



## President's Column

Amanda Green Alexander — 2014–2015 President

*Dear Caba Members,*

### What's your TYPE?

Many of you have kept track of “all things CABA” so you are aware that each month, the CABA Board of Directors meets to discuss our missions, goals and objectives of the year. It serves as a reminder to simply check in with our committees and each other to ensure we are on task. As President of CABA, I have the pleasure of serving alongside these great leaders of the Bar. I also have the great task of developing the agenda for each month to kick start our discussions. Certainly our minutes are available for your review, but I wanted to provide you with a sneak peek into our upcoming agenda and the many tasks ahead this Spring.

### Little something for everybody

To say we are having a busy Spring would be a HUGE understatement. CABA has a little something for everyone. For you “wanna be free” in the beautiful spring types, we've had our annual Legal Beagle 5K and our annual Golf Tournament to do just that while raising funds for a great cause. Or perhaps you are the “get out and serve” type. If so, there's the Food from the Bar project designed to

encourage individual donations from CABA members to donate to the Mississippi Food Network. Or perhaps you are the party type and like to celebrate—in addition to the social we had after the golf tournament, there will be a Spring Social this month to welcome and celebrate our newest members of the bar.

### Show me the MONEY!

Perhaps you are slammed and simply trying to manage a growing practice—if so, the small firm committee organized a great CLE, “Getting Help to Move Beyond Administration to Enjoy the Practice,” to bring you the tools/people you need to help you ALL while earning CLE credit. Are you vigorously trying to finalize that pre-trial order, motion, trial preparation? If so, you may want to pause and perhaps come meet that Judge in a less formal environment at our April CABA meeting or visit with our judges during our formal Evening Honoring the Judiciary in May. Or perhaps, you are the “laid back kinda girl/guy,” settled in your career and would like to simply put your money where your mouth is—if so, there's an opportunity to sponsor one of our CABA events or make a personal contribution to the Mississippi Volunteer Lawyers Project (MVLVP) on behalf of CABA. Whatever your type... get involved. While

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### April 18

CABA's “Food from the Bar” Campaign Launch

### April 30

Bar Admissions Spring Social at the Iron Horse Grill

### May 5

Evening Honoring the Judiciary at the Jackson Country Club

For reservations please make checks payable to Capital Area Bar Association

Mail to: CABA,  
Post Office Box 14065,  
Jackson MS 39236

**\$60**  
per person

*The views expressed in these articles are solely those of the authors and do not represent the views of CABA, its officers, directors, or staff.*

The Capital Area Bar Association Presents

# SHAKING THINGS UP!

A VIEW FROM THE BENCH, THE BAR AND BEYOND



Tuesday, April 21 • Capital Club in Jackson, MS

Keynote Speaker: The Honorable Bernice Donald, U.S. District Court 6th Circuit Court of Appeals

[Click here to get more info!](#)

membership has its privileges—including an opportunity to obtain great CLE at free or minimum costs—there are opportunities to involve non-CABA members as well. So please share with your friends. Below is a listing of our upcoming events—get out there and get going...

## Save the Date: Looking for Something to do this Spring?

### April 18, 2015: Media Launch of the CABA “Food from the Bar” Campaign.

An opportunity for CABA members to give back to the community through providing food donations and/or fundraising campaign for the MS Food Network to assist needy families in our communities. For more information, email Hewitt Jones at [Hewitt@griffinjoneslaw.com](mailto:Hewitt@griffinjoneslaw.com) or Michael Bentley at [mbentley@babc.com](mailto:mbentley@babc.com).

**April 21, 2015: CABA Membership Meeting & CLE Seminar “Shaking Things Up: A View from the Bench, the Bar and Beyond”** 3 hour CLE including ethics hour and lunch; CLE Seminar 9:30 a.m. to 11:30 a.m.; Panelists: Nakimuli Davis Primer, Baker Donelson; Tammra Cascio, Gulf Guaranty Insurance; Judge Carlton Reeves, U.S. District Court Southern District of MS; Judge Tomie Green, Senior Judge, Hinds County Circuit Court; and Judge Cynthia Brewer, Senior Chancellor Madison, Leake, Yazoo & Holmes.

Noon Hour Keynote: The Honorable Bernice Donald, U.S. District Court 6<sup>th</sup> Circuit Court of Appeals, Cost: CABA Member (\$45.00); Non-CABA (\$100.00); Noon Hr. Event Only (\$20.00); Cost includes lunch & CLE; For more information, email Marlena Pickering at [mpickering@bakerdonelson.com](mailto:mpickering@bakerdonelson.com) or Tammie Brown at [tbrown@brunini.com](mailto:tbrown@brunini.com).

**April 30, 2015: Bar Admissions Spring Social Iron Horse Grill** 5:30pm–7:30pm. CABA and JYL invite you to come celebrate, socialize and network and welcome newly admitted members of the Mississippi Bar.

### May 5, 2015: Evening Honoring the Judiciary

- Featured Speaker: Paulette Brown, President Elect of ABA; Country Club of Jackson
- 6:00pm Reception, 7:00pm Dinner

For sponsorship information, please contact Amanda Green Alexander at [aga@alexander-lawpa.com](mailto:aga@alexander-lawpa.com) or Gretchen Kimble at [gretchen@mississippivision.com](mailto:gretchen@mississippivision.com).

*Best,*

Amanda Green Alexander, President 

For more info about “all things CABA” please visit us at [www.caba.ms](http://www.caba.ms).

# PAULETTE BROWN BIO

*Paulette Brown (ABA President-Elect) to deliver keynote address at CABA’s Evening Honoring the Judiciary*

Paulette Brown, a labor and employment law partner and chief diversity officer with the Morristown, N.J., office of Locke Lord Edwards, is president-elect of the American Bar Association.

Brown has held a variety of leadership positions within the ABA. She has been a member of the ABA House of Delegates since 1997 and is a former member of the ABA Board of Governors and its Executive Committee as well as the Governance Commission. While serving on the Board of Governors, Brown chaired the Program, Planning and Evaluation Committee. Brown has served on the Commission on Women in the Profession and was a co-author of “Visible Invisibility: Women of Color in Law Firms.” Brown also chaired the ABA Council on Racial and Ethnic Justice (now Coalition on Racial and Ethnic Justice) and is a past co-chair of the Commission on Civic Education in our Nation’s Schools. Brown served on the Section of Legal Education’s Council on Legal Education and Admissions to the Bar and its Executive

Committee. Brown joined the ABA Young Lawyers Division in 1976. She became active in the Section of Litigation in 1995, which has continued to be her section “home” ever since. She is a former member of The Fund for Justice and Education (FJE), FJE President’s Club and a Life Fellow of the American Bar Foundation.

Brown has held many positions throughout her career, including as in-house counsel to a number of Fortune 500 companies and as a municipal court judge. In private practice, she has focused on all facets of labor and employment and commercial litigation.

Brown has been recognized by the National Law Journal as one of “The 50 Most Influential Minority Lawyers in America” and by the New Jersey Law Journal as one of the “prominent women and minority attorneys in the State of New Jersey.” She has received the New Jersey Medal from the New Jersey State Bar Foundation and currently serves on its Board of Trustees.

Brown has repeatedly been named as a New



Jersey Super Lawyer and by US News as one of the Best Lawyers in America in the area of commercial litigation. In 2009, Brown was a recipient of the Spirit of Excellence Award from the ABA Commission on Racial and Ethnic Diversity in the Profession. In 2011, she was honored with the Margaret Brent Women Lawyers of Achievement Award by the ABA Commission on Women in the Profession

Brown earned her J.D. at Seton Hall University School of Law and her B.A. at Howard University. 

# REMEMBERING RICHIE EDMONSON

By Steve Funderburg



Richie Edmonson passed away on January 15, 2015. Interesting phrase, “passed away,” although not entirely descriptive or accurate. It is one of those conventions of the euphemistic col-

lective that we have agreed is preferable to the plain truth which is this: Richie died.

What’s more, he died of ALS and he knew for more than a year that he was going to die from the disease. There was a period of frenzied denial after he was diagnosed with Lou Gehrig’s but the efficient progression of the ravage of our friend in the months that followed left no doubt as to the outcome.

I say “our friend” because he was. When asked to write this piece for the CABA newsletter, I reflected on the odd mix of xenophobia and hospitality that is “the South” and “Mississippi.” This combination of never-trust-a/never-met-a stranger is found in our legal profession and especially among those of us who practice workers’ compensation law. To my knowledge, Richie’s legal career was almost entirely devoted to representing employers, carriers and self-insureds in workers’ compensation claims. We “comp lawyers” are an identifiable subclass of the profession. *Legalis workers’ compensationalus*, if you will — (with full apologies to experts of Latin or binomial nomenclature).

Workers’ compensation practice in Mississippi, with its attendant rites of passage (e.g., your first Hearing on the Merits, your first 9(i) settlement, your first time learning that there is no actual section 9(i), your first time at a Hearing on the Merits conducted in a broom closet of a remote courthouse, your first time

getting yelled at by Judge Best [and before that your first time getting your arm twisted by Judge Thornton], your first time worrying that you drank/said too much at the Mississippi Workers’ Compensation Educational Conference, your first time complaining that the Governor appointed yet another Commissioner with zero workers’ compensation background, etc., etc.) — provides a sense of inclusion. Either you are in the club or you are not.

There is nothing *exclusionary* about the club and we welcome new members all the time. Once you are in you know it, as I suspect many of you reading this know it, and you likewise know that I am not exaggerating. The workers’ compensation community here is very real and, in my experience, unique. Richie was most definitely in the club.

Richie was the first lawyer who talked to me in the upstairs foyer of 1428 Lakeland Drive as I waited to be called in for my first motion hearing on a compensation claim. That was about 20 years ago when “telephonic hearings” had yet to come into fashion. I don’t recall exactly what we discussed. He probably asked me who I was and why I looked like I was about to puke. I do recall that he was kind and that he was reassuring. I know that in my own practice I have tried to be kind and reassuring to every young lawyer that I see at the Commission or a courthouse — especially if they looked as if they were in the middle of a shopping mall and suddenly realized that they could no longer see their mother’s legs. I can still remember how relieved I was after Richie spoke to me.

The thing about Richie getting sick and dying on us is that it has that sense of unreality that events have that occur outside of their proper time and context. The idea that “one of us” is gone — and especially one of us who was young and in peak physical condition — (I mean, the man kept a visible abdominal six-pack his entire life) — simply does not compute.

As a result, we keep expecting to see him at the Commission. Or to have it announced that he is holding on line #2. Or to see him at the Beau Rivage in April deftly deflecting would-be poachers from his adjusters. Or riding his extremely high-tech bicycle. When we remember that our expectations of seeing him are not going to be fulfilled because he is gone we grit our teeth and want to scream in protest at the fundamental *unfairness* of it.



Richie Edmonson

We don’t get to know “why.” We do know, however, something important. We know that what Richie cared about most was his family. We know that when he was diagnosed, the things that most of us concern ourselves with every day (finances, case-loads, dockets, deadlines, reports, status) fell away and were revealed for what they are ... meaningless.

What mattered was how Lisa cared for her husband and how he loved her and his three beautiful girls. What mattered was that his law partners supported their friend because they loved him. What matters is that Richie, at 51, had become the husband, the father, the son, the brother, the partner, the lawyer and

the man that was worthy of such love and care. And he was.

I could fill these paragraphs with Richie's professional accomplishments. I won't because the point is that Richie would tell you that they don't matter. Any one of the lawyers that visited with Richie at his home during his illness will verify that you did not leave there with any concept that "billable hours" or "professional achievement" mean much. Relationships do.

Family does. I know of no testament to Richie greater than how his wife, children and friends cared for him. You just cannot succeed in life more than loving and being loved to that extent.

So do this. Remember our friend. And when you do, remember to put down the dictation machine or let the e-mails go un-sent and take some time with your loved ones. Stop and plan a vacation to be with them. Remember when you are tempted to treat one of your colleagues

with less than courtesy and respect that you are in a special group. This legal profession we have been allowed to join is special. The workers' compensation community is special. We are more than a collection of specialists chasing dollars. Remember that our community exists and conveys that sense of belonging because we care about one another. We cared about Richie. Be worthy of your place in this club. 🍷

# REMEMBERING JUDGE ROY NOBLE LEE

*October 19, 1915 – January 21, 2015*

By Jimmy Robertson



Chief Justice Harry Walker stopped by my suite in the old Gartin Building that afternoon in late September of 1987. He was making the rounds, a personal visit to each Justice on the Supreme

Court of Mississippi, to let us know he had decided to resign. A pleasant enough visit, warm reciprocal expressions of appreciation and best wishes.

And then Harry added, "You know, Roy always wanted to be Chief Justice."

According to custom, Justice Roy Noble Lee, next senior in point of service, would become Chief Justice on October 1, 1987.

Percy Mercer Lee, Roy's father, had briefly held the office in 1964-65. No one doubted that Chief Justice Roy Noble Lee would enlarge and extend his father's legacy.

I recall that first *en banc* conference with

Roy in the Chief's chair. With quiet humanity, Chief Justice Lee shared his vision and pride in, and in the honor and privilege of, service on the Court. His eyes rotated around the table, fixing on one Justice, then the next. He left no one out, as though we were a jury.

A bit stuffy, perhaps. But sincere, real. Noble was not only his middle name. He was also brief. There was work to be done.

## Cutting to the Chase

I'd had a hard time getting a fix on Justice Roy Noble Lee when I came to the Court back in January of 1983. I have no memory of him at all regarding the *cause celebre* of the time, the great Separation of Powers case, *Alexander v. Allain*,<sup>1</sup> except that he did not dissent when Chief Justice Neville Patterson produced and led the Court to Mississippi's *Marbury v. Madison*.

Justice Lee had dissented two years earlier

when the Court promulgated the Mississippi Rules of Civil Procedure. Firmly but quietly.<sup>2</sup>

A less well known case, now largely forgotten, is my point of beginning. A huge controversy had been raging in Central Mississippi over the *ad valorem* tax revenues available to the Barnett Reservoir and how those monies were being used. Accumulated might be a better word.

I found myself thrust in the middle of a bitter intra-court battle on a matter I knew nothing about. I wasn't sure I cared much either, except that here was a complex case that had to be decided, long briefs to be read, and in short order; also, a massive record on appeal.

Tempers flared within the false quiet on the fourth floor of the old Gartin Building. Then down time, as the combatants retreated to their corners to calm down, and to sulk. No position could command a majority. Months later, righteous and conflicting indignations would erupt again.

1. 441 So.2d 1328 (Miss. 1983).

2. See Court Rules No. 1, 395-397 So. 2d (Mississippi Cases), pages 3-4 (May 26, 1981)

The case ultimately was decided by an evenly divided Court,<sup>3</sup> one Justice not participating because of conventional judicial recusal policy.

In the end, Chief Justice Patterson asked for two volunteers, one from each foursome, to prepare a *per curiam* order so the parties and the public would know what it all meant. As the member of the Court with the least interest in the case, I agreed that such a practical exercise was needed, and that I would work with a Justice on the other side to sort it all out.

I quickly found that two of the Justices I had voted with on the merits would not speak to me. I was consorting with evil! The intra-court passions were that high.

In the midst of this, Justice Roy Noble Lee wrote but a page.

“I emphatically agree that the Legislature contemplated... that when all of the funds coming into the district are properly applied, there may or may not be a need for the special two-mill levy provided by [law].”<sup>4</sup>

For twenty years this two mill levy had produced “revenues of the district [that] steadily increased, aggregating enormous amounts, ... [T]here have been corresponding tremendous increases in expenditures by the District for purposes not contemplated or authorized by statute.”



Chief Justice Ed Pittman,  
Chief Justice Roy Noble Lee

Still, Justice Lee would support only a prospective accounting, “with the situation having existed for so long a period of time.”<sup>5</sup>

“Otherwise, in my view, havoc would prevail in the District. Subsequent to that date,

there should be an accounting for all funds expended without authority.”<sup>6</sup>

And that was about it. Five paragraphs of substance, buried in the middle of 38 pages of blood red spilled ink. He did not cite a single case. A couple of statutes mentioned but not quoted. No high horse.

Just a strong sense of the core facts, of what was right, and of what was practical.

“ROY NOBLE LEE, Justice, concurring”<sup>7</sup> was inscrutable, as was the man. I took notice.

### “The Beginning of a Beautiful Friendship”

The Summer of 1984 produced a watershed moment in my relationship with Judge Lee. I had drawn the writing assignment in a death penalty case, the tragic but all too familiar late night robbery/murder of a gas station attendant.

The case turned on the recanted testimony of the defendant’s half-brother, who had his own serious troubles with the law. At a trial held in July of 1981, the prosecution was allowed to call the half-brother, impeach him with his recanted statement, and then argue the statement as substantive evidence.

It was not until 1986 that Mississippi adopted Miss. R. Evid. 615 which may have influenced the outcome determinative issue, but that is not to the present point.

Consistent with the *en banc* conference vote, I drafted an opinion, reversing the conviction and remanding the case for a new trial. Another Justice then circulated what I thought a rather intemperate dissent. Scare tactics. Cheap shots.

In 1984 as now public passions ran high in death penalty cases. September of 1983 had seen Mississippi’s first execution in 25 years, and many wanted more.

It was known that, personally, I was no friend of capital punishment, though I had by that time voted to affirm a number of death sentences.

Within the Court, once a dissent is drafted,

the Justice writing for the Court is given the opportunity to revise the proposed majority opinion so as to address the points made by the dissent. I was comfortable that the majority opinion I had drafted reliably applied the law at the time to the facts of the case.

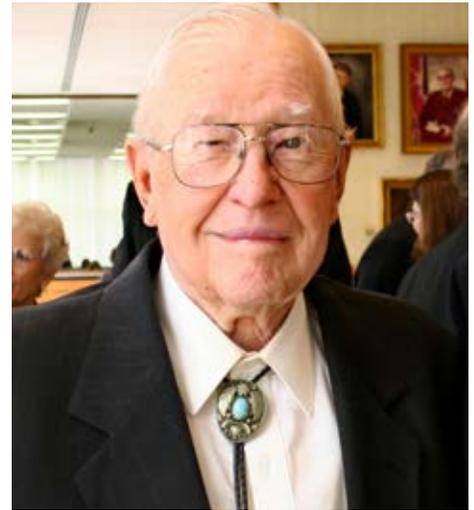
I sensed I should not rise to the bait tendered by the dissenting Justice. I loathed the thought of letting his diatribe go unanswered.

A few days later, Roy Noble Lee made what may have been his first visit to my office suite in the 18 months I had been on the Court.

“Jimmy, on this Moffett case, let me take care of Judge . You don’t need to say a thing.”

In time another opinion was circulated. “ROYNOBLE LEE, Presiding Justice, specially concurring,” and concluding:

“As a district attorney for twelve years in a five-county district, and as a trial lawyer for many years, the writer has encountered and dealt with, dozens of times, the exact questions now before us.



Chief Justice Roy Noble Lee

“From my examination of cases and records in this Court for almost nine years, I see little difference in people, defendants and human behavior now from when I began the practice of law. I am confident that so long as judges decide, and attorneys try, cases according to law, society has nothing to fear.

3. *Pearl River Valley Water Supply District v. Hinds County*, 445 So.2d 1330 (Miss. 1984).

4. 445 So.2d at 1337.

5. *Id.* at 1338.

6. *Id.* at 1338.

7. *Id.* at 1337.

“I concur with the majority opinion.”<sup>8</sup>

I can't remember whether it was immediately, or maybe days later, that I smiled inwardly as I remembered Humphrey Bogart's unforgettable final words to Captain Renault in the movie *Casablanca*. If Roy Noble Lee was your friend, he had your back.

I'm sure I never thanked Roy enough for giving me cover that day in 1984, as I have never enjoyed before or since.

I did start trying with the deer headlighting case<sup>9</sup> that came along four months later. That story has been well told, by Chris Shaw and others.<sup>10</sup>

### Roy Noble Lee, Trial Lawyer

Tort liability was a point of high heat within Mississippi legal circles in the 1980s. The Mississippi Trial Lawyers Association was on a roll.

There were recurring pleas for the courts to extend liability, to bend long standing precedents in favor of the plaintiff. Punitive damages were becoming a flash point. Tort reform talk was at least a decade in the future.



Chief Justice Roy Noble Lee, Donna Sexton

Roy Noble Lee was a quiet participant. He would remind us that he had been the first President of MTLA. Roy was not opposed to a plaintiff making a big recovery at the expense of a liability insurance company.

But Justice Lee was slow to support overruling settled tort doctrines to make the law more favorable for MTLA damage suit lawyers. His view was simple. He had been successful with a plaintiff's personal injury practice in the 1960s and early 1970s. A good trial lawyer didn't need a stacked deck to succeed.

And so Roy Noble Lee dissented when the Supreme Court followed the great majority of states in adopting a national standard of care for medical malpractice cases.<sup>11</sup> He dissented when Mississippi abrogated interspousal tort immunity,<sup>12</sup> again joining a national trend in tort law. And in other similar pro-plaintiff (some would say “more principled” or “more practicably realistic”) shifts in the law of torts.

### The Poker Face

One story says it all about Roy Noble Lee, vintage plaintiff's damage suit trial lawyer. And of his view that a good trial lawyer needed a skill set not taught in law school.

Years ago, perhaps in the late 1960s or early 1970s, Roy represented a plaintiff with “good injuries” and “good liability.” The case was being defended by a very able lawyer from Meridian.

The trial date was approaching. The defense wouldn't offer much above nuisance value. Roy was playing it close to the vest. “That's fine. We'll let a jury pass on it.”

A couple of days before trial, there was a little movement in the defense offer. Then the day before trial, the lawyers (who knew each other well) talked, exchanged jury instructions, whatever. Roy brought up settlement again.

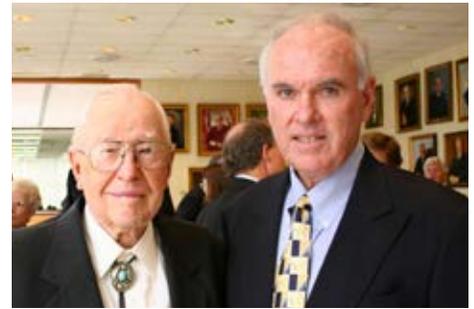
A protracted discussion took place, punctuated by lunch, “lawyers' lies” and several long distance calls by the defense lawyer to his insurance client. Late that afternoon, the defense finally offered what Roy thought he needed. A handshake sealed the settlement agreement.

After a week or so, the defense lawyer tendered the settlement check, with the customary release and proposed order dismissing the civil action. The settlement check, of course, was deposited into the Lee Law Firm trust account.

And there the matter lay.

A month or so went by. The defense lawyer called. “Roy, I need my settlement papers.” Lawyer Lee stalled, apologized. “I'll have them to you before too much longer.”

More months passed. No signed settlement papers. More phone calls. More stalling.



Chief Justice Roy Noble Lee, Chief Justice Jim Smith

More apologies.

At one point the defense lawyer was coming through Scott County and stopped by Roy's office. “I've just got to have my settlement papers. My client is furious and needs to close his file.”

Understand that each time I heard Roy tell the story it grew a little, was embellished a bit. A fish story of sorts. Roy beaming like a bream.

I'm pretty sure Roy said it was close to a year before he finally sent the release, signed by the plaintiff, back to the defense lawyer, who after reviewing the long awaited papers to be sure all was in order, noticed that the plaintiff's signature had been notarized in France.

The plaintiff had been in France all along. The plaintiff had not been in this country since shortly after the accident, much less in that week leading up to the trial setting, and, despite Roy's best efforts, had made it clear he was never coming back to the United States.

I have it on hearsay authority that the defense lawyer confirmed the story.

Roy enjoyed this “for instance” on what it took to be good trial lawyer as much as any case he ever had. How his eyes twinkled!

### He Expected Judges to be Judges

Chief Justice Lee had a traditionalist's view of the role of the courts in society, and of the Supreme Court of Mississippi in particular. Percy Mercer Lee had brought his son up right.

As much as he respected the separate office of the other eight Justices, he expected each to live so as to be perceived publicly as a Justice of integrity who respected the traditions and responsibility of the office.

8. *Moffett v. State*, 456 So.2d 714, 723-24 (Miss. 1984).

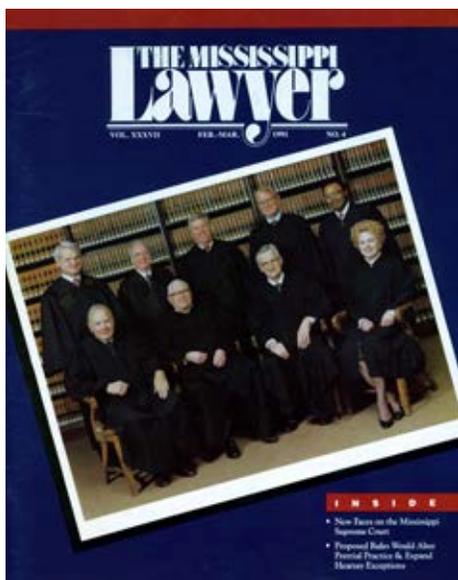
9. *Pharr v. State*, 465 So.2d 294 (Miss. 1984).

10. See Chris Shaw, “The Storied Career of Former

Supreme Court Chief Justice Roy Noble Lee,” CAPITAL AREA BAR ASSOCIATION NEWSLETTER [www.caba.ms/Archives/Newsletter](http://www.caba.ms/Archives/Newsletter) posted February 19, 2013.

11. *Hall v. Hilbun*, 466 So.2d 856 (Miss. 1985).

12. *Burns v. Burns*, 518 So.2d 1205 (Miss. 1988).



Roy Noble Lee with Court

When a judge misbehaved, Roy’s vote was never in doubt. *En route* to removing from office a justice court judge for converting to his own use the funds belonging to civil litigants, Roy once wrote “That office will remain in disrepute as long as respondent occupies it.”<sup>13</sup>

In late 1990, the Court scheduled for a Thursday morning *en banc* oral argument two cases of great public interest (some would say “political interest”).<sup>14</sup> After a break following the arguments, the Court convened in *en banc* conference for the rest of the day.

At the outset, Chief Justice Lee put on his most imposing ex-FBI agent face. A brief, stern command followed. “Everything said in this conference stays in this room. I do not want to read in the papers, hear on the street or hear from any other person in the world a whisper that anyone outside this conference room knows what we have said and done and how we vote on these cases.” Or words close to that very clear effect.

As the conference ended, Chief Justice Lee repeated his admonition. He meant it. He expected us to behave as judges, and was within his rights and responsibilities to say so, to demand that we do so.

I drove back to Oxford late that afternoon, as was my practice. Around eight o’clock that evening, I received a telephone call at home from a reporter whom I knew well. He had the

tentative vote, and he had it right on each case. I refused to confirm or deny.

I never saw a news story or heard of a TV report of what my reporter friend “knew.” I never mentioned the call to Roy. I don’t recall discussing it with others on the Court, though I probably talked to one or two.

In time, I came to sense that the other seven Justices had also kept their mouths shut [we didn’t have to ask who it was who had leaked the vote], and that the reporter had enough integrity that he would not publish the story unless he had it confirmed.

I and others knew we should not talk out of school. Somehow this time it was personal.

It was not so much that we knew Roy would have been sad to hear that one of us had let him down. A published report of what that reporter told me that Thursday night would have demeaned the Court as an institution in the public eye. We would have been seen as no more than politicians.

We knew Chief Justice Lee would have kept a stiff upper lip, but that deep down it would have broken his heart.

### But Judges are Human, too

One of my favorite RNL cases was the saga of Mose Dantzler and his efforts to buy beer in Hattiesburg where it was legal to do so and transport it to his rural home in the privacy of which he could lawfully enjoy it.<sup>15</sup>

Previously known to law enforcement, mighty Mose was arrested, charged and convicted of illegal possession in a “dry” part of Lamar County. By then Chief Justice, Roy wrote and circulated a majority opinion, affirming.

Seeing the draft, I wanted so badly to walk into his office and ask only the one word question, “Roy?!” I know at least two other members of the Court had the same unacted upon urge.

We all knew that RNL slipped in and out of a particular Jackson area liquor store with some frequency, to assure that his home in Scott County was always well stocked, a place where he could appropriately share camaraderie with family, friends and guests.

We were pretty sure that just about everyone Roy knew of his familiar practice.

We knew no law enforcement officer dared stop the liquor laden big boat of a Lincoln Continental of Chief Justice Lee while it was motoring through “dry” Rankin and “dry” Scott County *en route* home.

We also knew, if we made the visit to his office, we’d be met with the inimitable Roy Noble Lee grin.

I never knew a man who could say so much with a silent grin.

He well knew he had the ultimate and all sufficient defense, that he knew human nature and each of us well enough to know the foibles of the rest of us were equal to if not in excess of his own.

And he knew we knew he knew.

### The Courthouse

He wasn’t a scholar of the law. He wasn’t a great writer. I used to cringe at his familiar recitation of a procedural circumstance followed by “but the trial judge will not be put in error for ...”

It was about the courthouse to Roy Noble Lee. He used to tell of going to school across the street from the courthouse, how when school was out he would go to the courthouse to see what was happening. Like the moth to flame, Roy felt the pull of the courthouse.

Of course, his father was a lawyer. But you sensed Roy had grown past his father in seeing farther that something special about the courthouse, any courthouse.

I doubt Roy Noble Lee read a lot of William Faulkner, though I don’t know that. I’ve an idea Faulkner summed up what the courthouse meant to Roy and his view of a community:

“because it was theirs, bigger than any because it was the sum of all, and being the sum of all, it must raise all of their hopes and aspirations level with its own aspirant and soaring cupola, so that, sweating and tireless and unflagging, they would look about at one another a little shyly, a little amazed, with something like humility too, as if they were realizing, or were for a moment at least capable of believing, that men, all men, including themselves, were a little better, purer maybe even, than they had thought, expected, or even needed to be.”<sup>16</sup>

13. *In Re Brown*, 458 So.2d 681, 682 (Miss. 1984).

14. The two cases are now in the books as *Knight v. State*

*ex rel. Moore*, 574 So.2d 662 (Miss. 1990); and *State ex rel Moore v. Molpus*, 578 So.2d 624 (Miss. 1991).

15. *Dantzler v. State*, 542 So.2d 906 (Miss. 1989).

16. William Faulkner, *REQUIEM FOR A NUN* 37 (1951).

# RETHINKING THE CIVIL JUSTICE SYSTEM

By Philip Thomas



Lately I have considered whether the civil justice system and, in particular, litigation attorneys approach many cases wrong. In particular, I wonder about the notion of ‘winning’ and ‘losing’ in litigation and how it is measured.

Outside of litigation, the focus seems to be more on conflict resolution than winning a dispute. For example, when someone gets into an argument with their spouse or significant other, when it’s all over, they usually do not care who ‘won’ the argument. What they care about is that they resolved the conflict. Period. Victory is when hostilities cease and you want to be around each other again.

In contrast, in litigation, attorneys approach conflict as competitions where someone wins and someone loses. This is reflected both in the types of people who choose to become litigators and how those people practice. It starts with the people who choose to be litigation attorneys. There are generally two categories of litigators: (1) those who fell into it because they backed into going to law school and got a job working for a litigation firm; and (2) litigators who actively chose the profession.

People in the first category often do not stay litigation attorneys for more than a few years. They discover that they do not like litigation and switch jobs to a non-litigation position as soon as they can find one. People in the second category, which I fall in, planned their life around becoming a litigation attorney long before they passed the bar exam.

In my case, I knew that I wanted to be a trial lawyer by the time I was fifteen. I started

college as a business major for kicks and giggles, but switched my major to history, something I actually liked, so I would make better grades to ensure that I would get in law school. Once I started law school, there was never a doubt what I would do. I was going to litigate and ultimately try cases. Why? I didn’t know why. I just knew that’s what I wanted to do.

Now I think I know why. I wanted competition. I loved to compete as a kid. But when everyone else started growing in the 6th or 7th grade, I did not. I was out of organized sports by junior high. I was just too small—still under 5 feet and 90 pounds when I started high school. I still have my first driver’s license that proves it. I had to sit on a phone book to drive. I was like Owen Meany, minus the charisma. And I hated it. I wanted to compete in sports.

You get people like me in litigation. Runts who missed their chance to compete as kids. You also get ex-jocks who did not miss their chance, but still love to compete. It makes for some outstanding competition. I’ve had some great courtroom battles with outstanding lawyers. But we were not trying to resolve a dispute. We were trying to win a competition.

You see this attitude in literature about law practice and litigation. “*We’re not here to do (fill in blank), we’re here to win.*” You see it written again and again. And it’s generally true. Most of us are there to ‘win.’ But is that the way it should be? Is it best for the clients? What’s the emotional toll on parties who are embroiled in litigation for years? There is a heavy price to pay, it’s just hard to measure. Likewise, having a conflict resolved has immeasurable benefits to the parties.

Statistics prove that most civil actions do not go to trial. For many years, I viewed this as a damn shame. A good ten years ago I was practicing before a Hinds County Circuit

Court judge. We were on the eve of trial, and the judge was encouraging the parties—not the lawyers—to settle the case. The judge’s sales pitch was along the lines of “*I’ve been watching juries decide cases for years, and you don’t want to put your case in the hands of a jury.*” At the time, I had no idea what the judge was talking about.

But the more I learned about decision making and the more focus groups I conducted, the more I appreciated the benefits of settlement. I love conducting focus groups and have learned to conduct them myself inexpensively. Focus groups are interesting and fun. It’s a lot like a trial without the crushing anxiety and pressure. Here are just a few things that I have learned from focus groups:

- Jurors often decide cases based on their own evidence that the lawyers do not know about;
- The attorneys’ favorite arguments often do not overtly register with jurors;
- Jurors often make up their own argument that are simpler and more persuasive than the lawyers;
- Jury decision making is often spontaneous, visceral and fast—sometimes shockingly fast;
- Explicit explanations for the basis of a jury’s decision are often not reliable;
- Jurors are skeptical of the lawyers and their evidence, but treat something a fellow juror states like the gospel;
- When you win, it may not be for the reason(s) you thought; and
- Some jurors will never buy one side’s case.

Reading books like Daniel Kahneman’s *Thinking Fast and Slow*, Jonah Lehrer’s *How We Decide*, and Dan Ariely’s *Predictably Irrational: The Hidden Forces That Shape Our Decisions* helped me understand why juries are so unpredictable. Here’s just one example of the messiness of

decision making from David McRaney’s *You Are Not So Smart*. Studies show that people who are asked to make a decision will decide differently based on whether there is a box or a briefcase sitting on the table in the room where they are located. Go back and read that sentence again. Now, think about it. I don’t know about you, but it makes me worry that I might lose a case because I had the wrong kind of briefcase. Or suit, or pen, or whatever.

My point is that most litigators are blissfully unaware of where they are headed if they cannot get a case settled. It would be an oversimplification to say that jury trials are crap shoots. It would be accurate, however, to say that we have little comprehension of what all may influence a juror’s decision. A trial can result in a decision made for unpredictable reasons where the people who made the decision do not fully understand the basis for their decision. This phenomenon is not unique to juries. It applies to all decision making. I am just suggesting that jury (and judge) decision making is not exempt.

In addition to leading to a rather unscientific resolution, the litigation process takes a toll on the litigants. Lawyers are not the only ones who can get emotional about a case. The parties are almost guaranteed to be emotional about a case. Those emotions take a toll, particularly when a case drags on for years as often happens. A quicker resolution would have tremendous

emotional benefit to the parties.

So instead of in it to win it, should we be in it to resolve it? Should victory in litigation be the resolving of the dispute—the same as in a normal relationship? More and more I am thinking that the answer is yes. Except that’s just not how the system is set up or works. We litigate in a system tailor-made for competing, not efficiently resolving disputes.

Once we’re into a case, we feel like we have to act like the opponent’s case is meritless. Some lawyers actually always believe the other’s side’s case is meritless. They aren’t necessarily good lawyers, since they never see the freight train coming. But they exist. On both sides of the ‘V’. Other lawyers will privately admit that the other side might win. Just never to the judge or opposing lawyer. These are good lawyers. They often see the freight train coming and get off the tracks.

The rarest breed of lawyer are the lawyers who will openly admit to the opposing counsel that each side’s case has its pro’s and con’s and it could go either way. Lawyers in this category tend to be great lawyers who are revered by co-counsel and opposite counsel alike. Of course, it’s hard to pull off. If you’ve ever done it, you know that at first, you feel like something bad may happen because you are giving away the Colonel’s secret recipe.

But invariably, nothing bad happens. It improves communications between the lawyers and thus, the opposing sides. It distorts

the notion that “we should win” and “you should lose.” Somehow, it becomes more about resolving a dispute. And once you get it there, you’ve got a much better chance of actually resolving the dispute. But it’s hard to get there. Particularly among the ultra-competitive who become litigators.

So what’s the answer? I’m not sure. ADR may have been an attempt at creating a better system. But ADR went totally off the tracks with forced arbitration from pre-dispute adhesion contracts and arbitration forums that openly tilt for business interests (think AAA and NAF). The result is that people don’t trust ADR.

It’s almost like every case needs a neutral. Not a judge, who is an umpire and doesn’t have time to serve as a neutral. But more than a mediator, who is called in—often at the last minute—to try to help resolve a case. A neutral would be someone with no allegiance to either side who is actively working to bring the parties to a resolution whether the parties ask for it or not. Yeah, I get it. Who would pay the neutral? If this was the easy answer, I’d be telling you here’s the easy solution. I’d just like to see people talking about these issues and discussing whether there are ways to improve the system. Nothing will change as long as everyone accepts things the way they are. ➡

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### 2015 HOLIDAY HOURS

April 27 . . . . . Confederate Memorial Day  
May 25 . . . . . National Memorial Day & Jefferson Davis’ Birthday

# Defending Your Sole

EVENT PHOTOS



The Defending Your Sole Women's Networking Event was held January 15, 2015 at Seafood R'evolution. It was sponsored by the MWLA, MAJ Women's Caucus and CABA's Women's Initiative.

# Federal Court Kicks Off Lunch and Learn Program

By Terryl Rushing

Shortly after taking over as Clerk of the United States District Court for the Southern District of Mississippi, Arthur Johnston realized that the job was somewhat isolated, in a literal sense. The tenants of the Jackson Courthouse, which had occupied the same building on the corner of Capitol and West Streets since the mid-1930's, had moved to the new Courthouse on Court Street. In Manhattan, a city of walkers, the five-block difference would be considered almost no move at all. In Jackson, which becomes, at least during the summer, definitely a city of non-walkers, it was as if the Courthouse had moved to a different city. Other than the lawyers and litigants who were required to make appearances in the courthouses, relatively few members of the Bar have been inside the new facility. Arthur began looking for a way to entice lawyers to come those few extra blocks south.

At the same time, United States Magistrate Judge Linda Anderson was appointed, along with Tianna Raby, as Co-Chairwomen of the Bench & Bar Relations Committee of CABA. Judge Anderson and Tianna also began looking for ways to bring lawyers and judges together. In particular, they wanted to help judges get information out to the bar about practice in their courts. With that end in mind, they met in December with Arthur, Amanda Alexander and Mike Malouf, Jr., President and President-Elect of CABA, and Meta Copeland and Kate Margolis, President and Immediate Past Present of the Mississippi Chapter of the Federal Bar, for a planning session to develop a program by which lawyers and federal judges could meet informally over lunch.

"Lunch and Learn" is the brainchild of that session, and the first event was scheduled for February 24, 2015. The plan is to have a Lunch and Learn event every quarter, and different federal judges will meet with a small group of attorneys for an informal lunch provided by the Court, along with a presentation and a question-and-answer

session. Because Lunch and Learn will be held in the Courthouse, space constraints limit the attendees to twenty, so CABA and FBA members get the first opportunity to sign up. CLE credit will be available to those who attend. The first Lunch and Learn was announced to CABA and FBA members on January 20, and a link was provided to those organizations through which they could register. The event "sold out" in less than four hours; registrants included ten CABA members, two FBA members, and eight members of both organizations.

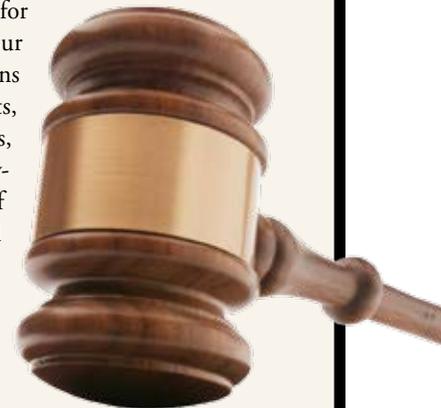
Despite (ultimately unfounded) fears of ice and snow, the first Lunch Learn took place as scheduled. Judge Anderson and Magistrate Judge Keith Ball served as discussion leaders for the first session, which included "Do's and Don'ts in Pretrial Proceedings" and "Tips for Successful Settlement Conferences." The Judges made it clear that questions were welcomed throughout their presentations, and there was

lively dialogue between the Judges and the attendees. Several of the attendees stayed after the meeting for a tour of the Courthouse, led by Space and Facilities Manager Nelson Creath, who also served as the in-house architect for the construction of the building.

The first Lunch and Learn was a success, and plans are being made for next quarter's meeting, which will be held on May 21 at 11:30 a.m. and will feature U.S. District Judge Henry T. Wingate. As Arthur noted, "These quarterly events will give attorneys an opportunity to interact with our judges in an informal—yet informative—setting and provide insight into court procedure and practice." Judge Anderson added, "As judges, we also welcome the opportunity to interact with the Bar and address their questions and concerns." Lunch and Learn should serve as a venue for this communication, and the Court looks forward to hosting more sessions. ➔

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# 23rd Annual GOLF OUTING

March 30, 2015 · Country Club of Jackson

*The 23rd Annual Lawyers Golf Outing was held on Monday, March 30th at the Country Club of Jackson. Proceeds from the tournament were donated to the MS Volunteer Lawyers Project. Shown are scenes from the tournament. Thank you to all of our tournament sponsors for making this event possible.*

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23rd Annual  
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23rd Annual  
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# 23rd Annual GOLF OUTING

**Titleist**  
#1 ball in golf

EVENT: **Champ Flight**

NAME	SCORE	PLACEMENT
Jim Spencer	55	1 <sup>st</sup>
Robert Ireland	56	2 <sup>nd</sup>
Murray Fincher	61	
Jody Varner	63	
Charles Russell		
Ryan Hall		
Derrick Godfrey		
Jimmy Hall		
Jake Bradley		
Steve Carmody		
Richard Cirilli		
Gary Rakerd		
Meade Mitchell		
Phil Abernethy		
Michael Caples		
Bobbu Miller		

**Titleist**  
#1 ball in golf

EVENT: **Champ Flight**

NAME	SCORE	PLACEMENT
David Ellis	65	
Cole Mlockbee	66	
Wesley Mlockbee	66	
Hunter Travis	60	3 <sup>rd</sup>
Brian Fenelon		
Byron Bryant		
Scott McVey		
Reed Ellis		
Michael Bentley		
Alex Purvis		
Steve Wilson		
Jason Fortenberry		

**Titleist**  
#1 ball in golf

EVENT: **1<sup>st</sup> Flight**

NAME	SCORE	PLACEMENT
John McCullough	64	3 <sup>rd</sup>
Lad McCraney	58	1 <sup>st</sup>
Steve Montagnet	64	
Billy Quinn	64	
Troy Odum		
Eric Patterson		
Travis Connor		
Matt O'Bryant		
Robert Walker		
Mike Boomer		
Clay Crum		
John Fletcher		
Henry Owen		
John Hooker		
George Williams		

**Titleist**  
#1 ball in golf

EVENT: **1<sup>st</sup> Flight**

NAME	SCORE	PLACEMENT
Jack McCants	62	2 <sup>nd</sup>
Chan McLeod		
Chase Bryan		
David Barrentine		
Chris Madison		
Phillip Branch		
David Langley		

**Titleist**  
#1 ball in golf

EVENT: **2<sup>nd</sup> Flight**

NAME	SCORE	PLACEMENT
Cliff Decker	66	
Doug Morgan	64	1 <sup>st</sup>
Myles Parker	69	
Jim Warren	66	3 <sup>rd</sup>
John Dollarhude		
Mitch Carrington		
Clay Escude		
Jon Still		
Will Janoust		
Trip Barnes		
Pete Massey		
George Holmes		
Eric Hatten		
Brad Vance		
John Lassiter		
Chris Meyer		

**Titleist**  
#1 ball in golf

EVENT: **2<sup>nd</sup> Flight**

NAME	SCORE	PLACEMENT
Kevin Gray	64	2 <sup>nd</sup>
Gill Baker	69	
Hardy Harris		
John MacNeill		
Steve Gardner		
Jay Kilpatrick		
Bob Sanders		
Steve Williams		

Closest to the hole #7 - Chan McLeod  
Long Drive #18 - Robert Ireland

# » On Computing

Focused on the Contemporary Lawyer



## New Apps to Consider



By Joel Howell

One of the best features of iOS devices such as iPads and iPhones is their interfunctionality. This month has some new Apps well worth looking at.

With every new model, the cameras on Apple products get increasingly better. Although those cameras take great pictures, the apps you can download significantly enhance the product. Paper Camera is one such app. It converts snapshots to hand-drawn/painted pictures. Paper Camera's free collection of cartoon, sketch, comic book, and many more effects can be painted directly into these in real time. You can then tweak and adjust as desired.

Another photo app with graphic effects is Litely. With it, you can edit your photos and customize your masterpieces, as it transforms your photos from average to dramatic and dreamy. Watch out though, as this may require additional in-app purchases for some enhancements.

Darkroom is a new iOS photo editing app that's a cut above many of its peers. While some other apps offer basic photo-editing options, Darkroom has Photoshop-like powers such as adjusting the RGB (red, green, blue) curves for precise color control. It's free, but there is a three dollar fee to access curves editing.

Don't have time for games during the business day? Try Epic Zen Garden, which gives you a 3-D animated environment that you can explore and interact with, as well as relax into your happy place. It contains stunning visuals of textures, reflections, cherry blossoms, swimming fish, flying birds, and much, much more. You can discover surprise areas where you can rake the sand or play with the fish.

Not using Evernote yet? You should try it to store notes, photos and voice memos, for retrieval later on any Web-connected device. The service offers a fair amount of free storage, but you can skip the limit for a fee.

Instead of covering your wall or desktop with sticky notes, you can take them with you. Post-it Plus allows you to do just that, as well as share and collaborate with others via services such as Dropbox and Tumblr. You can name, tag, and rearrange individual sticky notes, up to fifty per snapshot.

During the month, do you wonder if you're in danger of overrunning

your data allowance? There are handy apps just for that. DataMan Next is one. Just enter the basics (data allowance and payment due date). The main screen shows the percentage of data allowance used, and sends a text alert when you're getting close. It also proves a tally of how much data you've downloaded via Wi-Fi. This little fellow costs two dollars.

An alternative is My Data Manager, and it's free. This one works on iOS and Android devices. It provides more detail than DataMan, including daily usage with graphs. An interesting tweak is a map showing where your data usage is most frequent, including helping you notice places where you think you're on Wi-Fi but aren't.

Onavo Count also works with iOS and Android. It works much like DataMan and My Data Manager, but also shows how much of your data usage is for categories such as music and movies.

Data Usage, free but for Android only, is more text-based. You can customize it to show day to day usage, among other variables. Finally, your cellular network provider may have its own app.

As cyber-hacking becomes more of a threat in the modern computer era, strong passwords and logins become necessities. 1Password lets you store all of your vital information in one secure vault. It lets you log in to websites without having to remember your password, while still keeping your information safe and protected. ➔



Questions or comments?

Drop me an email: [jwh3@mindspring.com](mailto:jwh3@mindspring.com)



# JUDGE GARGIULO JOINS THE SOUTHERN DISTRICT

By Terry Rushing

Judge John C. Gargiulo has joined the Court as Magistrate Judge in Gulfport, taking the place of recently-retired Chief Magistrate Judge John Roper. Judge Gargiulo had been serving as Circuit Judge for the Second Circuit Court District of Mississippi, serving Hancock, Harrison, and Stone Counties.

Judge Gargiulo is the product of a family tradition of military service, being the youngest of five military officers. After graduating from the University of Southern Mississippi as a Distinguished Military Student and Graduate, he was commissioned as an Intelligence Officer with the 24th Infantry Division. During Operation Desert Storm, Judge Gargiulo was awarded the Army Commendation Medal for participating in the first combat dismounted patrol into enemy territory, and the Governor awarded him the Meritorious Service Medal for his voluntary service during Hurricane Katrina.

After the completion of his active duty, Judge Gargiulo graduated from law school at the University of Mississippi, where he served on the Moot Court Board. He began private practice, litigating personal injury, medical malpractice, insurance, and municipal liability claims. In 2000, he was appointed as

an Assistant District Attorney, serving as lead prosecutor for all felonies, with emphasis on cases involving high-profile sexual and violent crimes. He was appointed Circuit Judge in 2009, and he was elected to that position in 2010. Judge Gargiulo began his work as a federal magistrate judge in August of this year.

Judge Gargiulo has held numerous civic positions, including serving as a board member for the Boys and Girls Club and Saint Stanislaus College. He serves as a board member for the Russell Blass Chapter of the Inns of Court. He is also a Lieutenant Colonel in the Mississippi Air National Guard. Judge Gargiulo has three children: twin sons Andrew and Jordan, and daughter Katherine, all of whom participated in his Investiture Ceremony in Gulfport on January 16, 2015. That ceremony displayed several aspects of Judge Gargiulo's life, beginning with an invocation by Fr. Jude Israel, O.S.B., who was one of the Judge's teachers at St. Stanislaus. Karen Sawyer, representing the Mississippi Bar, attested to his work ethic, and Maj. Gen. William Crisler, Jr. lauded not just the Judge's exemplary military service, but that of his family. It was Joel Smith, however, District Attorney for the Second Circuit Judicial District, who gave the Court a glimpse into the Judge's more playful side,

including his propensity for strategic acquisitions from other offices. In fact, having heard that address, it is likely that the other Judges in the Gulfport Courthouse are keeping a close eye on personal possessions that could end up in Judge Gargiulo's chambers.



When asked for his observations on his federal service thus far, Judge Gargiulo said, "I'm overwhelmed and increasingly impressed by the degree of professionalism I've observed from each and every employee I've met since coming aboard. Everyone has been so helpful and friendly. I've been received with such warmth and courtesy that my transition into this new family was easier than I could ever have imagined." Chief Judge Guirola said about our new judge, "The Court is delighted to have him here, and we are confident that he will do a great job." ➡

## FROM THE FEDERAL BENCH: *Personal Perspectives on Naturalization*

By Terry Rushing

Amid the serious, and often tragic, events that unfold in federal court, naturalization ceremonies have a happy outcome for all of the participants, as well as the judges and court staff. That makes for a lot of happiness, since federal judges naturalized more than

360,000 immigrants in 2013. Likely, the judges that presided over those ceremonies throughout the country would say that it was their favorite proceeding of the year; that is certainly the sentiment of the Judges in the Southern District of Mississippi, where six naturalization ceremonies were conducted in 2014. When Judge Jordan presided over a

ceremony in July, he told the group at the outset, "I simply love naturalization ceremonies." Judge Carlton Reeves, who presided over a ceremony in January of this year, believes, "This is by far the most rewarding and gratifying thing we do. In civil cases we usually have winners and losers, and in criminal cases, it can really be sad. Naturalization ceremonies are like

adoptions in chancery court, everyone comes to court excited, looking forward to the court proceeding and everyone leaves extremely happy and excited.” Judge Ball said that, from his vantage point on the bench, “I am looking directly into the faces of the applicants,

**“We may have all come on different ships, but we’re in the same boat now.” — Martin Luther King, Jr.**

and it is an emotional experience to see the look of excitement and anticipation on their faces.” After the ceremony, when he meets the applicants and their family members, their pride in their new citizenship “enhances my own sense of patriotism.” Judge Anderson likes to quote Martin Luther King, Jr., “We may have all come on different ships, but we’re in the same boat now.”

Presidents of the United States who have spoken at naturalization ceremonies feel the same way. In 1915, President Woodrow Wilson began his speech by noting, “This is the only country in the world which experiences this constant and repeated rebirth. Other countries depend upon the multiplication of their own native people. This country is constantly drinking strength out of new sources by the voluntary association with it of great bodies of strong men and forward-looking women out of other lands.” Later, in 1984, President Ronald Reagan told a group of new citizens, “And so, today you join a happy country that is happier for your presence. You’re adding your voices to the chorus, and in doing that you’ve become part of a great unending song.” He went on to thank the group for “the compliment of your new citizenship.” More recently, President Barack Obama said, “No other nation in the world welcomes so many new arrivals. No other nation constantly renews itself, refreshes itself with the hopes, and the drive and the optimism, and the dynamism of each new generation of immigrants. You are all one of the reasons that America is exceptional. You’re one of the reasons why, even after two centuries, America is always young, always looking to the future, always confident that our greatest days are still to come.”

In fact, three Judges in the Southern District owe their status as citizens to immigrant parents:

Chief Judge Louis Guirola, Jr., whose parents came to this country from Cuba; Judge Sul Ozerden, whose father came from Turkey, and Judge John Gargiulo, whose father came from Italy. They each enthusiastically told the story of their parents’ experience, both the positive

and the negative. It was obvious from talking with these Judges that they take great pride in their parents’ courage in creating a new life in a strange land and making the sacrifices that made their children’s achievements possible.

Judge Guirola’s parents, Louis and Ruth Amelia Perez Guirola, arrived from Cuba in the late 1940’s, brought here by Louis’s job as a merchant seaman. They settled in Baltimore, where the Judge was born, and they became citizens in the mid-1950’s. Neither spoke English, but Louis learned it through his voracious reading habit. Ruth Guirola, who “understands more than she speaks,” is more comfortable with Spanish, so Judge Guirola grew up speaking Spanish at home. He also remembers the Cuban traditions that his parents kept alive for their children — particularly, his family’s celebration of Nochebuena, or “the Good Night” — the Latin American feast on Christmas Eve. In accordance with custom, presents were not distributed then, or even on Christmas Day, but on Epiphany, to celebrate the arrival of the Magi with their gifts. When I asked Judge Guirola whether his Mother made Cuban dishes at home, there was a long silence, followed by a sound that roughly resembled “Mmmmmmm.” I believe that meant “yes.”

The biggest challenge for the Guirolas, predictably, was understanding American customs, for which they had no point of reference. High school parties and dating in couples were completely at odds with their traditions. Judge Guirola relates that his parents clearly understood the importance of an education, but the mechanics of going to college, such as the application process and living in a dorm, were unknown to them. Despite those challenges, the Guirolas obviously imparted their work ethic and educational

values to their children. There were three boys in the family — one is a high school teacher in Miami, where the Guirolas still live, and the other brother, formerly a cruise ship captain, now captains a 600-ft. oil exploration ship in the Gulf of Mexico.

Judge Guirola is not just the child of immigrants; his grandmother, who died at the age of 103, became a citizen when she was ninety. His parents are still living — Louis is eighty-nine and Ruth is ninety-three — and they were able to attend the Judge’s investiture. Judge Guirola describes the moment where he got up to speak, and his eyes met his father’s. “I just went blank,” he says, as the enormity of the moment struck him, and he became emotional. Judge Guirola’s family valued their United States citizenship, and his family’s experience makes the Judge appreciate his citizenship all the more.

Judge Ozerden’s father, Halil, left Adana, Turkey, with \$100.00 in his pocket to come to this country, intending to go to school and become an American. When he arrived, Halil knew no one, and he had no money for school. He met his wife, Candace, in Montgomery, Alabama, and they married and moved to Mississippi. There, he attended the University of Southern Mississippi, where, as a graduate student, Halil set a record that still stands when he scored six goals in a soccer game. Judge Ozerden remembers that the family’s budget during those years was tight; they lived in student housing, and his parents shared a third-hand Volkswagon Beetle. Despite his modest financial beginning, Halil earned a Ph.D. in Psychology and served for many years as a Professor at USM.

He became a naturalized citizen in 1971, and, in 1992, Governor Kirk Fordice appointed him to the State Board of Psychology. Halil was active in other community affairs, as well, serving as a youth soccer coach and referee and as an active member of the Gulfport Rotary Club. When he died in 2006, the Mississippi Legislature adopted a Concurrent Resolution Commending the Life and Dedicated Community Service of Dr. Halil Ozerden of Gulfport, Mississippi, who had lived in the area for nearly forty years and who “embodied the American dream.”

Judge Ozerden remembered his father

teaching him and his sister, who now works in advertising, about the history of Turkey and the Middle East, as well as some traditional games. He also recalled the stories and the study of literature—in particular, “One Thousand and One Nights.” Unfortunately, Halil passed away just a few weeks before Judge Ozerden was nominated to the federal bench. Nonetheless, through his own achievements, Halil had achieved the American Dream. Judge Ozerden once said of his father, “He worked very hard to achieve that dream. I learned more about being an American from him than I have from anybody else.”

Judge Ozerden continues to look on his father’s example of appreciating the privilege of American citizenship, and he never takes his own citizenship for granted. As a result, presiding over naturalization ceremonies is his “very favorite thing to do.” The ceremonies, where he sees how excited the participants are and how hard they have worked to become citizens, have a personal meaning to him because of his father.

Like many of us, Judge Gargiulo has Irish ancestry on his mother’s side, a couple of generations back. (My aunt once repeated to my children an Irish saying that they still love, “There are only two kinds of people in the world: The Irish and those who wish they were.”) His French ancestry is similarly distant. The Judge’s father, however, came

to this country from Naples, the youngest of five children of a brick mason. Thomas Gaetano Gargiulo spoke no English when he arrived in this country. He learned it in the public school system in Brooklyn, New York, and he became a naturalized citizen in the 1940’s. Thomas’s success story is best told in the Judge’s words.

“My father was an intelligent man. At the time, and in his community, a good trade for someone with intelligence was that of a tailor. As such, he was destined to become one, and even apprenticed with a tailor. The tailor ultimately told my grandparents that, although my father would make a fine tailor, he believed my father possessed greater potential, and he suggested to my grandparents that they consider sending my father to college. My father was the only person in his family to attend college. Upon graduation, he was commissioned as an officer in the United States Air Force. He retired as a combat-decorated B-52 pilot, with the rank of Lieutenant Colonel.”

Thomas Gargiulo instilled a strong sense of patriotism in his children, inspiring by his example of “giving back to the country that provided so much.” So strong was that example that each of his sons served as a military officer: the oldest son is a retired Army Major, the next is a retired Army Colonel, the third is a retired Air Force Lieutenant Colonel, and the fourth served as an Army Captain. Judge

Gargiulo is currently a Lieutenant Colonel in the Mississippi Air National Guard. The Judge’s sister serves in an equally noble field, as an elementary school teacher.

Although Thomas spoke Italian with his parents and siblings, his children only learned a few phrases. Ironically, because his military career took the family to Northern Africa, the children became fluent in French and could converse with their father in that language, but not Italian. Thomas took obvious pride in his ancestry, becoming a founding member of the local Italian American Heritage Society and remaining active in that organization. His biggest accomplishment was graduating from college, and his family took great pride in him as the only family member who was formally educated. Thomas stressed the value of an education to his children, reminding them that it is a privilege to be educated.

Although both of his parents have passed away, Judge Gargiulo remarked on their influence on his view of citizenship: “I feel blessed to have parents who had such close ties to cultures that, if things were different, I may never have been exposed to. I feel that coming from such a diverse background produces an inherent acceptance of other cultures. I am most affected in that I’ve been raised appreciating our freedoms, and I am fully cognizant of the fact that many are denied what we take for granted.”

All of the Judges in the Southern District find conducting a naturalization ceremony to be both joyful and moving. For some, however, there is a distinctly personal kinship to the process. In that respect, they are like Supreme Court Justice Sonia Sotomayor, whose Puerto Rican parents moved to the mainland during World War II. In speaking to a group of new United States Citizens in 2011, she encouraged them to be active in American civic and political life, but also to celebrate their background and native cultures and teach them to their children. Her final admonition to the new citizens was one that might be echoed by Judges Guirola, Ozerden and Gargiulo. As part of their civic responsibility, Justice Sotomayor told the new Americans that, when they are called for jury duty, “don’t make excuses.”

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# CAPTAIN EQUITY

GONE  
FISHING!

For the first time in a while Captain Equity does not have an article for this issue. The Captain is taking an extended fishing trip and hopes to return to port with fresh material in future issues.



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