

STANLEY G. FELDMAN AND THE CRAFT OF LEADERSHIP

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It is appropriate that the *Arizona Law Review* mark the completion of Stanley Feldman's term as Chief Justice of the Arizona Supreme Court. He is an alumnus of this College whose illustrious career has honored his home institution. As one who has known Justice Feldman since he was a student in the first law class I ever taught in 1954, and as one who has watched him with admiration and pride ever since, I am honored to join in the *Review's* tribute to him.

Stanley Feldman earned his law degree in 1956 and embarked on a career that took him to the top of the legal profession in Arizona. He became a senior partner in an important Tucson law firm and established himself as one of the leading trial lawyers in the West. Active in the profession, he was a member of the American Board of Trial Advocates, a member of the board of the Arizona Trial Lawyers Association, and ultimately was elected President of the State Bar of Arizona. But he was not simply a successful lawyer; he was a community activist in a number of organizations, including the Arizona Civic Theater, the Tucson Jewish Community Council, and the National Legal Committee of the Anti-Defamation League of B'nai B'rith. In 1982, he was appointed to the Supreme Court by Governor Babbitt, following the retirement of Chief Justice Fred Struckmeyer.

As a member of the Supreme Court, Justice Feldman quickly began to produce opinions characterized by thorough scholarship and careful writing. I suspect that no lawyer so well known for his trial advocacy has ever made the transition to appellate opinion writing more smoothly. His opinions also indicated that he was willing to strike out in new directions when the case took the Court to the frontiers of the law. I think particularly of such cases as *State v. Chapple*,¹ *Darner Motor Sales, Inc. v. Universal Underwriters Insurance Co.*,² and *State v. Bible*.³ One of my own favorite Feldman opinions was written in *In re Schwartz*.⁴ In that case,

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1. 135 Ariz. 281, 660 P.2d 1208 (1983) (admissibility of expert testimony on the reliability of eyewitness identification device).

2. 140 Ariz. 383, 682 P.2d 388 (1984) (application of the doctrine of reasonable expectations to the interpretation of insurance contracts).

3. 175 Ariz. 549, 858 P.2d 1152 (1993) (foundation for and admissibility of DNA evidence).

4. 141 Ariz. 266, 686 P.2d 1236 (1984).

where a lawyer had insisted on collecting his full contingent fee even though the amount was out of any possible proportion to the value of the legal work he had done, Justice Feldman wrote that the lawyer had acted unethically in insisting on his fee contract.

[A] fee agreement between a lawyer and client is not an ordinary business contract. The profession has both an obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must remember that it is a "branch of the administration of justice and not a mere money getting trade."⁵

This is not the occasion for a deep review of Justice Feldman's important opinions, though in time legal scholars will surely want to do a thorough analysis of his contributions to constitutional criminal procedure, tort and insurance law, the law of lawyering, water law and all the manifold public issues that have come before the Court since 1982. As the body of Arizona's law grows, a study of the opinions of one of its most productive members will be instructive.

Instead of trying to describe Justice Feldman's contributions to substantive law, I want to focus instead on his role as Chief Justice because I think that role is not widely understood. The Arizona Constitution vests the state's judicial power in an "integrated judicial department" consisting of all the courts in the state, placing them under the administrative supervision of the Supreme Court, acting through the Chief Justice.⁶ This rather bland description masks the fact that Arizona's court system has become a vast and complex institution. It has more than 7,000 full and part-time employees and an annual budget exceeding \$300 million. A sense of the workload of the court system can be gleaned from the fact that in 1996, 161,000 cases were filed in the superior courts, over 86,000 juveniles were referred to juvenile court, 791,000 cases, including civil and traffic cases, were filed in the justice courts, over one million cases were filed in municipal courts, and over 2,500 suits were initiated in the Tax Court. Central administration for the court system is provided by 259 employees of the Administrative Office of the Courts (AOC). That administration covers a bewildering array of functions, many of which would not ordinarily be thought to be a part of the judicial function. For example, the AOC administers programs ranging from the Committee on Judicial Education and Training to Foster Care Review Boards and a Literacy, Education and Reading Network for juveniles. Obviously, the Chief Justice, as chief administrator, relies heavily on an extensive staff and volunteer boards and commissions. But the range of programs and projects for which he (or she when next a woman sits in the Court's center chair) is responsible must strike anyone as daunting. Typically, Chief Justice Feldman shouldered these administrative chores with vigor and a restless desire to improve the system. During his term, a number of projects were initiated or carried to completion. They included reform of the jury process, improvements in the discovery process in civil cases (the so-called

5. *Id.* at 273, 686 P.2d at 1243 (citation omitted).

6. ARIZ. CONST. art. VI, §§ 1, 3.

Zlaket Rules, named for the lawyer, now Chief Justice, who chaired the committee that produced the rules), the death penalty litigation assistance program, a redefinition of the roles of presiding judges of the court of appeals and superior courts, a commission on juvenile justice, uniform policies for domestic violence cases, a state-wide automation project, a commission on judicial performance review, and proposals for reform of the limited jurisdiction courts. From a current report of the Administrative Office, I count 118 different programs or services provided by the courts' central administrative body. To preside over such an array of functions is not the work of someone who does administration on the side. It is more than a full-time job, demanding the best of the energy and intellect of the Chief Justice. With his characteristic drive, Stanley Feldman immersed himself deeply in the functioning of the statewide court system.

While attending to the many administrative tasks of his job, the Chief Justice also carried a full judicial load as a member of the Supreme Court. A review of the court's workload reveals that from 1992 through 1996, Justice Feldman was among the leaders on the court in authoring majority opinions. Quite clearly, his administrative tasks did not prevent him from carrying his fair share of the court's judicial work.

In a time of considerable political criticism of the legal system, much of it misconceived I may say, Arizona's Chief Justice is a very visible public figure. As a result, Chief Justice Feldman, known for his forthrightness in matters affecting law and the courts, became a convenient target for some politicians and a segment of the press. When political forces organized a campaign to revise radically the juvenile justice system by amending the constitution through Initiative Proposition 102, a major dilemma faced the courts. While judges are barred from purely partisan political activity, this movement was seen by many in the legal and judicial community as an unwise threat to a major judicial institution. Proposition 102's most drastic effect was the repeal of section 15 of article VI of the constitution which had invested the juvenile courts with original jurisdiction over all proceedings involving juveniles, replacing it with a jurisdiction to be determined by legislation.

Proposition 102 was opposed by a large number of people experienced in the juvenile justice system, including the Attorney General, other prosecutors, victims' rights activists, and advocates of children's interests generally. The judiciary was obviously in a delicate position. Major changes in the juvenile court system were being proposed even though in 1993 substantial changes had already been adopted as a result of a study by the court-appointed Commission on Juvenile Justice. Believing that judicial ethics not only did not prohibit judges from speaking out on the issue, but that in fact they might have a duty to do so, juvenile court judges, the Judicial Council and Chief Justice Feldman made their opposition to Proposition 102 publicly known.

The debate was a hotly controversial one and, in the end, the opposition failed. Proposition 102 was adopted in the 1996 election and the state is now struggling to figure out just how the system should be restructured. Some have argued that in the campaign the judges strayed across the political divide. But that view is much too

simple. What was at issue was the very structure of an important part of the judicial system. It is hard to see why it should be improper for the public to be given the benefit of the views of judges who had the most direct experience with the present judicial system. It can be argued, in hindsight, that a more cautious posture should have been assumed and that the judges should have held themselves publicly aloof while others carried on the battle. But that was not Chief Justice Feldman's way nor that of the embattled juvenile court judges. An open and forthright expression of the judges' opposition was simply the most honest course. It was right that the voting public know of the Chief Justice's views on an issue going to the heart of the judicial system, even though there was a risk that the voters would ultimately reject those views. Given the issue and the stakes, in my view this episode was an example of Chief Justice Feldman's willingness to exercise bold leadership on behalf of the judicial system.

Given the temper of the times, the judicial system is likely to continue to be a focus of political attacks. Each legislative session in recent memory has been marked by one proposal or another to repeal so-called merit selection of judges and return judicial selection to unrestrained partisan politics. The Chief Justice, who presides as chairman of the Judicial Selection Commissions, has a special responsibility for the selection of qualified candidates for appointment to the bench. In his last Report of the Judicial Department, Chief Justice Feldman made the safe prediction that the attacks on merit selection will continue and that "We need to be prepared to fight to preserve the judicial selection process." Thoughtful people who believe that a politically independent judiciary is essential to the rule of law will surely see no impropriety in the Chief Justice's call to defend a system that has served the public well.

These are contentious times for those concerned with the law and the court system. The challenges that are raised must be dealt with thoughtfully and with courage. It is fair to say that those who value an independent judiciary are much in Stanley Feldman's debt for his service as Chief Justice.