

# THE WRITE STUFF

Judge Robert H. Alsdorf (ret.)

AJA 54th ANNUAL EDUCATION CONFERENCE  
2014

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## The burden placed on judges:

Proper syntax and paragraph structure,  
standing alone, do not alter public  
perceptions of justice.

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They don't pay me to be  
right.  
They pay me to be fair.

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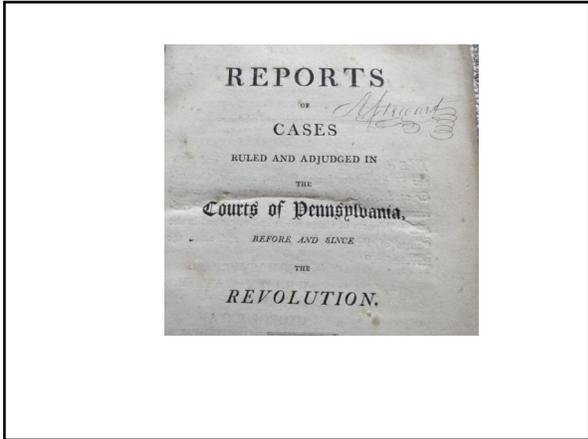
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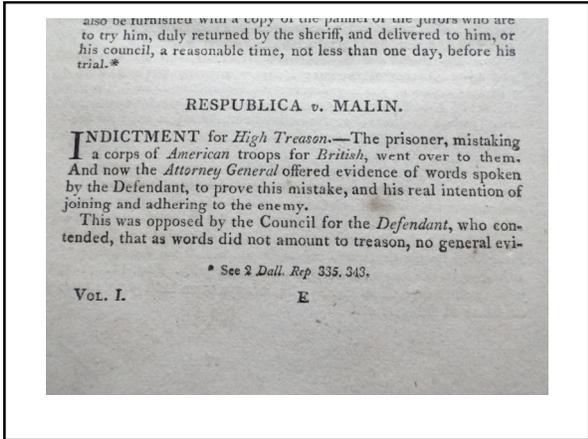
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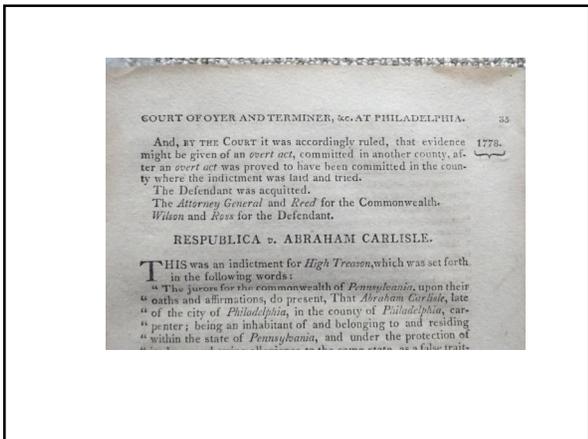
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The most important person in the courtroom is the loser.

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The justice sat back in his chair. "Your impassioned representations to the court are quite impressive," he said. "The court will not entertain the application, will not recognize a chimpanzee as a human or as a person ... who can seek a writ of habeas corpus under Article 70. I will be available as the judge for any other lawsuit to right any wrongs that are done to this chimpanzee, because I understand what you're saying. You make a very strong argument. However, I do not agree with the argument only insofar as Article 70 applies to chimpanzees. Good luck with your venture. I'm sorry I can't sign the order, but I hope you continue. As an animal lover, I appreciate your work."

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Demonstrate neutrality  
in posing questions of law  
and in weighing  
evidence.

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The start for press and public:



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...became this:



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The flip test  
can correct for  
unconscious bias.

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Not just a mental exercise,  
but an exercise in decisional  
integrity:

Switch male and female,  
Black and white,  
Belief / religion A and belief / religion B

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“The spirit of liberty  
is the spirit  
which is not too sure  
that it is right.”

• Judge Learned Hand

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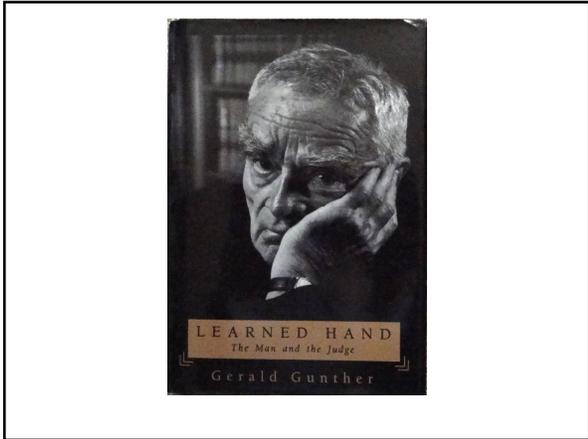
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• "...The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias..."

Judge Learned Hand, May 21, 1944, in Central Park

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KELO  
v.  
CITY OF NEW LONDON,  
CONNECTICUT  
545 U.S. 469, 125 S.Ct. 2655  
(2005)

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### The first paragraph

A positive tone

...development plan ... projected to create...to increase...to revitalize...the city's development agent has purchased property from willing sellers ...

versus a negative tone

...proposes ... to acquire the remainder...from unwilling owners in exchange for just compensation...

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### Succeeding paragraphs

"a distressed municipality"... target[ed] for economic revitalization ... catalyst to the area's rejuvenation ... approval ... planning ... series of neighborhood meetings to educate the public ... build momentum ... make the City more attractive ... successfully negotiated purchase of most of the real estate ... but its negotiations with petitioners failed...

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### Petitioners' stories, buried until later in the ruling:

Petitioner Suzette Kelo ... has made extensive improvements to her house, which she prizes for its water view. Petitioner Wilhelmina Dery was born in her Fort Trumbull house in 1918 and has lived there her entire life. ... There is no allegation that any of these properties is blighted or otherwise in poor condition ...

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### Other buried points:

Explanation of

- the differing roles of legislative, executive, and judicial branches of government
- the need for judicial deference to other bodies

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### Consider an alternative approach:

“This case presents a serious conflict, one between private citizens as petitioners, and the City of New London. The City seeks to take petitioners’ properties by eminent domain. The 9 petitioners own 15 properties. [One pet’r, 1918 ... none blighted ...] They were condemned only because they were in the City’s proposed development area. ...

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### Identify key questions:

... Simply put, the question for this Court is whether the City may take the property of these petitioners... In order to answer that question, the Court must ask whether the decision to take property satisfies the “public use” requirement of the Fifth Amendment...

In this inquiry, courts are required to defer to state legislatures...the amount and character of land to be taken rests in the discretion of the legislative branch. ...”

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AMALGAMATED TRANSIT  
UNION  
v.  
STATE OF WASHINGTON  
2000 WL 276126  
(Wash. Super.Ct., 3/14/2000)

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The surrounding circumstances:

- Citizen-sponsored initiative
- Won by wide margin of the popular vote
- Substantial cut to a hated tax and limitation on all future tax / fee increases
- Judicial election year

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The approach:

- Acknowledge the popular vote
- Government of laws and not of men
- Rulings made by reference to law and not upon personal whim; in this case, the State Constitution is the law
- Examples for left and right

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**Use of recognizable historical references:**

“No taxation without representation!  
Echoes of that revolutionary spirit are found in the passage of Initiative 695.”

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**Constitutional Principles:**

- In requiring a vote before any governmental charge could be modified, Initiative 695 would have functioned as a modification of the state's constitutional requirements on referenda, but had not been passed in the manner required for constitutional amendment
- The Initiative violated the Single Subject rule
- Court function is limited: it may not rewrite a law in order to make it constitutional

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**Making the decision accessible to the general public:**

A great majority of the voters were about to see their policy preference struck down. Therefore:

- Once questions of law had been analyzed and decision had been reached, wrote straight through without legal citations or quotes. Inserted them only at the end.
- Wrote not in legalese but in language used in speaking to neighbors
- Placed opinion on judicial website

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What does this all add up to?

“I have changed my mind, Judge. I still disagree with you, but I think you were doing the best you could.”

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**Additional cases of interest:**

- Ruthelle Frank, et al. v. Scott Walker, et al.; League of United Latin American Citizens (LULAC) of Wisconsin, et al. v. Judge David Deininger, et al., \_\_\_\_ F.Supp.2d \_\_\_\_ (EDWis., April 29, 2014), 2014 WL 1775432; *see also*, 2014 WL 3939979 for August, 2014 ruling.
- Rene Romo, et al. v. Ken Detzner and Pam Bondi; The League of Women Voters of Florida, et al. v. Ken Detzner, et al., \_\_\_\_ S. 2d? \_\_\_\_, (Second Judicial Circuit, Leon County, Florida, July 10, 2014); *see also*, 2014 WL 4261829 and 4261840 for August, 2014 rulings.

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