

TAD HALBACH'S ANTI-AGENDA JURISPRUDENCE

by SUSAN BORRESON

Joseph "Tad" Halbach knew when he was appointed judge in 1995 that many plaintiffs lawyers feared that the picks Gov. George W. Bush made for the Houston bench would spell the second coming of tort reform.

His concern was justified. Halbach's appointment to the 333rd district bench came after a legislative session where the plaintiffs bar took plenty of hits. But Halbach wanted to prove them wrong.

"I don't think it was unreasonable initially for the bar to be concerned about what kind of judges we were going to get, in terms of agendas," Halbach says. "The first thing you had to send as a message was, 'No agenda.'"

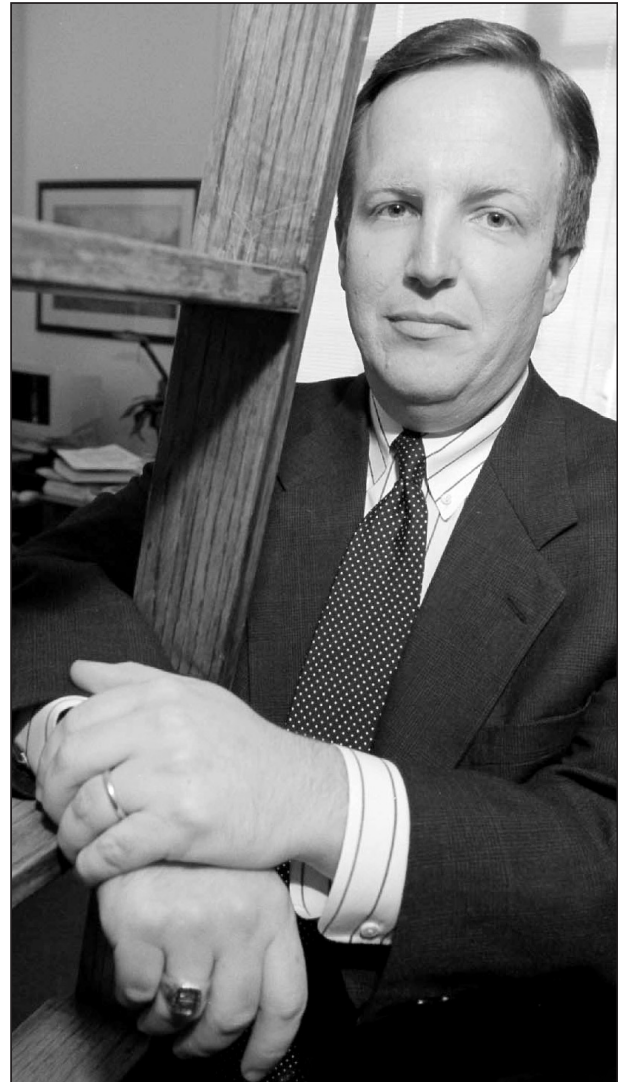
"One of the messages I had to get out was, 'Guys, don't expect me to help you. Try your cases. I'm not in the Legislature, I didn't write this stuff, and I'm certainly not the jury. You have to deal with the jury. But I'm not the enemy. I'm not going to try to juice up this revision to the tort reform law or . . . try to influence this jury,'" Halbach says.

Many plaintiffs lawyers say Halbach and other appointees have mostly succeeded.

"I have to admit that I assumed we were going to get a bunch of bad, really hard-core right-wing people appointed," says Tim Pletcher, a plaintiffs lawyer and partner in Houston's Helm, Pletcher, Bowen & Saunders. "It hasn't turned out that way."

Halbach, 42, is a good example of why it hasn't. He was 39 when appointed — younger than the average Bush judicial appointee — but Halbach fit the profile in other ways: He is a white man who graduated from the University of Texas School of Law, and he came from a small firm and solo background.

But unlike some of Bush's appointments to the civil district bench in Houston, Halbach had litigation expe-



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rience on both the plaintiffs and defense side, mostly in commercial practice.

Halbach worked for two small firms, Bonham, Carrington & Fox and Wilshire, Scott, Halbach & Dyer; he estimates he tried about eight to 12 cases as first or second chair at both firms. He went out on his own in 1990, where he developed a general business practice.

Halbach had some political credentials. He was a local district leader for U.S. Sen. Kay Bailey Hutchison and worked the polls for Texas Supreme Court Chief Justice Thomas Phillips. He ran unsuccessfully in 1992 for the open 80th district bench in Houston but was defeated by Scott Link in the primary.

After Bush was elected governor, Halbach figured he had a shot at an appointment to a judgeship, although like many appointees he had no ties to the Bush campaign.

"To the extent that was going to be important to the governor's office, did I think I was right up there? No," Halbach says.

When the 215th district bench in Houston became vacant, Halbach contacted Al Gonzales, who served at the time as Bush's general counsel, to get the details about the application process. Halbach got to know Gonzales from their work together in a community project called Leadership Houston.

Halbach did not apply for that bench, but applied and interviewed for the 152nd, which was filled by Harvey Brown. Halbach was tapped when the 333rd came open.

Halbach's demeanor probably best exemplifies what many lawyers like about some of Bush's appointees. Although some lawyers gripe that Harris County judges keep lawyers on too tight a leash by limiting the time allowed for voir dire, for example, Halbach does not order. He guides.

"I think what he's known for is his absolute lack of eccentricities," says Michael Sydow, a shareholder in Verner, Liipfert, Bernhard, McPherson & Hand in Houston who does mostly plaintiffs work. "He wants to

get to the meat of any dispute and he wants to hear about it up front, and he's very open and honest with the lawyers."

Even lawyers who have lost say they got a fair hearing before Halbach. William Helfand, a defense lawyer and name partner in Houston's Magenheim, Bateman, Robinson, Wrotenbery & Helfand, lost a request for a temporary restraining order in Halbach's court in 1997. Helfand's client was challenging the language of the ballot in a controversial affirmative-action referendum.

Halbach declined to grant the TRO, ruling that he had no jurisdiction to stop the election. He did not reach the issue of the language on the ballot. The Texas Supreme Court heard arguments in the case last month but has not yet ruled.

"He worked very carefully through what were unquestionably, if not matters of first impres-

sion, certainly matters of limited impression and ones that had very little precedential guidance," Helfand says.

That's not to say that Halbach doesn't keep a tight rein. He hates squabbling among lawyers, and once sanctioned two lawyers for ignoring his warnings to quit bickering. He withdrew the penalties the next day.

"I try to foster, as much as I can, a team approach, while at the same time knowing that I ultimately benefit from being able to say, 'And this is how we're going to do it,'" Halbach says. "I think the parties want that; I wanted that. I wanted a judge that ultimately had control, but one that was collaborative in a sense."

In most cases, Halbach would rather have a hearing on an issue than not, a policy that might have contributed to a bit of a backlog. Halbach says at a recent bench/bar conference, lawyers complained that it can take three to four weeks to get a hearing in his court.

"I don't like to punt on things," Halbach says. "I don't like to say, 'This is a tough issue,' therefore deny the motion and save face. I feel it's intellectually dishonest to do that." ■■■

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