

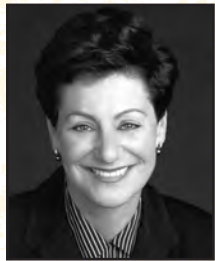
Judicial Division Record

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CHAIR'S COLUMN

Heroes – Ordinary and Otherwise

I am proud of what I do for a living and proud of my colleagues at the bench. We have been entrusted with a sacred privilege – the privilege of supporting and honoring a system of justice that, with all its flaws, is the best that any nation has devised. We expose to our citizenry in open proceedings an adjudicative system that they can watch, criticize, and participate in, as litigants and as jurors, and in doing so we promote the fundamental underpinnings of our democracy.



By Hon.
Barbara M. G. Lynn

Judges have been a critical part of the world's history. Although the Old Testament's reference to "Judges" is the translation of a Hebrew word otherwise translated as "heroes," "chieftains," or

"leaders," this reference to judges captures the qualities inherent in each of the alternative translations. Throughout history, judges have shown great courage, deciding cases based on the law, without regard to the social and political consequences that might result. Of particular note are the judges who decided desegregation cases during the Civil Rights Era. Although such judges came from courts all over this country, among the best known were four judges from the old Fifth Circuit – Judges Wisdom, Tuttle, Brown and Rives. Through their opinions they extended the reach of *Brown vs. Board of Education* to voting, jury service, and employment, at great personal risk and in the face of public disapproval. Two years ago, despite enormous political pressure, state and federal judges adhered strictly to what they thought the law required in a fight over end of life decisions. Where the rights of inmates and the mentally ill have not been protected by executive and/or legislative bodies, judges have stepped in to vindicate constitutional protections. State judges who have overturned capital convictions on constitutional grounds have not infrequently been rewarded by the voting public with early retirement. All of these decisions have evidenced great courage, motivated by faithfulness to the law. Sometimes, courageous action on the part of judges has subjected them and their families to the ultimate unthinkable sanction – retribution. In 1982, three High Court judges in Ghana were abducted and murdered. Three dozen Iraqi judges have been murdered since 2003. Hundreds of Colombian judges have been executed over the last twenty years. Judges have been executed in Brazil, Italy, Northern Ireland, Dagestan, Gaza, Lebanon, and countless other nations. In this country, in 2005, a distinguished state court judge was slain in the Fulton County Courthouse, when a prisoner murdered him while escaping.

(continued on page 2)

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Appellate Judges Education Institute Summit to be Held in Phoenix, Arizona

By Hon. Mark D. Martin
Raleigh, NC

Planning is well underway for the Appellate Judges Education Institute (AJEI) Summit to be held Thursday, November 13 through Sunday, November 16, 2008, in Phoenix, Arizona. Appellate judges, appellate court staff attorneys, and appellate practitioners can expect an exciting array of educational programming and events against the gorgeous backdrop of one of Arizona's premier hotels, the Doubletree Paradise Valley Resort.

The AJEI Summit brings together programming for federal and state appellate judges with programming from the Council of Appellate Staff Attorneys (CASA) and the Council of Appellate Lawyers (CAL). Although the groups will join together for many of the substantive programs, each group will also have separate programming directed to its particular interests. The Summit will feature presentations from a host of nationally recognized legal scholars, federal and state court judges, and appellate practitioners on a wide variety of topics ranging from legal ethics to the law's interaction with film, history, and religion. A solid base of core

programs, on subjects such as administrative law, statutory interpretation, and appellate brief writing, will be interspersed with informative discussions about neuroscience, the impact of technology on appellate decision-making, and other less conventional subjects. A Summit highlight will be the AJEI Annual Dinner on Saturday evening, during which United States Supreme Court Justice (ret.) Sandra Day O'Connor will give remarks. Additionally, attendees will enjoy an evening reception at the beautiful Desert Botanical Garden, and a Native American cultural event to be held in conjunction with the Annual Dinner. Go to www.law.smu.edu/AJEI to register for the Summit and to view the complete program agenda. Other than programming hosted by the American Bar Association (ABA) Judicial Division at the Mid-Year and Annual Meetings of the ABA, the AJEI is the sole continuing appellate judicial education program financially supported and sponsored by the ABA. The SMU-Dedman School of Law and its Dean, John Attanasio, also continue to generously sponsor and support the AJEI.

Attendees will find the Doubletree Paradise Valley Resort a delightful and luxurious setting for the Summit. Renowned for its Frank Lloyd Wright-inspired architecture, sparkling fountains, and water features, the Resort offers visually stunning views of the Sonoran Desert and a location minutes from historic Old Town Scottsdale. With an array of attractions in the Phoenix and Scottsdale areas, the Summit will provide both extraordinary educational and recreational opportunities for attendees. Make your reservations today at the Doubletree by calling (480) 947-5400. Appellate judges and staff attorneys are all eligible for the government room rate of \$102 per night. But hurry, as the block of rooms at this incredible rate will not last long.



Honorable Martha Curtis Warner, Judge, Florida District Court of Appeal (AJC Chair-Elect); the Honorable Frank Sullivan, Jr., Justice, Indiana Supreme Court (AJC Chair).

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Please log onto <http://www.abanet.org/jd/ajc/casa/home.html> for a great article on CASA by Susan S. Dautel, Esq., Assistant Deputy Clerk, New York State of Appeals

Lawyers Letter

CHAIR'S COLUMN



By Hon. Michael B. Hyman, LC Chair, Chicago, IL

Fairness underlies both the legitimacy and the effectiveness of a judicial system. That lawyers believe the judicial system to be fair is a prerequisite, but without the confidence of the public, what lawyers believe means practically nothing. Indeed, any claim to integrity by the judicial system depends on the public's expectation of fairness.

Assessing fairness has less to do with reality and reason and more to do with perception and perspective. Many factors can affect perception and perspective, including race, ethnicity, class, religion, gender, sexual orientation, and education. Although any notion that the courts are unfair is alarming and unacceptable, studies and surveys consistently show that most whites perceive the courts to be fair and most people of color perceive the opposite.

People of color see the courts as largely oblivious to or ill informed about their culture and way of life. They will tell you that they do not get a fair shake, and that the judicial system conspires against them. They view the judicial system as prone to bias, inconsistency, and politicization. It does not matter whether you agree or not, what matters is that a large number of Americans believe the legal system fails them. As columnist Clarence Page noted about racism, "[D]enials of a cancer, no matter how vigorous they may be, will not make the malignancy go away."

The legal profession, I believe, should contribute to a national effort to address the elephant in the courthouse. People of color will continue to feel aggrieved unless and until we are prepared to confront this

multi-faceted and sensitive issue.

My intent is not to air laundry. Nor is it to deny, dismiss, refute, or minimize the problems and challenges facing the judicial system. Rather, I seek to initiate a dialogue on the fundamental issue of fairness, color, and the courts, and thereby build understanding, expose misunderstandings, defuse conflict, foster credibility, and ultimately, strengthen respect for the judiciary.

To be sure, undertaking such a dialogue requires wading into the murky waters of race, an uncomfortable subject that is difficult to approach but too important to ignore. It is far easier to discuss diversity in the profession than the nature, implications, and effects of color on the administration of justice.

We need to sit down together—judges, lawyers, and influential individuals of color—community by community—and talk, listen, share and learn, openly and honestly, without pretense or reproach. "You cannot live in this country and not see color," said Oprah Winfrey. "We all need to step out of the naiveté box and stop pretending it really doesn't exist." Lawyers and judges, especially, must "step out" take the lead in flattening naiveté boxes throughout our society.

As Lawyers Conference chair, my major initiative is to spur conversation and reflection on an issue that calls out for serious dialogue. My successors, Neal Ellis and David Horowitz, have committed to continuing this effort beyond my term. In addition, collaborating with the Lawyers Conference in this effort (as of September 2008) are the Judicial Division, the Section of State and Local Government, the ABA Council on Racial & Ethnic Justice, and the Standing Committee on Minorities in the Judiciary. Consultants in race relations are assisting as well.

We are planning a roundtable by invitation only at the 2009 ABA Midyear Meeting in Boston. I will provide details on the roundtable in the next issue of the *Judicial Division Record*. Eventually, we

intend to draft a protocol so that members of the Lawyers Conference along with members of the other Judicial Division conferences can conduct similar roundtables in their communities.

I invite your input and interest in this project.

A Special Thanks

I want to acknowledge and congratulate last year's chair, Gloria Wilson Shelton of Baltimore, and her predecessor, Judge Cheryl Cesario of Chicago, who has now finished her tenure on the LC Executive Committee, for their tremendous work and leadership on behalf of LC.

A Special Request

Only with your activism can LC make a difference. We have committees that need your participation: Awards, Membership, Programs, Publications, and Technology. Get involved. It is as easy as contacting me at Hymikeb@aol.com.

Rehearing

"The law can open doors and knock down walls, but it cannot build bridges." Justice Thurgood Marshall



Outgoing LC Chair, Gloria Wilson Shelton, Incoming LC Chair, Judge Michael Hyman

Bylaws Amended

The NCSTJ Bylaws were amended at the annual meeting in New York to re-structure the governing body of the State Trial Judges. Instead of electing members to the Executive Committee from 12 districts around the United States and Territories, there will now be 10 members elected at large. A nominating committee will consider geographic diversity. In the past, some districts have been unrepresented while other districts have substantial interest among judges in serving on the Executive Committee.

Along with officers, the newly constituted Executive Committee will be reduced from 18 members to 16, which will result in some cost savings.

Judge Joel Medd of North Dakota, who chaired the Bylaws Committee, said the amendment will allow for active representation on the Executive Committee.

The amendment will have to be approved by the Judicial Division and the ABA Board of Governors before it is effective.

Conference Celebrates 50 Years

The State Trial Judges Conference celebrates its 50th anniversary in 2009. The theme of the year-long commemoration, according to Judge Sophia Hall of Illinois, Co-chair of the anniversary committee, is "The 21st Century Judge. By remembering

what the conference has done, we can envision our future."

Educational programs were presented at the Annual Meeting in New York, and a gala celebration is scheduled for the 2009 annual meeting in Chicago. Widener Law School is also publishing a special law review on the subject of the 21st century judge.



Judge Toni Clarke of Maryland, chair of the NCSTJ Education Committee, moderated the program in New York entitled: "The 21st Century Judge, Challenges for the Future."



Judge Sophia Hall of Illinois led the discussion at the annual meeting on successful collaborative courts.



Judge Terry Ruckriegel of Colorado (second from left) conducted his final Executive Committee meeting at the annual meeting in New York. Pictured, left to right, are: Past Chair Judge William Missouri of Maryland, Immediate Past Chair Judge Ruckriegle of Colorado, New Chair Judge William Caprathe of Michigan, Chair-Elect Judge Gary Randall of Nebraska, Vice-Chair Judge Stephanie Domitrovich of Pennsylvania, and Executive Committee Member Judge Chris Whitten of Arizona.

Justice Center Event Calendar

2008 Summit for Appellate Judges, Lawyers & Staff Attorneys

November 13-16, 2008

Phoenix, Arizona

Further Information and to register: www.law.smu.edu/ajei

Persons with Disabilities and the Elderly with Equal Access to Justice

December 5-6, 2008

St. Petersburg, FL

More information: TTIPS Committee for Diversity in the Profession

<http://www.abanet.org/tips/home.html>

2009 Midyear Meeting

February 11-17, 2009

Boston, MA

More information: 800/238-2667 x5700

2009 ABA Day in Washington, DC

April 21-23, 2009

Washington, DC

More information visit: <http://www.abanet.org/poladv/abaday08/>

2009 Spring Planning Meeting *(by invitation only)*

May 6-9, 2009

Los Cabos, Mexico

More information: 800/238-2667 x 5700

Presidential Commission on Fair and Impartial State Courts *(invitation only)*

May 7-9, 2009

Charlotte, NC

More information: 800/238-2667 x5134

Appellate Practice Institute (Council of Appellate Lawyers)

May 28-30, 2009

Chicago, IL - Northwestern Law School

To be added to a mailing list email: raiblea@staff.abanet.org

2009 Annual Meeting

July 30-August 4, 2009

Chicago, IL

More information: 800/238-2667 x5700

* For more meeting information, please visit: <http://www.abanet.org/jd/events.html>



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