

Judicial Profile

WILLIAM M. JANSSEN

Hon. Joseph F. Weis, Jr. Senior Circuit Judge, U.S. Court of Appeals for the Third Circuit

IN THE CLOSING scene of Steven Spielberg's *Saving Private Ryan*, a now much older Private Ryan kneels at the grave site of a comrade-in-arms who had, so many years earlier, given his life to protect the young soldier. To the silent gravestone, Private Ryan confides solemnly that he has been bearing his protector's last, dying instructions to him close in mind each day of his life: "Earn this."

Joseph Weis was a young, 21-year-old soldier on Nov. 11, 1944, serving with the Fourth Armored Division of General Patton's Third Army near Nancy, France. Earlier that day, he was slightly wounded by a shell from a German tank gun which killed a soldier standing just three feet away. After brief treatment at a dug-out aid station, Joseph returned to the battlefield only to be struck a few hours later by shrapnel from an enemy mortar shell. This time—severely injured—he lay helplessly on the battlefield. Within minutes, another young soldier, Chester Wernecke, scurried to a jeep and, perilously endangering his own life in the act, motored out to where Joseph Weis lay, loaded him aboard the jeep, and bounded back to the medics' aid station. Joseph would be hospitalized for the next two and a half years as Army surgeons worked to stabilize him. But the heroism of Chester Wernecke, that day, had reclaimed a life—such a curious act of heroism. On a continent engorged by rivers of dying men and boys, the value of a single human life must often have seemed to have lost its meaning, its relevance. Amid all this horror, what could one life really mean? Why would any single life be worth the risk?

Judge Weis' law clerks, to a person, can recount that battlefield scene for you upon request. But, thinking back now, most of us never seem to have been told the rest of the History Channel glamour details—how the Third Army outwitted its adversaries, the tactical brilliance of the march towards the German border, the strategic role the drive through



Nancy played in the reconquest of Europe. On reflection, that's probably just as Judge Weis prefers it. What his law clerks can repeat about Nov. 11, 1944, is only what Judge Weis ever emphasized—how it highlighted the bravery and heroism of *another* soldier. *That* soldier's risks. In the retelling, Judge Weis serves as the backdrop or prop for the true story. And with each retelling, the sublime poignancy of Spielberg's final movie scene comes crisply into focus. If the rescue of a life is truly heroic (and it certainly was that day in France), then the expectations of the life rescued must be equal to the valor. The privilege of "earning" that rescue has, perhaps, been motivating Judge Weis his entire life.

Joseph Weis retired due to his wounds from the U.S. Army in 1949, with the rank of captain. He was decorated with the Bronze Star, Purple Heart with Oak Leaf Cluster, and the Croix de Guerre with Palm. He returned home to Pittsburgh, Penn., where he resumed his college studies at Duquesne University. He then enrolled at the University of Pittsburgh School of Law, earning his J.D. in 1950

and serving as an editor and prolific student author with the *University of Pittsburgh Law Review*. He was admitted to the Pennsylvania Bar that year and practiced law as partner in a small firm, until he joined his father in 1952 to form *Weis & Weis*; his three brothers later joined the family practice. He became a judge of the Allegheny County Court of Common Pleas in 1968, was confirmed to the U.S. District Court for the Western District of Pennsylvania in 1970, and was then appointed to the U.S. Court of Appeals for the Third Circuit in 1973. Judge Weis assumed senior status in 1988 and has continued to serve in that capacity since.

Judge Weis married his wife Peggy (Margaret Horne) in December 1958 and she became his loyal mixed-doubles partner in tennis and in life until her passing in 2012. Together, they held court lovingly over a family of three children and, later, seven grandchildren.

Along his impressive tenure as a state and federal jurist, Judge Weis undertook a staggering array of administrative responsibilities. He served as chair of the U.S. Judicial Conference's Standing Committee on Rules of Practice and Procedure, chair of the U.S. Judicial Conference's Advisory Committee on the Civil Rules, and chair of the U.S. Judicial Conference's Committee on Experiments of Videotape Trial Proceedings within the Third Circuit. He was also chair of the ABA's Appellate Judge's Conference and chair of its Committee on Technology and the Courts, as well as chair of the ABA Committee on Design of Court Rooms and Court Facilities. He additionally served as chair of an International Judicial Conference of a Joint American-Canadian Appellate Judge's Conference in Toronto. He was co-chair, together with Lord Justice of Appeal Michael Kerr, of the Joint American-English Appellate Judge's Conference in London. He has been a member of the U.S. Judicial Conference's Administration of the Bankruptcy System Committee, the U.S. Judicial Conference's Subcommittee on Judicial Improvements, the U.S. Judicial Conference's Committee on International Judicial Relations, and various of its task forces that meet with judges of the Court of Human Rights in Strasbourg, France, the Federal Judges' Conference on Delay of Criminal Cases, and the Conference of State Trial Judges.

Judge Weis was a participant in the Canadian-American Exchange Program when the American College of Trial Lawyers organized a series of conferences in Toronto, Montréal, Ottawa, and Washington. Judge Weis was a member of the judicial delegation from the United States headed by Chief Justice Rehnquist that met with the Canadian judges and Chief Justice Brian Dickson of the Supreme Court of Canada.

While a sitting judge, Judge Weis also wrote more than 20 legal articles, taught at the Federal Judicial Center, was a member of the adjunct faculty at

University of Pittsburgh School of Law, and participated as a member of the Advisory Committee for the University of Virginia School of Law's Master of Laws in Judicial Administration. He promoted pilot projects for the Federal Judicial Center, supervised pilot projects on word processing, electronic mail, and videotape systems for the Court of Appeals, and pioneered experiments with the use of video-conferencing technology for appellate court arguments.

Among his achievements was his leadership of the Federal Courts Study Committee, which he chaired from 1989-1990 at the personal request of Chief Justice William H. Rehnquist. The committee was tasked, by mandate of the U.S. Congress, to conduct a "complete study" of the federal and state courts, to recommend revisions to the laws of the United States that it "deems advisable", to craft a "long-range plan for the judicial system," and to complete its work by transmitting its comprehensive report to the President, the Chief Justice, the Congress, the U.S. Judicial Conference, the Conference of Chief Justices, and the States Justice Institute—all in 15 months.

Heading a 15-member committee, Judge Weis orchestrated this sprawling task and its (timely) submission of one hundred recommendations for improving the delivery of justice in the federal courts. Rep. Robert W. Kastenmeier, a member of the committee, gauged Judge Weis' contributions this way: "As its chairman, it was he who brought the Committee together, organized its work and through his outstanding leadership inspired the Committee to produce a monumental report that will influence federal judicial reform for many years to come."

Throughout his life, Attorney Weis (and later Judge Weis) came to earn a very peculiar and oft-repeated reputation. Former Chief Judge of the Third Circuit Ruggero J. Aldisert tells a chapter from that tale especially well:

Over twenty years ago when I was a Common Pleas Court Judge in Pittsburgh, I attempted to settle a case in which Dennis Harrington represented the plaintiff and Joseph F. Weis, Jr., the defendant. Dennis told me with profound regret that his client could not accept from the defendant the settlement offer that I had hammered out in chambers after intense negotiations. The case went to trial before another judge and the jury subsequently returned a defense verdict. I later asked Dennis, "What happened?" He responded, "Joe just out-niced me!"

It is the quintessential Joseph F. Weis, Jr.—compiling a nearly unfathomable legacy of achievement and distinction, all the while "out-niceing" the other guy. Not competitively, or in pursuit of some immodest laurel. But simply, honestly, genuinely, and with his characteristic impish grin and easy laugh.

In 1988, the *University of Pittsburgh Law Review* dedicated an issue to him as he assumed senior status. The enormity of the praise bestowed on Judge Weis there is testament to the profound and abiding impact his hand-print has left on lives and the law. Chief Justice Rehnquist praised Judge Weis for having “never let the solemnity expected of a judge obscure the twinkle in his eye.” Third Circuit Chief Judge Aldisert wrote: “Some do it better than others, but few do it better than he. Yet none do it as nice as Joe.” Fellow Third Circuit Judge, the late Carol Los Mansmann: “Lawyers continually pay him the highest of professional compliments—their recognition that he has never forgotten that he was once a lawyer.” U.S. Solicitor General Kenneth Starr: “His magic lies in the fact that he is a far-seeking judicial reformer who at the same time is marvelously self-effacing and gracious. He listens with care and respect.” The late Dean W. Edward Sell, University of Pittsburgh School of Law: “Never have I heard a lawyer criticize Joe as a judge, even when the decision was not what the lawyer might have desired. ... We and the profession are much the better because he walks and works in our midst.” University of Pittsburgh Chancellor Mark A. Nordenberg: “What is remarkable about the man ... extends beyond the quantity and quality of his professional accomplishments. It includes the way in which he approaches life and particularly the way in which he deals with other people. ... To merely report that Judge Weis is greatly admired is something of an understatement. He enjoys the highest professional respect and the deepest personal affection.” David B. Fawcett: “How does one who constantly decides contentious litigation that lawyers and citizens cannot resolve themselves continuously receive admiring accolades?” Close friend and fellow Circuit Judge Leonard Garth: “[His] presence helps us to take heart against forebodings.”

In the years that followed, the accolades have only grown. In 1993, Judge Weis was selected by his peers in the federal judiciary to receive the prestigious Edward J. Devitt Distinguished Service to Justice Award. That same year, West Publishing Company dedicated a volume of the *Federal Reporter* in his honor. In 2004, the Town of Montargis, France celebrated him with a parade on the 60th anniversary of its liberation, replete with flag-waving French children and elderly residents pushing through the crowd to glimpse one of the Americans who had given them back the gift of liberty. That same year, the President of France inducted him into the French Legion of Honor. In 2010, the Pittsburgh federal courthouse enshrined the “*Joseph F. Weis, Jr. Law Library*” to his legacy.

A judicial clerkship with Judge Weis has always been a coveted privilege for newly-minted lawyers because of the very special lessons it promises. In his tireless commitment to mastering the nuances of

every legal dispute that rose before him, Judge Weis gave us our work ethic. In the cavernous depth of his generosity of time, talents, and labors (to almost anyone who sought his assistance), Judge Weis showed us that days may be short, but they always stretch to accommodate the needs of others. In his unwavering insistence on preparing the first drafts of each opinion that bore his name, Judge Weis taught us the non-delegable nature of responsibility. In his insistence to complete his assigned tasks early and precisely, Judge Weis imparted his respect for the legal profession and our duty to dignify all who participate in it. In his frequent indictment of blind obedience to The Bluebook’s *Uniform System of Citation*, Judge Weis helped us appreciate the inanity—at times—of artificially strident structure. In his warmth and sincerity towards his family and friends, Judge Weis proved for us that balance—in all things—nurtures the soul. In his unfailing politeness, good humor, gentleness, and respect for everyone, Judge Weis whispered us the secret of living a good life.

Many former law clerks today cherish special memories of their time as “Weis Guys.” Sprinkled liberally amidst our many professional lessons are warmly remembered images of Philadelphia dinners during argument weeks, tall tales of tennis matches won (or unfairly lost), the raucous laughter of “contestants” battling for the winning score in the “JoePardy” game of Weis trivia, the misty eyes listening to remarks at his formal portrait presentation ceremony, the spirited choruses of “Edelweiss” led by Judge Weis at the annual Circuit Library holiday parties. The great legacy of Hon. Joseph F. Weis, Jr. will persist long into a hopeful future through the pens, the hearts, and the commitment to excellence of so very many young lawyers he shaped and guided.

Which, then, fittingly reserves the final word for Chester Wernecke, Army Soldier Joe Weis’ rescuer all those many years ago: “All this time, he never forgot me.”

Well earned, Your Honor. Well earned. **TFL**

William M. Janssen served as a law clerk to Judge Weis. He is now a law professor at the Charleston School of Law in Charleston, S.C.