

Judicial Profile

HON. FRED M. MESTER

Hon. Ralph B. Guy Jr. Judge, U.S. Court of Appeals for the Sixth Circuit

SIXTH CIRCUIT COURT of Appeals Judge Ralph B. Guy Jr. has been an esteemed member of the federal judiciary for 36 years, first as a district judge for the Eastern District of Michigan and, more recently, on the Sixth Circuit Court of Appeals since 1985. He is currently on senior status. Judge Guy is recognized by his colleagues, attorneys who have had the positive experience of appearing

before him, and the general legal community for his sharp intellect, practical wisdom, and decisiveness. He is also noted for his keen, dry sense of humor. What is most important is that Judge Guy has always taken his work, but never himself, very seriously.

Judge Guy was born for the law and public service. His father, a lawyer, had been involved in public service for many years—having served as chief of police for the city of Dearborn, president of the Dearborn City Council, and ultimately as a state district judge in Michigan. Judge Guy, a graduate of the University of Michigan Law School, was admitted to the bar more than 57 years ago. He began his legal career as corporation counsel for the city of Dearborn. At the young age of 28, he was appointed to head the second largest full-time municipal law department in the state of Michigan and held that position for 12 years. At that time, there was no intermediate court of appeals, and all appeals were of right to the Michigan Supreme Court. As a result, Judge Guy became an extremely active trial practitioner and also developed considerable appellate expertise—experience that greatly influenced the path his career ultimately followed.

During his tenure with the city of Dearborn, Judge Guy also spent 11 years on the Wayne County Board of Supervisors—the governing body of Wayne County, Mich. While serving on the Board, Judge Guy became friends with Jim Brickley, another Board member. When Brickley, who had no trial experience, was appointed U.S. attorney for the Eastern District of Michigan in 1969, he asked an accomplished trial attorney, Ralph Guy, to become his chief assistant. Judge Guy turned down Brickley's initial offer but subsequently accepted the position in November 1969. Judge Guy now calls his decision to become the chief assistant U.S. attorney



“one of the best decisions of my life.” As a result of this decision, in 1970, President Richard Nixon appointed Judge Guy to succeed Brickley as U.S. attorney for the Eastern District of Michigan—a position that opened up when Brickley accepted Gov. William Milliken's offer to become lieutenant governor of Michigan.

The Federal Rules of Evidence took effect during Judge Guy's tenure as U.S. attorney. In an effort to encourage his assistant U.S. attorneys to become active in the Federal Bar Association, Judge Guy set up a number of in-house seminars and encouraged education on the Federal Rules of Evidence through the FBA's Detroit Chapter. With Judge Guy's encouragement, many of his assistant U.S. attorneys became members of the Federal Bar Association. Judge Guy promoted not only the chapter's significance as a federation of government and private attorneys practicing in the federal courts but also the FBA's educational objectives. Judge Guy has been active in activities sponsored by the federal, state, and local bar associations.

His emphasis on and participation in the education of law students and improvement of lawyers' legal

skills are reflected in the 20-plus years Judge Guy has devoted to teaching. In his busy schedule, Judge Guy always managed to find time to devote to teaching trial advocacy courses at the University of Michigan Law School, the National Institute for Trial Advocacy, the Institute for Continuing Legal Education, and the United States Attorney General's Advocacy Institute.

Four of Judge Guy's assistant U.S. attorneys and law clerks followed him as president of the Detroit Chapter of the Federal Bar Association, and one of the four, Alan C. Harnisch, became the FBA's national president. Collectively, eight of Judge Guy's protégés from the U.S. Attorney's Office went on to become judges. Harnisch commented that Judge Guy "was very intelligent, but also practical. He was knowledgeable and experienced in the law, but also well-grounded in the realities of his office and the cases being handled. He had an open-door policy and the attorneys in his office always felt he 'had their backs.'" Harnisch further stated, "The Assistant U.S. Attorneys who served during Ralph Guy's tenure have gone on to distinguished careers. A noticeable portion of the gloss on these careers is a reflection of the training and mentoring under Ralph Guy's tutelage." One such example is Saul Green, who became the chief counsel for Detroit's Housing and Urban Development office and ultimately deputy mayor of the city of Detroit. Green recalls his tenure under Ralph Guy as integral in preparing him for all the positions he has held throughout his career and states that "Judge Guy had assembled an office of outstanding attorneys who were conducting challenging and complex litigation."

Michigan Court of Appeals Judge Harold Hood was the chief U.S. attorney for the Eastern District of Michigan for a period during Ralph Guy's tenure as U.S. attorney. Of that time in the office, Judge Hood says, "In looking back, I can safely say that the most meaningful experiences that I had in my professional development were the result of my association with Judge Guy." Prior to Judge Guy's tenure, the U.S. Attorney's Office consisted of attorneys who had connections with the political party of the sitting President. Judge Hood recalls how important it was to Judge Guy that persons considered for attorney positions be selected based on their ability and potential (though it probably did not hurt them if they were graduates of the University of Michigan). According to Judge Hood, "His emphasis and interest were in integrity and preparation, which he himself exemplified. He did not hesitate to give younger attorneys an opportunity to hone their trial skills." Judge Hood continues, "I can safely say that he is probably one of the most brilliant legal minds that I have ever encountered."

Judge Guy hired another colleague, Robert Hurlbert, for a position as assistant U.S. attorney in 1971. Hurlbert served in this position through August 1973, then served as a special assistant through March 1974. Because of his experience in complex commercial cases, Hurlbert expected to be placed in the Civil

Division of the U.S. Attorney's Office, but Judge Guy placed him in the much larger Criminal Division instead. Judge Guy assured him that this assignment, with a caseload of challenging matters, would also provide highly valuable experience. Although Hurlbert recalls being skeptical about this advice at the time, he now says, "This proved not to be the case. Ralph has superb qualities as an individual, a lawyer, and as a teacher. He relished the intellectual give-and-take in addressing complex legal and prosecutorial policy questions." He further commented that Judge Guy was "the perfect role model of a knowledgeable, ethical, intelligent, and highly capable attorney." The *Detroit News* validated this view in an editorial—published under the headline, "Guy in a White Hat—congratulating Judge Guy on the accomplishments of his office. Under his leadership, investigations of corruption in Detroit's Housing and Urban Development office led to the conviction of more than 100 individuals and companies engaged in wrongdoing.

Humor was an important part of Judge Guy's relationships with his staff. Gordon Gold, who worked with Judge Guy as an assistant U.S. attorney and witnessed Judge Guy's dry sense of humor on several occasions, recalls an incident that occurred at about 6:00 p.m., after he had completed a lengthy nine-week jury trial that culminated in a guilty verdict: "Ralph, as the U.S. Attorney and of course my boss, came down to the courtroom and, upon hearing of the favorable verdict, graciously advised me that I could have the rest of the night off."

After completing his first term as U.S. attorney, Judge Guy was appointed to another term by President Gerald Ford. However, before Judge Guy could serve out that term, President Ford appointed him to the U.S. District Court for the Eastern District of Michigan. Judge Guy would spend nine years as a federal district judge in that jurisdiction before being appointed to the Sixth Circuit bench by President Ronald Reagan in 1985.

Judge Guy has enjoyed a reputation as an exceptional, hardworking judge who takes pride in getting his decisions out on time. The scholarship that he exhibited during his term as U.S. attorney clearly followed him in his tenure on the federal bench. What stands out in many attorneys' memories is the number of matters Judge Guy was able to dispose of by an oral opinion from the bench at the conclusion of whatever proceeding was before him—whether it was through a motion or a bench trial. Members of the bar who appeared before him would reflect that he exemplified the best in the American judiciary.

Dale R. Burmeister and Daniel P. Malone served together as clerks with Judge Guy from 1978 to 1980. Their recollection of their first day as his clerks attests to the sense of humor Judge Guy demonstrated while mentoring them. Judge Guy's orientation described protection of the jury as a law clerk's "sacred duty." Malone recalls when, on the first day, the deliberating jury slipped a note under the jury room door,

and he dutifully carried it into the courtroom and solemnly handed it to Judge Guy, who by then had started another trial. Judge Guy briefly perused the note, handed it back to Malone, and directed him to comply with the request it contained. After leaving the courtroom, Dan read the note. To his chagrin, it asked for six black coffees, three with cream and six more with cream and sugar! When he later returned to chambers, Judge Guy good-naturedly informed him that law clerks were permitted to look at jurors' notes before presenting them to the judge. How Judge Guy chose to handle that and other rookie mistakes helped forge a special rapport within the chambers that both Malone and Burmeister recall with great fondness and appreciation to this day.

Burmeister and Malone fondly recall another example of Judge Guy's sense of humor that occurred during the dawn of political correctness in the country. Judge Guy had recently changed his jury signature block to read "Foreperson" instead of "Foreman." That day, the jury had just been released when Judge Guy quickly ordered them back into the courtroom. He instructed them that the decision was to be unanimous and inquired as to why only four jurors had signed the verdict form. The foreperson meekly replied, "Because it said 'four persons.'" Judge Guy laughed along with others in the courtroom. Burmeister said, "Judge Guy used these and countless other incidents as 'teaching moments.'"

Another young lawyer whom Judge Guy mentored is Hon. Raymond Kethledge, now Judge Guy's colleague on the U.S. Court of Appeals for the Sixth Circuit. Judge Kethledge first met Judge Guy in 1992, when, as a second-year law student, Judge Kethledge was interviewing to become one of Judge Guy's clerks. Judge Kethledge remembers that Judge Guy was measured and kind during the interview. When the interview was over, he and Judge Guy walked together toward the door leading into the chambers lobby. Judge Kethledge thought that Judge Guy would see him off from there, but Judge Guy made a gesture that has stayed in Judge Kethledge's mind ever since. Judge Guy walked to the coat closet in the lobby, took Kethledge's overcoat off the hanger, and then insisted on holding it out for him while he put it on, one arm at a time. Judge Kethledge comments today, "I recall thinking that there I was, a mere 21-year-old law student, and a federal appeals judge was holding my coat for me. There was an important lesson in that gesture."

During the year he clerked for Judge Guy, Judge Kethledge saw him act in the same manner on more occasions than he can count. Judge Kethledge recalls that Judge Guy's "spirit of kindness and humility" was apparent in his dealings with "all kinds of people subordinate to him; his clerks, the court security officers in their building, the lawyer who argued in front of him, the court staff in Cincinnati, and the waiters and hotel staff who served us while we were there." Judge Kethledge recounted, "After a while, I began to

understand why Judge Guy acted that way. It was not because he was unaware of his abilities, he could not have been. Instead, I think it was because Judge Guy measures people based on their character, rather than on their status in life. To Judge Guy's eyes, the bellman, security officers, taxi drivers all stood as tall as and sometimes taller than the most powerful lawyer or Court of Appeals Judge."

Summing up the reflections of those fortunate enough to work with Judge Guy, Bob Hurlbert stated, "As a federal prosecutor and judge, Ralph Guy has had few peers. He has been an inspiration for those of us who had had the pleasure to work with him and to practice before him."

Reflecting on his position as an appellate judge, Judge Guy modestly downplays his contribution to the court of appeals, stating, "I can't really single out a blockbuster appeal in which I was involved. Being on the Court of Appeals and always working in panels of three is not an identity-building position. It is really quite obscure with not only the public—but a large portion of the Bar—not knowing who you are. After a point in one's career, there is something to be said for anonymity, however."

Still, Judge Guy would make a significant contribution during his judicial tenure, and his career would eventually come full circle. In 1999, Chief Justice William H. Rehnquist appointed him to the Foreign Intelligence Surveillance Court of Review, was made up of three judges who were appointed to a statutorily limited seven-year term. Judge Guy said that he was "generally aware of the FISA court ... but knew nothing about the Court of Review." As published in an article in the *Oakland County Legal News*, Judge Guy stated, "This is the so-called FISA court or as the press is fond of referring to it—'the secret spy court.'" The day after he was appointed, he received a call from the presiding judge of the FISA court informing him that this was a rather hollow appointment: in its 20-plus years of existence, there had never yet been an appeal to the review court. With that phone call, Judge Guy filed away his appointment and didn't think much about it again—that is, until three years later, when he received another letter from Chief Justice Rehnquist informing him that he had just been appointed the presiding judge of the Foreign Intelligence Surveillance Court of Review. Ironically, what Judge Guy believed would always be a hollow appointment actually became a high-profile post as a result of an unexpected chain of events.

After Sept. 11, 2001, many changes occurred quickly throughout the United States. One of the first changes was the passage of the PATRIOT Act by Congress. As a result, changes were made to both the FISA court itself and to the language in the statute that created the court—changes that the Bush administration considered quite significant. However, the lower FISA court announced, sua sponte, that it intended to follow policy guidelines that had been established by Attorney General Janet Reno during the Clinton administration.

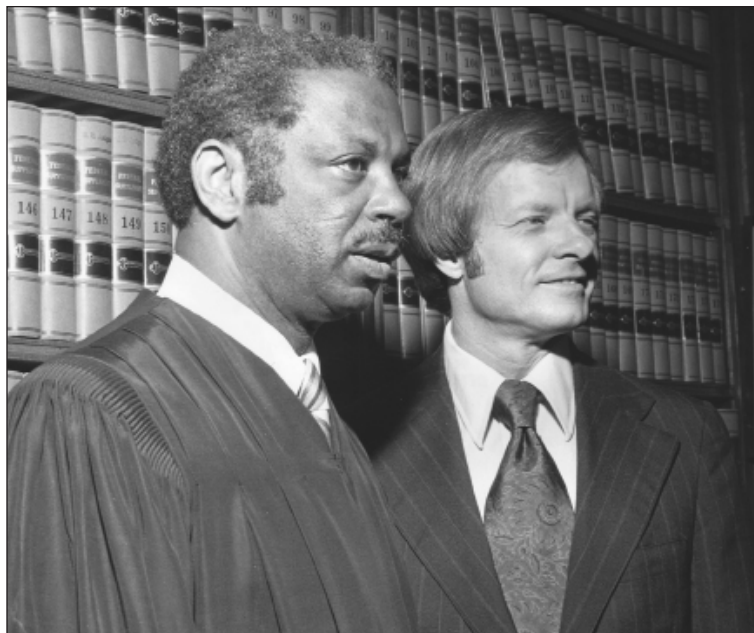
Shortly thereafter, Judge Guy received a telephone call from the chief judge of the lower FISA court stating that its first appeal might be heard, because Bush's Justice Department did not intend to accept the lower FISA court's interpretation. The appeal that was filed was like no other because it was ex parte with only the government represented. The panel accepted amicus briefs from the American Civil Liberties Union and the National Association of Criminal Defense Attorneys. Lengthy oral arguments were made, with the government's principal arguments being made by Ted Olson, whose wife had perished in one of the planes that had been hijacked on Sept. 11.

In simplistic terms, one of the key issues in the case was the so-called wall that existed between government agencies that had been mandated by the Clinton administration. After careful review, the court upheld the position advocated by the government, finding that the amendments to the PATRIOT Act were significant on the issue of statutory interpretation. The court also held that it was doubtful that the "wall" ever had to be erected in the first place. Because there was no provision for appeal to the U.S. Supreme Court, the court's decision became final.

When Judge Guy was the U.S. attorney for the Eastern District of Michigan, he also was involved in a high-profile case stemming from the bombing of the CIA office in Ann Arbor in 1969. His office indicted three individuals, but the case did not require his personal involvement as U.S. attorney until he learned that famed defense lawyers Leonard Weinglass and Bill Kuntzler had appeared as counsel for the defendants. When he became part of the prosecuting team, Judge Guy found himself buried in an avalanche of motions, none of which had any merit, or, as he now recalls, "so I thought."

One of the motions was a boilerplate motion asking for any evidence of electronic surveillance of the defendants. Judge Guy's office was informed that there was no such material. The attorney general of the United States then came forward and said that a telephone conversation of one of the defendants had been overheard as part of a noncourt-authorized national security wiretap. A motion to suppress followed, and, when Judge Guy reviewed the intercepted material, his thought was "let the motion be granted," because the information that had been overheard was not in any way pertinent to the prosecution nor had there been any "fruit from this poisonous tree." However, it soon became evident that the Department of Justice was looking for a test case. This same scenario had just played out in the Ninth Circuit, and the attorney general wanted a decision defining the contours of the President's national security powers.

The presiding district judge, Damon Keith, granted the motion. A suit for mandamus to overturn the decision was immediately filed in the Sixth Circuit, which, in a 2-1 decision, upheld Judge Keith's decision. In speaking about the case, Judge Guy recalls, "Everyone



(l to r) Judge Damon Keith of the Eastern District of Michigan and Judge Guy (then U.S. attorney for the Eastern District of Michigan) in the early 1970s.

knew an appeal to the Supreme Court was where this was all headed, and the Supreme Court quickly granted *cert.*" In an 8-0 opinion (with Justice Rehnquist recusing himself), the Court upheld the lower court and the case (*United States v. United States District Court*, 407 U.S. 297 (1972)) is known to this day as the "Keith case."

What was significant about the U.S. Supreme Court's opinion, however, was the Court's expressed concern about the powers of the President in relation to national security, particularly in the area of domestic threats. The Court said that it was bound to reach the decision it did, but suggested that the relief, if any, lay with Congress. But before the Nixon administration's proposed legislation could go anywhere, the Watergate scandal erupted. The subsequent election of President Jimmy Carter brought about the passing of a somewhat watered-down version of the legislation by Congress.

The legislation that followed led to the birth of the FISA court, which would establish the procedures for obtaining a surveillance order in connection with national security matters. Ironically, Judge Guy was the attorney for the government in the litigation that resulted in the creation of the FISA court. He ultimately sat on the Foreign Intelligence Surveillance Court of Review, which defined, to some degree at least, the framework of that legislation. As Judge Guy recalls, his thought was, "I have come full circle."

Judge Guy fondly recalls his lengthy tenure as a federal judge and U.S. attorney with the following words: "I have indeed been lucky in my career. But the luckiest part of all was the opportunity to work with the multitude of young men and women who served as assistants and law clerks. To all of them, I owe eternal gratitude, and if, on occasion, I have looked good, they deserve the lion's share of the credit." To the contrary,

those former subordinates unanimously recall that they always looked better because of Judge Guy's intellectual and practical leadership, to which they, in turn, have aspired to achieve.

Judge Guy currently resides with his wife, Yvonne, in Harbor Springs, Mich. They have two sons—David, who lives in Anchorage, and James, who lives in Seattle. Judge Guy's distinguished career continues as he now serves on senior status on the Court of Appeals for the Sixth Circuit. **TFL**

Hon. Fred M. Mester sits on the Sixth Judicial Circuit Court of Michigan in Oakland County, Mich. Judge Mester wishes to acknowledge the inestimable contribution to this profile by Judge Raymond Kethledge, U.S. Court of Appeals for the Sixth Circuit; Judge Harold Hood (Ret.), Michigan Court of Appeals; Dale Burmeister, Harvey Kruse PC; Saul Green, Miller Canfield Paddock & Stone; Gordon Gold, Seyburn Kahn Ginn Bess & Serlin PC; Alan Harnisch, Stroble & Sharp PC; Robert Hurlbert, Dickinson Wright PLLC; Daniel Malone, Butzel Long; and Meg Van Meter, Meg Van Meter PLLC.