

Hon. Harvey E. Schlesinger

Senior Judge, U.S. District Court for the Middle District of Florida

by Lauren Gentry



Lauren Gentry graduated from the Florida State University College of Law and now lives in Jacksonville, Fla., where she serves as a judicial law clerk to Hon. Patricia D. Barksdale, U.S. magistrate judge.

Perhaps Harvey Schlesinger could not avoid success. His high school—James Madison High School in Brooklyn, N.Y.—boasts alumni such as U.S. Sens. Bernie Sanders and Chuck Schumer and Supreme Court Justice Ruth Bader Ginsburg. One might expect it would be difficult to stand out among such illustrious alumni, but the Honorable Harvey E. Schlesinger has earned notoriety in his own right for devoting 50 years to federal service and leaving his mark on the judicial system.

He earned a Bachelor of Arts degree in political science from The Citadel and a Juris Doctor from the University of Richmond School of Law, where he was the president of the legal fraternity Phi Alpha Delta and on the moot court team. Expecting to make the military his career, he entered the Army, where he worked for the Judge Advocate General's Corps of the U.S. Army and acquired a taste for trial work through handling an estimated 80 felony cases.

After a few years of military life, his wife convinced him it was time for a change. In 1968, he made the switch to civilian life and accepted a job as corporate counsel for the Seaboard Coast Line Railroad in Jacksonville, Fla. He liked the work, but was disappointed that outside counsel handled all of the litigation. He could not resist the allure of the trial work he had experienced while in the military, and so, when a position at the U.S. Attorney's Office became available, he jumped at the opportunity.

When a district judge called a few years later and asked him to apply for a recently vacated magistrate judge position in Jacksonville (the prior magistrate judge had been appointed to the Florida Supreme Court), he obliged but planned to stay only three or four years out of the eight-year term. He changed his mind after amendments to the Federal Magistrates Act granted magistrate judges the jurisdiction to try civil cases with the parties' consent. Still, he craved something more: "I thought many a time, do you think you can spend a lifetime being No. 2 instead of No. 1? And my feeling was, not everybody can become the president of General Motors or Ford, there are a lot of vice presidents in the organizations, so I stuck with it."



Sixteen years later, in 1991, his patience paid off. President George H.W. Bush nominated him to be a U.S. district judge, and he was confirmed with the unanimous consent of the Senate. Remarkably, the moment passed without much fanfare. He remembers it this way:

I knew the day that they were scheduled to vote and I stayed up watching C-SPAN until about 12:00 at midnight when they recessed. I went to bed, and about 5:00 in the morning, I got a phone call from a colleague of mine in Birmingham, Ala., who congratulated me. I said, "No, they didn't vote on my confirmation last night." And he said, "Oh yes they did, weren't you watching?" His wife had gotten up to go to the bathroom around 2:00 in the morning, couldn't fall back asleep, and she turned on C-SPAN and she saw my confirmation. I never did.

Judge Schlesinger praises the confirmation process for its lack of political undertones—his only prior foray into the politic realm had been back in law school when he handed out flyers for one of his professors who ran

for city council. Indeed, when a fellow judicial nominee at that time asked him how long he had known Florida's senator, he replied he had never met him.

Judge Schlesinger has never felt political pressure on the bench and believes that the media has done a "tremendous disservice" to the country by focusing on the political leanings of the judiciary. He is quick to note that a particular judge's political leanings do not matter "one iota." Rather, his view is, "Judges adhere to the law, they follow the law, whichever way the law is. I would agree that sometimes, maybe, if you're a philosopher on the Supreme Court, you can decide the case the way you want to decide the case, but I think everybody below that is bound by the Supreme Court's decisions. Not that they're 100 percent right, it's just that they have the last say. That's the way our Founding Fathers set the government up and we all adhere to that."

He is hopeful that the days of politics infiltrating the judiciary have passed, describing the recent controversies in Washington, D.C., as merely "a blip in history."

The aversion to politics in his professional life does not equate to civic apathy; Judge Schlesinger considers it his duty to help the public understand the role of the judiciary.

"A lot of people do not understand the position that a judge has," he explains. "They think, oh, there's a dispute, each person tells the judge what they think is best, and the judge picks one and makes a decision. They don't know about *stare decisis* and precedent. They don't realize that a judge is not a politician and does not go out looking for problems." He tells potential jurors there are limited ways ordinary citizens can participate in the government: They can be an employee, they can vote, or they can serve on a jury. "I go back into the history of the jury system, going all the way back to ancient Egyptian days to explain to them how important [it is that] the judiciary relies on jurors," he said. "Especially in the United States, we have an aversion to governmental officials making important decisions in people's lives and rely on peers to do it ... it's part of the 'American Way of Life.'"

Judge Schlesinger's sense of civic duty does not end in the courtroom; he has amassed an impressive list of professional and charitable involvement, not the least of which is serving as a founder and the first president of the Jacksonville chapter of the Federal Bar Association. He recalled a lesson from an early mentor, Prime Osborn, then the vice president in charge of the Seaboard Coast Line Railroad's law department. Osborn was "a member of every organization there was" and enlisted his employees to attend meetings in his place. When Schlesinger asked him why he sent young lawyers to civic functions when they were paid to do legal work, Osborn told him, "If you don't participate in your community, you don't have the right to complain if it's not doing what you want it to do."

That lesson stuck—Judge Schlesinger has taken leadership roles in countless organizations, including Rotary

International, the Boy Scouts of America, and religious groups; he has taught at two different law schools and served on the faculty at the Federal Judicial Center; and he has served on numerous professional committees, including being appointed to chair the U.S. District Court Forms Task Force for the Administrative Office of the U.S. Courts and the Judicial Conference Advisory Committee on the Administration of the Magistrate Judges System, serving on the Supreme Court's 10-member advisory committee on the Federal Rules of Criminal Procedure, serving as president of the Eleventh Circuit U.S. District Judges Association, serving as president of the Eleventh Circuit U.S. District Judges Association and the Federal Magistrate Judges Association, where he spearheaded the legislative effort that produced the current pay and retirement system for U.S. magistrate judges, and others too numerous to list.

His dedication has not gone unnoticed: he is recognized in at least eight editions of *Who's Who*, was selected by the American Board of Trial Advocates as the 2008 Florida Jurist of the Year, and was selected by the American Bar Association as the recipient of the 1989 Franklin N. Flaschner Award as the outstanding judge on a trial court of special jurisdiction, among other accolades too numerous to list.

In his early years as a magistrate judge, Judge Schlesinger was instrumental in starting the staff attorney program in the federal court system. When the Federal Judicial Center selected the Middle District of Florida to pilot the "experimental program" to reduce the burden of prisoner litigation, he remembers physically moving all of the prisoner civil rights cases from the clerk's office to the new staff attorneys' office. Some of the cases had been left dormant for up to six years and contained mail returned as undeliverable because the inmate had died or been released with no forwarding address. "The cases could have disappeared if somebody did a little work on it, but they didn't have a process to do it," he remembers. Those days are gone. Now, the staff attorney program is critical to managing growing caseloads across the federal court system.

During his 42 years on the bench, Judge Schlesinger presided over some of the Middle District of Florida's most high-profile cases, including denying a request for an emergency injunction where African-American voters alleged infringement of their right to vote on the eve of the 2004 presidential election,¹ granting a motion for summary judgment in favor of the United States in a negligence case after live missiles fired from an American carrier during a naval exercise struck a Turkish destroyer,² and handling pre-trial matters in the case against the notorious Medellín Cartel kingpin Carlos Lehder-Rivas.³ The trial of the *Lehder-Rivas* case ignited a swarm of activity—a SWAT team staked out the roof of the courthouse and a bomb-detecting dog patrolled chambers every afternoon before closing. After a seven-month trial,

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demanding; but also very thoughtful, compassionate, and gracious.” She said he laid out expectations not only to his staff, but also to attorneys.

“It was a delight to work for him because I always knew where I stood,” Frank said.

Despite his businesslike demeanor, McManus had a good sense of humor, his son David, recalls.

“He liked a good joke,” David McManus said. “He

liked to go to parties. He liked to talk to people.”

According to his obituary, McManus was the third longest-serving federal district trial judge in the history of the United States. Frank said that was part of what drove him.

“I know he loved to work,” she said. “He loved what he was doing. I think it’s just the whole idea of coming to the office every day and doing what needed to be done.” ☺

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Lehder was found guilty of drug-related offenses and sentenced to life in prison.

Surprisingly, the proceedings that weigh on Judge Schlesinger most heavily are not those with the most publicity or novel legal issues. Instead, like many judges, he dwells on the routine sentencings, though he joked that when he transitioned from magistrate judge to district judge, he had to learn to count past one because he no longer handled only misdemeanors. He described sleepless nights before sentencings involving difficult facts and lengthy mandatory minimum sentences. That distress is unlikely to subside. He remembered some advice from a former district judge: “When you stop worrying about sentencing someone to prison, it’s the time to retire, because it means your heart has turned to stone.”

Thankfully, the stressful moments have been balanced by moments of levity, like the time a witness called Judge Schlesinger “Your Majesty,” or when a lawyer tried to invoke a “pet-vet privilege,” or when a *pro se* litigant treated him to a scene reminiscent of a Woody Allen sketch, running back and forth from the lectern to the witness stand to ask and answer his own questions. “That gave everybody a little laugh in the courtroom,” he recalled with a smile. “You have to have humor in every case.”

Then there are the moments when a bit of creative thinking makes a noticeable impact in a litigant’s life, like finding an exception in the Department of Agriculture’s regulations to avoid euthanizing a family’s beloved horse that had become infected with equine anemia or crafting a creative solution to help an inmate who was denied smoking-cessation medication because the prison was afraid he would hoard the pills:

I asked the doctor who was testifying, “Have you ever heard of applesauce?” And he said, “No, what does applesauce have to do with this pill?” And I said, “I can remember as a little boy I hated aspirin. And whenever I needed an aspirin, my mother would put it in applesauce and feed me the applesauce and that’s how I would get the aspirin.... If you’re worried about someone hoarding your pills,... why don’t you crush ’em up and put it in applesauce?” And with that, they asked for a recess, the case settled, and the man ultimately became a marathon runner. He quit smoking, he started working out in the prison yard, and when

he eventually was released from state custody, [he] started running in marathons.

Such stories are typical of Judge Schlesinger’s time on the bench. Sharp analysis and thoughtful consideration, peppered with a bit of humor, are his calling cards. Though he took senior status in 2006, he shows no signs of slowing down: He maintains a large caseload and remains an active figure in the Jacksonville legal community. He believes strong professional and mentoring organizations have made Jacksonville a “unique community” for legal practice in that “the lawyers are always cordial, they’re friendly, [and] they don’t get into fights the way lawyers from other parts of the country do.” He attributes that to “the mentoring and the socialization that takes place amongst the lawyers and the judiciary, which makes it a lot easier to do the job [of judge].”

In March 2017, the U.S. District Court for the Middle District of Florida, Jacksonville Division, honored Judge Schlesinger for devoting 50 years to federal service, including his time in the military, in the U.S. Attorney’s Office, and on the bench. Hon. Timothy J. Corrigan, a fellow U.S. district judge, aptly summarized his career: “We all owe a debt of gratitude to Judge Schlesinger, who has promoted collegiality among the members of the court and professionalism in the bar and has set a standard that all of us try to emulate every day.... I certainly expect that 10 years from now, we will be standing in this same courtroom thanking Judge Schlesinger for his 60 years of federal service.” ☺

Endnotes

¹*Jacksonville Coalition for Voter Protection v. Glenda Hood*, 351 F. Supp. 2d 1326 (M.D. Fla. 2004).

²*Aketepe v. United States*, 925 F. Supp. 731 (M.D. Fla. 1996); *aff’d*, 105 F.3d 1400 (11th Cir. 1997).

³*United States v. Lehder-Rivas*, 668 F. Supp. 1523 (M.D. Fla. 1987).