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

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Sunday Sit-Down: Ohio County Circuit Judge Arthur Recht

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The Intelligencer / Wheeling News-Register

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Editor's note: With retirement from the bench coming at the end of January, the Sunday News-Register sat down with Ohio County Circuit Judge Arthur Recht to reflect on his judicial career.

-- It's been 29 years since you issued the "Recht Decision" in the case of Pauley vs. Bailey to equalize school funding in West Virginia. There's been a lot of contention over that ruling and that remains to this day, particularly among Eastern Panhandle lawmakers who believe the ruling does not adequately fund schools in their area. What are your thoughts on the decision and how it has impacted public education?

Recht: Originally, based upon the evidence only ... the evidence was that if you shower money up-front on the various problems that are associated with any deficiencies in public education, the outcome should be that you will benefit. That's really the theme of the opinion. On that basis we prepared a master plan and that went into effect. The question was, did that work?

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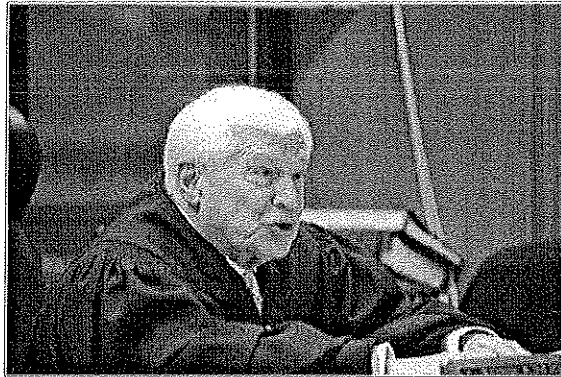
In the original opinion, I said that at any time, if any of the parties felt, especially the plaintiff, that if the terms of the master plan ... were not being implemented then come on back, lay out with some specificity what is not being done, what is your recommendation as to what should be done and then move on from there. That was not done until approximately 1995-96. So here you had 1982 to 1996, that period you presumed, simply by the silence of everybody, that it was being implemented. That may be a conclusion that is erroneous, but ... judges react to what is before them. I don't look around and go to say Monroe County and say what's being done here and move accordingly. It doesn't work that way.

Ultimately what happened, is in 2002 I changed that opinion. It was based upon a statute that was passed by the Legislature that basically said what we are going to do is that we will examine the results that we have in all areas of education which are touched upon in the master plan. Based upon test scores and a whole series of

criteria as to how you measure success.

And those areas in which there may be a deficiency, then we will concentrate on those. Instead of showering the money up front, we will do it the other way, we will come in the back door and say OK, we need money because we don't have enough math teachers, we need resources because we don't have enough science equipment. ... Instead of an overall approach, it would be an ad-hoc, dedicated approach based on what the Legislature said it would do and how they had the ability to go out and qualitatively assess what is going on. So, the decision basically was reversed. I dismissed the case at that point. I said there's no reason to keep it on the docket as I did the first time. I said however, if anybody feels that somehow there is a need to implement this opinion, there are ways procedurally that it can be done. ... That has not been done. So once again, you sit back and say the opinion's been out there for nearly 10 years, and nothing's been filed suggesting we have a problem, I must assume that everything is fine.

Article Photos



So, there really was not a great deal of attention paid to my reversal. I just basically said I was wrong, based upon what the evidence was back in 1981-82. ... It's the dynamics of this thing that I think are important. You have to be willing to take a look at what the current situation is, how the Legislature has reacted, and they did react properly, I thought, and it should be given a chance. That's what Pauley v. Bailey II did, and is still doing as far as I know. ...

We react. If someone lays a problem before you, we try to answer it as expeditiously and hopefully as accurately as possible.

-- You've had a fairly illustrious career as a judge. What are some of the bigger cases you've handled?

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Recht: (Pauley v. Bailey) was one of them. I knew when I was assigned that case - that was back in March 1981, I assumed off in January 1981 - everyone saw all kinds of conspiracy theories as to why I was assigned to try that case. And it was very simple: I was the youngest judge and I had the smallest docket. I was up in Hancock County when I got word I had assigned that case, and I had not even read the Supreme Court opinion on the case. So I went to the library in Hancock County, got the opinion and took it home with me. I read it and I told my wife, this one's going to be a dandy. And

it was.

The most difficult part about it was how do you try a case like this? ... It's a very difficult case to structure in the typical way that a case is structured, so I had to give it a lot of thought. And we finally started the trial in August 1981. ... And soon after that, I was asked to try the Conditions of Confinement case at the maximum security facility in Moundsville. That too had the makings of a rather important case. As a matter of fact, after we took into consideration all the evidence after a two-week trial and I knew what I was going to do based again on the evidence, I told my wife and children, 'All of the fire storm that was created over a case that I didn't think anybody was going to worry about, the school case, it's going to be quadrupled in this case. You're talking about prisoners possibly being let out, walking the streets, and I said just be careful. The ironic thing is after that opinion came out, there wasn't a peep, nothing. It was reported in a normal fashion, and the Legislature took it up and finally a new penitentiary was built. It was nothing like the horrific outcry over the Pauley v. Bailey case. I was called some things then that I didn't even want to share with my family. The funny thing about it is that many of the state's (southern) newspapers (were not very kind to me.) ... I didn't know anything about that until my so-called friends, they couldn't wait to send me all of the outpourings from these newspapers, I was called everything. So those are two cases that have more than just a local impact.

I do think of the interesting cases, all of the asbestos cases, all of the cases involving railroads, the tobacco case, these have impact on a statewide basis. Those are very interesting cases, very complex cases and as a judge, they're not fun, not enjoyable, but they give you a sense of worth. It's not a routine case.

-- What are some of your most memorable moments in court?

Recht: It's been a rather benign setting, the only thing that happened once in a criminal case, the defendant asked permission to go to the bathroom, and I asked the bailiff to take him. He came back, said he was not feeling well, I told him to sit down and we'd look into it. Just at that point he ran out of the courtroom, down the hall, down the steps and left the building. My clerk at that time, a fine, fine young man, who was a scholar but he was A) not a fighter and B), not a runner. He takes after the guy. and I yell and say get back here, what are you going to do if you catch him? Just let him go. So he left, and where do you think he went? He went home, waiting for the police to pick him up. That was the only time there was any real excitement.

There have been plenty of emotional moments, particularly when you have families involved. ... But other than that, it's been just ... it's not uneventful, but not anything that's really that eventful that stands out.

-- As a judge, you've had to deal with a lot of human tragedy - see the photographs of it, review evidence and even sometimes rule against evidence that could make a difference in a case. One case that comes to mind is Robert Padelski who you sentenced to nearly 800 years in prison for molesting a 5-year-old girl. After presiding over such a trial, how do you deal with the feelings that must build up within yourself?

Recht: That's an excellent question. It is my makeup. When I go home, it's all generally turned off. There are a couple of cases that stay with me, and (Padelski) wasn't one of them. A couple cases that did were an individual who had sexual relations with a 17-month-old child. Those things - I'm repeating it now because it's still with me. You sometimes have to wonder, what is it about an individual that they would even think about doing something like that. And what the problem is is that a judge, no matter what, you have certain instincts. Your instincts tell you that those type of crimes against infants are horrific. But yet you are a judge, he is still presumed innocent, and you have to give him every guarantee that's called for in the United States and West Virginia constitutions. You do. And you resist all of the natural instincts that you have, you fight against those consciously. Now that stirs you up a little bit inside, I think I do my best to overcome it, I try to, I'm consciously aware of it, and then once a person is found guilty, then the only thing you are concerned about is that the sentence conforms with what the legislature says and is proportionate to the crime itself. And then you

think about the victim and whatever the victim's interests are, and the family of the victim. That goes into the equation insofar as sentencing is concerned. When you have that whole package put together, you feel that you've done your job and it really doesn't stay with you.

I have a wonderful family that helps a lot. I have a dog who I love and no matter what, as soon as I walk in the door, there it is. It's almost therapeutic. That helps. That lets you get through. After awhile, though, they do start to wear on you. The criminal cases against children are terrible. But added to that is the number of abused and neglected children that we have that may not reach the level of a criminal act, but still their treatment requires a great deal of attention. It may involve the termination of parental rights. What you try to do is achieve permanency in the lives of these children. But matters involving children are the things that give you the greatest concern, the greatest anguish, it's just all part of what you do.

-- West Virginia has the moniker as a "judicial hellhole." First, do you believe that's true, and second, why has it seemed to stick?

Recht: It started out and caught on, and like every phrase it has a life of its own. I don't really know what it means as it applies to what I do here. The thinking that a lot of people have concerning the judicial system is really not based on anything they've seen or experienced, it's really a result of looking at something through a prism constructed by somebody else. ... Citizens Against Lawsuit Abuse is one group. I ... don't know anybody associated with it, never seen anybody in this courtroom, never been approached by anybody asking why did you do so and so, which would be a legitimate question. Decisions made by people based on correct information is proper. Criticism based on correct information is proper. I personally like to keep the courtroom as open as possible ... because I think the more people see what goes on inside the courtroom - that's why I think coverage by all press - is necessary to a judiciary that is viable. And the only anecdote to the claim of a hellhole is to let someone come and see what's going on. Be specific in what you are complaining about, and it might result in some change. We try to do things based upon the law and evidence, and if we don't, shame on us. ... The hellhole moniker - it seems to have cycles - has spawned a request for a business court, an intermediate appellate court, somehow if you get those things then somehow the hellhole will be erased. I don't know. The only thing I do know is let people see what we have, and then go out and complain about it, change it, that's absolutely fine. I really wish somebody ... would come in here and say 'OK Recht, here's what you've done' and let me explain it. ... Have that kind of discourse. Now it's an intellectual way to approach it, but no one seems to do that. You just simply put the judicial hellhole out there and it sticks.

-- You mentioned earlier about the courts being reactive. The state Supreme Court, some would say, has kicked off a proactive campaign against truancy. What are your thoughts on that initiative and the role that circuit and magistrate courts could play?

Recht: Again, that's a good question. I've wondered about that myself. The way the statute reads now, if a person is determined to be a status offender, which can either be a claim of truancy or incorrigibility, then you have a hearing and if there's proof by clear and convincing evidence that they are, then the matter's in the hands of the Department of Health and Human Services. They then shape some program to address the deficiencies either in terms of truancy or incorrigibility. And, according to the statute, if there is a need to get enforcement of what (DHHR) wants, then you come back to circuit court and then we give some teeth to enforcing that decision. That's what we have now.

Justice (Robin) Davis feels that maybe we need some changes in those areas, I think any change should come ... from the Legislature. I think the statute we have now may be tweaked a little bit, but you have to be careful with the separation of powers, what is a judicial function, what is an executive function and what is a legislative function. I think the goals that the Supreme Court has laid out - how can you be in favor of truancy? But think of it this way: Right now, you have a hearing on a matter of truancy and you find that the child is a truant by clear and convincing evidence. (That child) has a right to appeal that decision. Now you're going to appeal it to a body that

has already committed to a position (truancy) that may make it a little bit difficult. So you have those considerations.

There are good things about it certainly, and maybe after all is said and done it will finally work itself out. ... There's no question that cutting into truancy - there are many, many things that flow from a child who is perpetually truant. We have to find a way to address it.

-- Alternative sentencing: we have the Lee Day Report Center in our area, and over the years you've not been a big fan of alternative forms of sentencing. Some of the judges in our area are very big fans. Do you think alternative sentencing is good or bad?

Recht: When (the Lee Day Report Center) first started out, it was meant to be a place for first-time, non-violent offenders, and I think that was wonderful. Most of those cases were usually in magistrate court, and we didn't see many of them. All of a sudden we're told no, it can be for violent offenders, it can be for repeat offenders. That's where I draw the line. I think when it comes to a violent offender, alternative sentencing should be at a very, very strict minimum. I think repeat offenders do not deserve alternative sentencing. ... And the one thing that I am is I am consistent with that. ... If I have a first-time, non-violent offender then yes, I will do everything I can to see that the person is in that program, but it doesn't happen very often.

-- Courtroom decorum: It's not uncommon to come into a courtroom these days and see people wearing shorts, flip-flops or even baseball caps. Do you believe the court system has lost the public's respect?

Recht: Yes. You can tell from the color of my hair that I've been around for awhile, I still go back to when I went to law school you wore a coat and tie, and that just carries over. The dress in the courtroom is terrible. I do have some say, and I've done it, in regard to parties (that appear in court.) I've sent people home who've come in in shorts, people with ball caps on, the thing that sets me off really is ball caps on backwards. It's more of a symptom that when you come into the courtroom, there's no longer that sense of respect. You need that.

The judicial system - we don't have an army, we don't have any money - all we have is the power of the pen. We are an equal branch of government, but in terms of being able to say what can we do if somebody does something contrary to what we want, we have very limited ways of handling that. ... By and large the judicial branch is based simply on just the sense of respect. It starts with the judge. That's why I always try to maintain that a judge's temperament I think is maybe the most important thing in the courtroom. We can't expect somebody to come in and treat the system with respect and have the judge not doing the same thing. ... We had a judge, for example, down in Pleasants County who didn't like what a defendant did, he went down ... and ended up biting the nose of the defendant. See it's that type of thing that really sticks with me. I happened to be the judge assigned to handle that case (after the biting incident), but that's an example of what judges should not do. If you're going to demand respect, then you have to deserve it. And you try not to let your emotions get in the way.

I've always said there are three things that a judge should have: scholarship, a work ethic and temperament. It's a three-legged stool. And if you're light on the scholarship and light on the work ethic, you can even things out with temperament. I work at that, whether I achieve it all the time I really don't know - I probably don't. Not that I don't try to do it, but that is a goal.

-- Those with an understanding and appreciation of the legal system would rate you as a judge who is firm yet fair, one who follows the letter of the law. For you, what do you believe your judicial legacy will be?

Recht: All I would like is for people to say he was fair. That sounds almost trite, but you have to have a polar star to guide you. That's why I put so much emphasis on temperament, because I think a sub-sect of temperament is fairness. That's all I want - to give everybody an even break, is it fair, does it pass that litmus test, and if it does not, why not, maybe something needs changed. You still follow the law, you're still bound by it ... that's really what I would be happy with. He was fair, he tried to treat everybody equally to the extent that he could.

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