

Chief Justice Jones at the Helm

STEERING THE SHIP

In the coming years, Arizona Supreme Court Justice Charles Jones may find that sitting on the bench is the only sitting he does.

On January 2, 2002, Jones will be elevated to the post of Chief Justice. In that position, he will be the administrative leader of a Court that oversees every court in the state. And the list of tasks that he inherits and that he intends to initiate is a long one. From the first day of his new post, he knows that time is valuable. “Quite frankly,” he admits, “the end comes a lot sooner than people think.”

Sooner for him than for others, he notes. Because of required retirement at age 70, the new Chief Justice has about three and a half years to guide the Court.

Given the speed with which time passes, it is no surprise that delay—administrative and legal—is the first item discussed by Justice Jones.

“We developed in Maricopa County a serious problem in the handling of criminal cases at the superior court level,”

recalls Jones. “We were backlogged badly. We saw people who were charged with crimes in the county jail and they were there not just for 100 days, but they were there for 200, 300, 500, 700, 800, some even 1,000 or more days without ever being brought to trial. That was a problem.”

But, says Jones with obvious pleasure, that “culture of delay” and the backlog have largely been reduced. Jones says that credit for that goes to previous Chief Justices and “the main cog in that wheel at Maricopa County Superior Court seeing that reengineering was taking place was [Judge] Roger Kaufman.” That is a success that is good for justice, for lawyers and for the public.

Backsliding is always a possibility, warns the new Chief, especially with increased growth.





“We’re now up to 90 divisions of the Superior Court in Maricopa County,” he says. “The 91st has been approved by the Governor.” And that number does not include commissioners, city magistrates or justices of the peace.

“That size poses problems.”

But Jones sees the Court as more than a traffic cop that urges other courts to “keep it moving.” He intends to focus on systemic challenges that go to the heart of how judges do their work.

“Judges traditionally have not been problem-solvers. They have been officers

that are trained in the law for the purpose of resolving disputes, both civil and criminal.”

That is good as far as it goes, says Jones, but new problems call for new tactics. And those involve the development of judicial foresight.

“Matters come before the court on an existing record,” he says. “Everything is looked at retrospectively: We look backwards at things. Now, the question is, are judges well enough equipped to look forward and say, ‘What is needed to help John Doe resolve his substance abuse problem,

or does he need anger management? What kind of treatment will help this family? What kind of procedures can we put in place that will help bring this family back together?”

Although all courts would benefit from broader vision, Justice Jones expects to expand services in the family court area, rife with its own troubles.

“Well over half the litigants are coming into domestic relations court without representation. With emotions and sensitivities running as high as they do when you deal with families and children and custody and

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property and violence sometimes—it’s in some respects a time bomb waiting to explode. We’ve got to get a handle on it.”

The tool he would like to use is simple but would signal a sea change in court methods: “There’s a trend in the country of moving into areas like the family court where we can have a complete range of family-related problems handled by the same people. For example, if we have a son involved in substance abuse, we have a domestic problem involving a dissolution, we ought to get those families together, rather than trying to piecemeal every little problem that comes along.”

Jones is aware that shrinking budgets are not the only obstacle to this vision. “There are some out there frankly who would resent it to have courts move into those areas.” He sees the Court proceeding carefully: “If we move into this ‘therapeutic jurisprudence,’ we have to be very cautious, because it does bring courts into an area of government they’ve never occupied.”

Nonetheless, he sees that many judges are ready for such an approach and are good at it; he names Judge Tom C. Cole in Yuma and Judge Jeffrey Coker in Flagstaff as two examples.

If judicial approaches are to change, must the judiciary change as well? On that, Chief Justice Jones is circumspect, but he indicates that he is willing to examine every aspect of courts, including personnel.

“The question is, are we getting the best bang for the buck, are we getting the best results from those who know an area of the law?”

He thinks that generally, the answer is yes. But in future selections of judges, he talks of a possible change of approach.

“In the broad sense, we’re looking more

and more at judges with specialty interests who are willing to focus on things that they’ve had some experience in or know something about.”

“Should [we] continue our practice of rotating superior court judges on a wholesale basis as regularly as we do.” Such rotations occur approximately every three years.

“Maybe when we recruit candidates with applications for superior court judgeships, do we want to notify people ahead of time that we have a vacancy in a given department and raise the possibility that we would like to have applicants who know something about that area of the law? That would include commercial, complex civil litigation. We have lawyers and others that are very versed in that.”

Jones stresses that “first and foremost, we want on the bench people of quality, just good human beings, people who ... have good training, good experience, good academic background, and who are sound in their personal lives and otherwise.”

But, says Jones, if the Court can identify specific areas of law that would be better served by a targeted selection process, he is open to change: “We have special needs, and we need to start thinking about finding people that can help satisfy some of those individual needs.”

A tougher nut to crack, Jones admits, is the large number of unrepresented litigants who populate courtrooms every day. He is pleased at attempts to help those without lawyers with tools such as kiosks and the Self-Service Center, but they are incomplete fixes.

“The culprit in this whole thing is what we call the billable hour,” says Jones. “All these law firms are driven by the bottom

line. I think that has done as much as anything I can think of to destroy the professional qualities of the legal world.”

Odd words from a former partner at Jennings, Strouss & Salmon? After all, he was at that firm from 1963 until he was appointed to the Court in 1996 by Gov. Fife Symington. But law firm life has changed since he strolled large-firm halls: “When lawyers must charge [so much], who can afford a lawyer? I will be the first to step up and say, ‘I can’t afford a lawyer at those prices.’”

“We’ve got tens of thousands, maybe hundreds of thousands of people who would find it impossible to even access the system. ... They can’t afford a lawyer.”

“Something has to happen.”

The Supreme Court will undergo its own changes during Jones’ tenure. Justice Frederick Martone may be confirmed as federal district court judge in a matter of months. And Justice Tom Zlaket, whose tenure as Chief just ended, may soon move on, as well (see story, p. 21).

But change is a challenge to Jones, who recalls his law practice fondly: “I enjoyed the rough and tumble of law practice for 33 years.”

Is he beckoned by the siren song of a return to practice or, like Martone, of being a trial court judge? No, says Jones. He enjoys his work too much.

And those who have worked with him find Jones a great choice to head the Court.

One who knows the Chief’s job firsthand is Justice Zlaket, who finds Jones well qualified. “He’s a very competent fellow ... a real gentleman and a good human being. Because of that, I expect him to have a great deal of success with some extremely difficult problems.” Zlaket recommends

that his successor “needs to do it one step at a time. The job is kind of like eating an elephant: You do it one bite at a time.”

Doug Dunipace, a former partner of Jones who is still at Jennings, Strouss, says, “He is the consummate gentleman in all of his dealings, whether personal or professional. He is a consensus builder. In fact, he is a confidence builder.”

Senator John Kyl also knows Jones well. As partners, they worked on many cases together. One that Jones recalls well was *Arizona Farm Bureau Federation v. United Farm Workers’ National Union*, 442 U.S. 289 (1979). Representing the agriculture industry, Jones, Kyl and Rex Lee (later the U.S. Solicitor General, now deceased) challenged the constitutionality of the Arizona Agricultural Employment Relations Act. Today, Kyl speaks highly of Jones: “I practiced law with Bud for 20 years. My office was right next to his. I am delighted to see him elevated to this position, and I am certain he will serve the people of Arizona with distinction.”

Jones is pleased at what has been fostered between the Court and the State Bar. “It’s an excellent relationship. We know them well. We are very supportive of their leadership. Cindy Zwick and Nick Wallwork—These are the finest of people, and they will do us a good job.”

“I sense from both Cindy and Nick and others at the Bar that they want to be supportive of the Court’s functions as we administer the needs of the bar.”

In that relationship, Jones thinks it is imperative to perform one core Bar function with increased efficiency: the discipline system. “We’ve had some problems with backlog in discipline cases. [But] we’ve begun to work through that.”

By “bringing our lawyer discipline function up to speed ... and deciding what we’re going to do with a certain number of errant lawyers in the system,” the Bar and the Court together can foster increased public trust in the system. And that, Jones says, would be a great accomplishment of which every Arizona lawyer could be proud. ▲

SECOND IN COMMAND

Ruth McGregor's Evolving Court

She is on deck, and there may be no runners on base.

Sports metaphors do not immediately spring to mind when viewing the Arizona Supreme Court, but they may apply to the evolving panel on which Justice Ruth McGregor sits.

In January, McGregor will be elevated to become Vice Chief Justice of the Court. In that position, she will aid Chief Justice Charles Jones in achieving his goals.

Most important in that position, however, is learning what it takes to run the Court and to oversee all Arizona courts. Because her eventual elevation to Chief Justice is almost assured, these years as Vice Chief are important ones. In fact, they may be more important than ever before.

- In three and one-half years, Chief Justice Jones will have completed his tenure and retired from the Court, required due to his reaching 70 years of age. The same is true of Justice Stanley Feldman, who turns 70 in 2004.
- Justice Frederick Martone's name has been put forward for consideration as a federal district court judge. His probable confirmation could come within months.
- Finally, Justice Thomas Zlaket, Chief Justice through 2001, has indicated that he will not be on the Court by the time Jones retires. In fact, when pressed, he does not deny that his departure could come far earlier, perhaps within the year. Justice Zlaket has indicated that he looks forward to life in private practice, and closer to his Tucson home.

Thus, the panel on which Justice McGregor eventually will preside will be "a brand-new court, totally new," as noted by Justice Zlaket. That may provide her the opportunity to advance ideas and court change, but it also may be a disadvantage in drawing on a well of experience. In contrast, Justice Jones can turn to a deep bench on a daily basis: Justices Zlaket and



Feldman are both former Chiefs.

Justice McGregor understands the complex role of Chief is that of facilitator: "We've been fortunate over the years to have people leading the courts who have been willing to look at innovative programs, knowing that they won't all be successful, being willing to fail, so that we can have the advantages of those programs that succeed."

In fact, since she joined the Court of Appeals in 1989 and the Supreme Court in 1998, she has been struck by a simple but important change: "the willingness to let others into the process."

Some of those others include new lawyers, for whom she clearly has an affinity. "One of the things I have enjoyed is the work the Young Lawyers Division does," she says. "When you see people getting involved in professional activities early on, you just know it will carry through. In five or 10 or 15 years, they will be on the Board of Governors, and they'll be officers in their county bars and their State Bar."

This openness pleases her. As she aids Chief Justice Jones, she certainly will be aware of the value of opening courts to relative newcomers—even those who may soon head the Court itself.

—Tim Eigo