

Like Father, Like Son: Duo Wins Big Before Appeals Court in Separate Cases

By John Roemer

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SAN FRANCISCO - Father and son lawyers Roderick and Gregory Walston's practices are as diverse as water rights and civil rights.

Roderick E. Walston, 73, currently of Best Best & Krieger in Walnut Creek, is a veteran government-side natural resources litigator who has held top legal posts at the U.S. Department of the Interior, the Metropolitan Water District of Southern California and state agencies.

Son Gregory, 35, has worked for a decade as a plaintiffs' lawyer with his own San Francisco firm, Walston Cross.



Despite their divergent legal paths, the father and son's professional lives converged at the appellate level during a single week in November, when each man won a 1st District Court of Appeal reversal in separate precedent-setting cases.

They can't prove it, but both men doubt any other family-related legal duo have duplicated that feat. In his landmark case, Gregory S. Walston represented a male-to-female transgender prison inmate who'd been sexually assaulted behind bars. Walston's successful appeal, following San Francisco trial courts' dismissal of the case, established for the first time in California that jailers owe a duty of care to prisoners. *Giraldo v. California Department of Corrections and Rehabilitation*, 168 Cal.App. 4th 231 (Cal. App. 1st Dist. Nov. 14, 2008).

Walston's win withstood the state's petition for review, as the California Supreme Court last month declined to rehear the case.

Father Roderick scored his own victory, representing a North Bay municipality battling environmentalists over groundwater use for proposed developments. In persuading the court of appeal to reverse a trial judge, he obtained the first appellate interpretation of a new law on water supply planning. *O.W.L. Foundation v. City of Rohnert Park*, 168 Cal.App. 4th 568 (Cal. App. 1st Dist. Nov. 19, 2008). When the losing side didn't appeal further, Roderick Walston's win became final on Jan. 22.

The similarities extend to how both men learned of their recent victories.

Roderick Walston was traveling in Southern California and dining by candlelight at a steakhouse when he read the appellate court's opinion. Although the document was filled with technical jargon about watersheds, subbasins and mandamus, Walston said it was pure poetry to him.

"Everyone else there dining was in convivial couples or groups, but I was oblivious as I read the text," he said. "I've won and lost before on appeal, but I've rarely had a case where the court so closely adopted my arguments. I had a glass of wine and felt wonderful."

Gregory Walston received the good news while vacationing with his wife on an island in the Gulf of Thailand. It came in the form of an e-mail from his client's excited supporters saying the favorable appellate decision had been posted on the Court of Appeal's Web site.

"It wasn't easy finding an Internet café, and the one available was next to a compound where monks were chanting and meditating loudly," Walston said. "You'd think meditation would be quiet. But I downloaded the opinion and just sat there reading and smiling." The smiles and satisfaction were payoff for the Walstons' persistence in the face of adverse trial court outcomes.

Roderick Walston's client in the environmental case was the City of Rohnert Park in Sonoma County, and the issue involved the quality of the city's analysis of groundwater availability for proposed developments. Specifically, the case looked at how much leeway water suppliers have to prepare studies justifying proposed projects under a 2001 state law, SB 610, which requires land use planners to prove existing water supplies are adequate for their projects.

Plaintiff O.W.L. Foundation - a Sonoma County nonprofit whose acronym stands for open space, water resource protection and land use - contended that Rohnert Park had not met the analytic requirements of SB 610, codified in the state Water Code at section 10910.

The foundation's lawyers wrote that although "water is our most important resource," Rohnert Park planners ignored years of overconsumption of the groundwater in the local aquifer. To attain approval of a new development, the complaint alleged, the planners "cherry picked data to support its newly found conclusion of groundwater sufficiency" and produced an assessment "that is clearly legally insufficient under SB 610."

Sonoma County Superior Court Judge Knoel Owen agreed with the environmentalists, holding that Rohnert Park's groundwater sufficiency analysis didn't comply with the law because its relatively small study area was not representative of the region's much larger groundwater basin.

Walston, however, persuaded an appellate panel to conclude that the new law affords water suppliers wide latitude in measuring groundwater sufficiency and that Rohnert Park planners acted well within their discretion in adopting the groundwater study while approving the project.

Walston believes the decision came at a crucial moment.

"You cannot in this drought age plan for future land usage without guidance on how to determine whether water supplies are going to be available," he said.

Robert B. Maddow, a name partner at Walnut Creek's Bold Polisner Maddow Nelson & Judson, who chairs the legal affairs committee for the Association of California Water Agencies, was impressed with Walston's ability to turn around the decision.

"He's a really good appellate brief writer," Maddow said. "The decision provides a degree of certainty for how water agencies have to deal with the water supply assets available to them."

However, the O.W.L. Foundation's president, H.R. Downs of the town of Penngrove, said the opinion takes the teeth out of SB 610.

"That bill was called the 'Show Me the Water Bill,'" Downs said. "This decision tells agencies they can say the water exists on paper and nowhere else."

The other appellate win by the father-son duo also required persuasive powers strong enough to produce a U-turn in the result.

Gregory Walston's client was a male-to-female transgendered parole violator, Alexis Giraldo, who was locked up on a male cell block at Folsom State Prison in 2006, although she physically looked like a woman.

Giraldo complained that she was sexually harassed, assaulted, raped and threatened by her cell mate daily, but her guards refused to grant or ignored her pleas to be housed safely. Giraldo has since been released on parole.

San Francisco County Superior Court Judges Ellen L. Chaitin and Peter J. Busch, hearing different parts of Giraldo's complaint, dismissed causes of action for negligence by prison authorities, intentional infliction of emotional distress and violation of the state constitution's prohibition of cruel and unusual punishment. The state denied the allegations and said it didn't owe prisoners a duty of care.

On appeal, Gregory Walston argued successfully for the reversal of Giraldo's negligence claim, with the unanimous panel holding that "there exists a special relationship between a jailer and a prisoner giving rise to a duty of care to protect the prisoner from foreseeable harm inflicted by a third party." The panel said it was surprised that no California court had addressed the question before and added that the outcome is supported by nearly all pertinent authorities, from jurisprudential casebooks to federal law to the high courts of other states.

According to Gregory Walston, "It was completely draconian to say what the trial court said, that there was no duty of care."

A spokesman for the prison guards' union, Ryan Sherman, pointed out that the state Department of Corrections is under great pressure to manage 170,000-plus inmates appropriately, which could lead to some mistakes.

"We want to make sure our members aren't exposed to liability because of this decision as a result of the department's failure to train them adequately," Sherman said.

While the law binds them, father and son focus on other matters when they're together. Most of the time, that means sports, and, principally, baseball. As for politics, Gregory Walston has eased away from his father's conservatism.

"I've become increasingly apolitical," he said. "I'm certainly not a Republican now. It's hard to be a staunch Republican at the same time you're a plaintiffs' civil rights attorney, where your goal is to change the world."

And despite the recent victories, father and son have weathered their share of disappointments. Walston senior recalled a family story that he said once made its way into a Herb Caen column in the San Francisco Chronicle. Arriving home discouraged one evening after litigating and losing an important question regarding state water laws, he tossed his briefcase on the porch, entered the house and announced glumly that he'd lost his case.

Son Gregory, then 3 or 4 years old, ran outside, retrieved the piece of luggage, and returned happily to proclaim, "Here's your case, Dad."

"Aside from that, I kept my legal life pretty much separate from my family life," the elder Walston said. "I don't think Greg really thought much about the law until college."

Gregory Walston said he at first resisted following in his father's career.

"He made me not want to be a lawyer," Walston said. "What kid wants to be like his old man? But it's my calling. I found I couldn't do anything else."

"It's hard being the attorney son of a successful attorney. I spent the first few years of practice trying to be Greg Walston instead of Rod Walston's son."

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