



The Resource Page



NEW BOOKS

GREG ROBINSON, *BY ORDER OF THE PRESIDENT: FDR AND THE INTERNMENT OF JAPANESE AMERICANS*. Harvard Univ. Press, 2001 (\$27.95). 310 pp.

Canadian history professor Greg Robinson has pieced together from hundreds of sources the events and considerations that led to President Franklin D. Roosevelt's 1942 order for the internment of Japanese-Americans. Although the timing was a complete coincidence, its publication after the events of September 11 provides an opportunity to move back in time to a similar situation to see how events and policies unfolded.

As Judge Procter Hug noted in his speech at the American Judges Association annual educational conference in Reno in October (see pages 5-6 of this issue), the internment of Japanese-Americans has been soundly criticized in later years, both in scholarly discussions and in court opinions. What Professor Robinson adds to the discussion is a straightforward presentation, in Watergate terms, of what President Roosevelt knew and when he knew it. Robinson concludes that Roosevelt failed to recognize and transcend the prejudice that infused the movement to intern Japanese-Americans and that he "bears a special measure of guilt" for never projecting any real sympathy or consideration for these people.



ARTICLES ON JUDICIAL ETHICS

David McGowan, *Judicial Writing and the Ethics of the Judicial Office*, 14 *Geo. J. Legal Ethics* 509 (2001).

University of Minnesota law professor David McGowan has provided an

interesting commentary on interrelationships between judicial writing, the role of the judge in our legal system, and judicial ethics. He proposes—and discusses potential objections to—four rules:

1. Judges should speak candidly and speak first to the parties and their dispute.
2. Judges should write their own published opinions. They should not have law clerks or anyone else do the writing for them.
3. A published opinion should discuss the resolution of an actual dispute and try to use the dispute to develop the law in a way useful to society and in particular to those whose situation is similar to that of the parties. Opinions that do not should not be published.
4. An opinion should not be published to make a point of general political content, nor should an otherwise appropriate opinion make such a point.

Of at least equal interest, Professor McGowan applies these rules to a fascinating exchange from the published opinions of the Ninth Circuit in a death penalty case in which various internal court memoranda and procedures became an issue both before that court and before the United States Supreme Court. Any judge who regularly writes opinions will find this article of interest.

Steven Lubet, *Bullying from the Bench*, 2 *Green Bag 2d* 11 (2001).

[Available on the web at www.greenbag.org.]

Even if you've neither heard of United States District Judge Samuel B. Kent, who sits in Galveston, Texas, nor read one of his opinions chastising incompetent attorneys, you should read Professor Lubet's pithy chastisement of Judge Kent. Many of our readers probably have seen e-mails exchanged among judges quoting from some of

Kent's opinions, such as one accusing the attorneys of having "obviously entered into a secret pact—complete with hats, handshakes, and cryptic words—to draft their pleadings entirely in crayon on the back sides of gravy-stained paper place mats, in the hope that the Court would be so charmed by their child-like efforts that their utter dearth of legal authorities in their briefing would go unnoticed."

Professor Lubet finds Judge Kent to be an exemplar of a more general problem of abuse of power by judges. Lubet argues that opinions of this type exploit the inherent inequality of power between judges and lawyers; that they further reduce civility in the courts; and that they unnecessarily lead clients to question whether justice was the aim of the proceeding. In addition, he notes that the zealous advocacy upon which the legal system depends may be tempered by a desire to reduce the risk of public humiliation from a judge who regularly engages in such conduct.

Steven Lubet, *Stupid Judge Tricks*, 41 *S. Tex. L. Rev.* 1301 (2000).

All judges need an occasional review of the applicable ethics rules. Reading this article by Professor Lubet won't cover all of the rules, but it is an interesting reminder of situations that have led to significant sanctions against judges. The article arose from Lubet's practice of keeping a folder next to his desk labeled, "Stupid Judge Tricks." He has regularly put case reports and newspaper stories into it for use in updating the treatise on judicial ethics he coauthored. First, he defines "stupid judge tricks" as those violations "that cause you to scratch your head in wonderment and exclaim, 'What could that judge have possibly been thinking?'" Then, he covers a variety of examples and tries to draw conclusions about the causes of such behavior, as well as how it can be prevented.