Judge William Dwyer dies

By Steve Miletich
Seattle Times staff reporter

William L. Dwyer, a towering figure in Northwest law and one of the nation’s foremost trial judges, died yesterday at the age of 72.

Judge Dwyer, who practiced law for 37 years before his appointment to the U.S. District Court in Seattle in 1987, died at home at 4:20 p.m. of complications of lung cancer, a disease that came as a surprise when it was diagnosed last year because he had not been a smoker for more than three decades.

As a judge and lawyer, the impact of his extraordinary career reaches from the region’s oldest forests to the outﬁeld grass at Safeco Field, from King County’s corridors of power to the halls of Congress.

Judge Dwyer was the author of several landmark opinions, including the one that will forever be linked to his name: the 1991 decision ordering the U.S. Forest Service to adopt a conservation plan to ensure the survival of the spotted owl.

His ruling drew praise and condemnation and renewed questions about the judiciary’s role in setting public policy. But the decision withstood appeals and forced government ofﬁcials to draft a plan that reduced timber harvests in the Northwest by 75 percent.

In that case and others, it was Judge Dwyer’s scholarly opinions and force of intellect that made him more than a judge who decided individual cases. His inﬂuence was felt not only in the Seattle-based court where he sat — the United States District Court for the Western District of Washington — but in federal courts throughout the nation.

Judge Dwyer, who grew up on Seattle’s Queen Anne Hill, left a legacy that is visible everywhere in the law and the region’s social and political life.

It ranges from his interpretation of the one-person, one-vote doctrine, which led to the transformation of Metro, King County’s transportation and public-utility agency, to his use of the federal courts as an instrument of local oversight, when he ordered state ofﬁcials to provide adequate mental-health care for civilly committed sex offenders.

It also was reﬂected in smaller cases, such as his ruling that the Constitution provided an “arena of free speech” protecting the right of a Mill Creek man to post offensive words about debt-collection and credit-reporting agencies on the Internet.

Outgoing and warm, he was viewed as a fundamentally fair judge with an even, good-natured temperament and an impish grin, traits that can be seen in a new generation of local judges who have sought to emulate him.

Despite the enormous impact of many of his rulings, and his thirst for deciding important cases and rendering justice, Judge Dwyer saw his job in simple terms: to uphold the law and the Constitution.

"You are not in it to try to please those who brought about your appointment, or to try and displease those who were opposed to it," he said in a 1999 interview. "None of that has anything to do with it."
"It would be a real mistake to ever get carried away by the accolades, just in the same way it would be a real mistake to ever get too depressed by criticism," he said. "You just try to do the best you can."

But the accolades were unavoidable. Last year, the University of Washington School of Law established the William L. Dwyer Chair in Law, an endowed position funded by the university and many donors.

While Judge Dwyer will be primarily remembered for his work on the bench, he was considered a leading figure in the legal community well before he became a judge. His years of work as a trial lawyer, handling major cases, earned him widespread respect, even from courtroom opponents.

One of his most famous cases was a lawsuit against the American League that led to the creation of the Seattle Mariners. The outcome was more than a courtroom victory for Judge Dwyer; he had a great fondness for the game, dating to his days as a child playing sandlot ball on Seattle’s unpaved streets.

William Lee Dwyer was born March 26, 1929, into modest surroundings. His parents divorced when he was 5, and his childhood was marked largely by his mother’s struggle to raise him. She was a stenographer; his father a truck driver turned carpenter.

His mother, Judge Dwyer said in a 1986 interview, “told me the important things had nothing to do with material success, and she hoped I’d get an education.”

He credited both parents for teaching him the value of hard work and honesty.

"What early life taught me, I guess, was the lesson that what we call ordinary people — people who are not wealthy, powerful, well-educated — are entitled to just as much dignity and respect and certainly earn as much affection as anybody else. Often more so."

Early in his life, he flirted with the idea of becoming a newspaper reporter. He worked as a copy boy at the Seattle Post-Intelligencer while attending the University of Washington and helped cover anti-Communist legislative hearings for the UW Daily student newspaper,

But one day in 1948, on the advice of friends, he wandered into the law school building and sat in on a torts class, soaking in the colorful and engaging words of a professor named John Richards.

"Somewhere in my conscience, there must have been a tug of awareness that I might like to be a trial lawyer," he said in the 1999 interview.

He went on to get his law degree from New York University in 1953, launching a legal career in which he made headlines instead of writing news stories that generated them.

After a stint in the Army and clerking for a Washington state Supreme Court justice, Judge Dwyer set up shop in 1957 with one of his former college classmates, Gordon Culp.

In 1963, he attracted national attention defending a Democratic state legislator who had been falsely accused of being a Communist.

His libel suit on behalf of Okanogan rancher John Goldmark was remarkable not only because it was heard during the "Red scares" at the height of the Cold War, but also because 22 years later the case led a deranged man to murder Goldmark’s son and family.

Arguing before an Okanogan jury composed of people dressed in jeans and dirt-smudged shoes, the suit-and-tie attired Dwyer won them over with arguments about fairness and common decency. He later wrote a book on the case.

One witness at the trial was a young Republican state legislator named Stade Gorton, who went on to serve as state attorney general and in the U.S. Senate. Gorton was so impressed by Judge Dwyer’s performance in the Goldmark case that, as attorney general, he hired Judge Dwyer to represent the state in the suit against the American League and baseball’s owners.

The suit, the first to directly challenge baseball’s antitrust exemption, stemmed from the sudden departure of the Seattle Pilots to Milwaukee after their first year of existence in 1969. The team would remain in Milwaukee as the Brewers, but the legal action led to a settlement in mid-trial that produced the Mariners in 1977.

Judge Dwyer tucked a provision into the agreement that said the suit wouldn’t be dismissed until the Mariners played their first game in the Kingdome.

Judge Dwyer also won other big antitrust cases in which he took on large corporations on behalf of clients with few resources.

He also represented a Black Panther leader accused of grand larceny, obtaining an acquittal in a case in which he took no fee. And as the lawyer for the city’s first foreign movie theater, he won a state Supreme Court ruling allowing a Seattle cinema to screen foreign films.
In 1986, Gorton, who had been elected to the U.S. Senate, and Washington’s other Republican senator, Dan Evans, recommended Judge Dwyer for a vacant U.S. District Court seat.

The choice drew praise from most quarters but also opposition, in part because Judge Dwyer was a Democrat and civil libertarian whose name was being submitted to a conservative Republican president, Ronald Reagan. Some Senate Republicans and members of the Reagan administration objected.

Gorton, in a political deal that would come back to haunt him, agreed to vote for a controversial, conservative judicial nominee from the Midwest if then-U.S. Attorney General Ed Meese would allow Judge Dwyer’s nomination to be considered.

That move played a role in Gorton’s defeat that year. (He won election to Washington’s other Senate seat two years later when Evans decided not to run. He served two terms before losing in November 2000.)

Judge Dwyer was finally sworn in Dec. 1, 1987, though not until Evans threatened to block every judicial nominee in the western United States unless the nomination moved forward.

Even so, Judge Dwyer had to win over skeptics. Sen. Strom Thurmond, R-S.C., the ranking minority member on the Senate Judiciary Committee, and other conservatives grilled Judge Dwyer during lengthy confirmation hearings. In particular, he came under attack for his work defending a sex-education book, “Show Me,” at the Seattle Public Library.

Among those who testified in Judge Dwyer’s behalf and helped turn the tide was David Crosby, a former Seattle resident who told the committee how Judge Dwyer searched the city’s streets one night in 1985, when Crosby’s 14-year-old son had dropped out of school and run away from home. Crosby blamed a local teen dance hall, The Monastery, and Judge Dwyer helped him get the business closed and a new local ordinance approved for teen dance halls. Judge Dwyer did the work for free.

Once on the bench, a string of major cases and decisions followed. Among them:

• 1988: President over the nation’s first federal product-tampering homicide case. A jury convicted Stella Nickell of murdering her husband and an Auburn woman with a cyanide-laced painkiller. Judge Dwyer sentenced Nickell to 90 years in prison.

• 1990: Ruled that Metro, King County’s transportation and public utility authority, was unconstitutional because since voters could not directly elect Metro officials. The King County Council was subsequently expanded from nine to 13 seats and assumed responsibility for Metro services.

• 1991: Ordered the U.S. Forest service to adopt a plan for the spotted owl in habitat areas of Washington, Oregon and Northern California. His injunction against logging in national forests remained in place for three years.

Gorton bitterly attacked the decision, but eventually acknowledged the law left Judge Dwyer no choice and spoke warmly of him.

President Clinton held a Northwest Forest Conference in Portland and developed a plan that allowed logging to resume but reduced the harvest by 75 percent.

• 1991: Overturned the death penalty for Kwan Fai “Willie” Mak, a defendant in the Wah Mee massacre in Seattle’s International District in 1983. Judge Dwyer upheld the murder conviction but said Mak did not receive adequate legal counsel at sentencing. Prosecutors are attempting to reinstate the death penalty.

• 1994: Issued an injunction ordering state officials to provide adequate mental-health care for civilly committed sex offenders at Washington’s Special Commitment Center in Monroe. The state remains under court supervision.

• 1994: Declared the state’s term limits unconstitutional as it applied to members of Congress. Despite voter approval of such limits, Judge Dwyer said the law limited voters’ constitutional freedom of choice.

He said the U.S. Constitution would need to be amended to permit term limits on Congress, reasoning later upheld by the U.S. Supreme Court.

• 1997: Allowed a massive land swap between the U.S. Forest Service and Weyerhaeuser involving nearly 35,000 acres of public and private land. The Pilchuck Audubon Society and Muckleshoot Indian Tribe challenged the exchange; the Sierra Club and other environmental groups supported it.

Judge Dwyer also mediated settlements — a process he ardently believed in to avoid costly trials and diffuse acrimonious battles.

One of his triumphs was a 1995 case in which he mediated a settlement over Jimi Hendrix’s music legacy. Hendrix’s father, Al, and a family lawyer had argued over intellectual property rights.
Hendrix's Seattle family regained ownership of all songs, unmastered recordings and images of the guitarist, worth up to $75 million.

At the end of 1998, Judge Dwyer went on 'senior status,' which allowed him more control over his hours and docket, though he continued to carry a caseload while battling the onset of Parkinson's disease, a slowly worsening disorder that undermines muscle control.

He also found time to complete another book, a reaffirmation of the jury system titled "In The Hands of the People," published in January to the joy of friends who wanted him to live long enough to see it in bookstores. He dedicated it to his wife of nearly 50 years, Vasiliki.

Vasiliki was "the love of his life," according to Judge Dwyer's friends. The two raised three children, now grown: Joanna Tiffany, Tony Dwyer and Charlie Dwyer. And in recent years, Judge Dwyer spoke often of his five grandchildren.

Judge Dwyer's other passions included travel, hiking and books — he read two or three books at a time and was known for reciting Shakespeare at the dinner table and quoting literary giants and legal philosophers to make his points in legal opinions and public speeches.

One of the last books he read was "The Oxford History of the 20th Century", which he called one of the best he had read in years, although his weakened condition forced him to tear it into "26 pamphlets which makes it easy for me to read and hold."

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