

Appellate Passion

Jeffrey Ehrlich has helped set precedent, but he's proudest of getting one man out of prison.

By Malcolm Maclachlan
Daily Journal Staff Writer

Once, when Jeffrey I. Ehrlich was about 7, a septuagenarian with the memorable name Pearl Maine took him fishing.

The man turned out to be a grateful patient of Ehrlich's father, a general surgeon. The doctor had saved the man's leg after other surgeons had told him it would need to be amputated due to a circulatory condition. That day left an impression.

"I just wanted to practice medicine with my father. That was my goal," Ehrlich said. "But then he died suddenly when I was 13."

An obsession with high school debate eventually led him instead to Harvard Law School and a win at the U.S. Supreme Court. But Ehrlich's son Clinton finally introduced him to his own Pearl Maine.

Surfing the web one day in 2015, Clinton came across a Dateline episode about Raymond Lee Jennings, who was convicted for the 2000 shooting death of a woman in a Palmdale parking lot. A law student clerking for the one-attorney Ehrlich Law Firm on a work-study program, Clinton Ehrlich felt the facts didn't add up. After staying up all night researching, he convinced his father.

About a year later, Jennings became the first person exonerated through the Los Angeles County district attorney's office Conviction Review Unit, founded in 2015. Jennings said Ehrlich showed there were other people present, including known gang members, and that his own witness testimony suggested he didn't have the same view of the crime scene as the shooter.

"His approach to my case was totally different than what my appellate attorney did and my defense attorney did," Jennings said.

Assistant Head Deputy District Attorney Ken S. Lynch oversees the review unit. He said hundreds of applications came in during the



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— Lisa J. Perrochet

first few weeks of the program. But Ehrlich's 34-page request for review quickly caught the eye of an office paralegal.

"If you've ever read Jeff's writing, he's incredibly thorough and very articulate," Lynch said. "It wasn't even crafted like a legal document. It was crafted like a letter."

"He's one of the only appellate lawyers I know who is able to match so eloquently on paper what most people can only do in oral argument," said Robert T. Simon, co-founder of the Simon Law Group in Hermosa Beach. "His writing reads like a novel you want to finish in one night. You can feel what was going on in the courtroom."

Growing up in Reno, Ehrlich also showed other qualities that might lead him into appellate law, such as gumption and a willingness to be unconventional.

For instance, when he was 14, he decided to

get a broadcaster's license, then spent months riding his bicycle between radio stations asking for a job. Finally he found a country station in a bind: the midnight-to-6 a.m. weekend DJ was sick, and the manager was desperate. Ehrlich soon had a regular gig, eventually moving to a local rock station and then the college station while attending the University of Nevada.

Ehrlich assumed he'd be a commercial litigator. But after law school, he got a job clerking for the late U.S. District Judge Judith N. Keep in the Southern District of California about the same time Keep was asked to hear several appellate cases in Guam and Saipan.

Ehrlich offered Keep's other clerk a deal: He would do all of the work in these cases if he also got to go across the Pacific for the hearings.

When he joined the now-defunct Los Angeles boutique of Hufstедler Miller Carlson

& Beardsley, he was assigned to litigate appeals, gaining early appellate experience. He later moved with his family to Washington, D.C. and took a staff attorney position with the Federal Deposit Insurance Corp.

“This was at the time of the savings and loan crisis and they were hiring lawyers like crazy,” Ehrlich said. “They were building an appellate litigation practice for the Resolution Trust Corporation.”

In that role, he argued in front of six of the U.S. Courts of Appeal. When that crisis wound down, he started his own appellate practice in D.C. and made his only appearance in front of the U.S. Supreme Court, in *UNUM Life. Ins. Co. of Am. v. Ward*, 526 358 (1999).

The case is cited today to limit preemption claims under the Employee Retirement Income Security Act of 1974 — a benefit to insurance consumers.

That same year, Ehrlich applied to Shernoff Bidart Echeverria LLP. Partner Michael J. Bidart remembers sitting in his office before Ehrlich’s job interview wondering how they were ever going to replace the firm’s “exceptional

appellate attorney.” Sharon J. Arkin had recently moved to Oregon, where she still practices.

“I was ushered into his office and he said, ‘How are you?’” Ehrlich recalls. “I said, ‘Quite well, thanks, I just won a case unanimously in the U.S. Supreme Court.’ That’s a great way to start a job interview.”

In fact, the *UNUM Life* verdict had been posted on WestLaw that morning.

Ehrlich spent seven years with the firm before setting out on his own with an office in Claremont, in eastern Los Angeles County. Bidart said Ehrlich still handles all of the firm’s appellate work and sometimes consults with him on other cases. “He’s the kind of guy, if I’m ever excited about a new case, he manages to give me all of the ‘what ifs’ and all of the defense arguments,” Bidart said.

“It’s rare for me to say that someone sees something I don’t,” said Arash Homampour with the Homampour Law Firm PC in Sherman Oaks, another firm that frequently hires Ehrlich on appeals. “It always surprises me, the issue he sees that tells me, ‘Thank

goodness you hired him.’”

Ehrlich said over the years his practice has become largely about protecting plaintiffs against attempts by insurers to limit coverage. Perhaps his biggest case in the *California Supreme Court* was *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, invoked in determining fault among multiple, partially liable parties.

Just this month, Ehrlich won in *Pebbley v. Santa Clara Organics*, B277893 (Cal. App. 2nd Dist., Sept. 23, 2016). The complex case was about protecting the coverage rights of insured patients who get care outside of the health plan, he said.

The lawyer on the other side of that case, Lisa J. Perrochet, said she’s faced off half a dozen times against Ehrlich, and said he is always courteous. Despite their many legal disagreements, the partner with Horvitz & Levy LLP in Burbank said they occasionally meet for lunch.

“He’s certainly skilled at making even a stretch of an argument sound plausible,” Perrochet said. “That’s tough to go up against. But I also know he’s not going to

play games. He’s going to fight the fight at hand.”

But even given a few chances to set precedent, Ehrlich said the Ray Jennings case remains his proudest, in part because it meant working closely with his son. One day to the year after Jennings’ release, Ehrlich, Clinton and several other family members attended Jennings’ wedding at San Francisco City Hall.

Clinton will be finishing his degree soon and has moved on from the firm, but his younger brother Reid has replaced him as Ehrlich’s legal apprentice.

“When you work on the plaintiff side, the difference between winning and losing is often someone’s life,” Ehrlich said. “It’s very meaningful when you can bring a case for someone who really needs to win.”

“The biggest change is people who care,” Jennings said. “If you’ve ever been involved in the criminal justice system, they generally don’t pay attention to what the defendant, their client, is trying to tell them.”

Jennings added, “They had a passion to set me free.”