointed with pride to her appellate record. Out of 93 criminal appeals, she'd been reversed 18 times, but not once had she been reversed for imposing a criminal sentence that was too harsh. True, she was "disheartened" that attorneys seemed to find her lacking in courtesy and compassion, the whole "judicial demeanor" thing, but she'd sought the help of a professional who worked with "executives who have communication problems" and was trying to change.

"What do the voters want to know about their judges?" she asked. "If a judge is courteous and compassionate, does that outweigh a lack of diligence or legal knowledge? If a female judge takes control of her courtroom and demands excellence from attorneys, is that less tolerable than if a male judge does the same thing? Is excellence from attorneys too much to demand when people's lives and liberty are at stake?"

And so it went. As Hufnagel saw it, her poor score could be largely explained as the revenge of sloppy attorneys on a female judge who set high standards for her courtroom. Never mind that Fasing's panel urged the retention of four other female judges in Denver--not a shrinking violet in the bunch--or that surveys have indicated, over and over, that attorneys have serious qualms about Hufnagel's sense of justice.

The lawyerly closing argument failed to sway the commission, but in the final analysis, it isn't their verdict that counts. On November 5 Judge Hufnagel will face a higher court, one that can be as tough and capricious as her own. That court may be no larger than a voting booth, but its judgment is final.

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