

Gormley Recounts Turmoil of Watergate

By Jim Nixon

JUST OVER 40 YEARS AGO, PRESIDENT Richard Nixon fired Watergate Special Prosecutor Archibald Cox in what became known as the Saturday Night Massacre. This action unleashed a firestorm of public protest that eventually culminated in Nixon's resignation from office.

Dean Ken Gormley of the Duquesne University School of Law addressed the audience at this year's Bench-Bar on Archibald Cox's life and role as a special prosecutor in the Watergate scandal. In 1997, Gormley published "Archibald Cox: Conscience of a Nation," the authorized biography of Cox, who is considered to be one of the leading lawyers and public servants of the 20th Century. Gormley's history with Cox dates back to his days as a student at Harvard Law, where Cox instructed him as a professor of Constitutional Law. Gormley spent seven years in the 1990s researching for this book.

Gormley described the Watergate scandal as the greatest constitutional crisis in the history of the United States. After the Watergate scandal became public, Elliot Richardson, Richard Nixon's Attorney General, appointed Cox as a special



Photo by Jeff Lyons

Duquesne University School of Law Dean Ken Gormley addresses Bar members at the opening luncheon of the 2013 Bench-Bar & Annual Conference.

prosecutor to investigate Nixon. Gormley candidly noted that Cox was selected only after seven others declined the opportunity to serve. Gormley described Cox as a genuine man with unmatched integrity.

Following a brief video presentation on the Watergate scandal, Gormley described the period from when Cox assumed his role as special prosecutor through his firing during the Saturday Night Massacre. Following his overwhelming landslide victory in 1972, President Nixon was feeling confident and presidential, despite the looming issue of Watergate. Nixon had just sent the military into the Middle East to engage in the Yom Kippur War and recently been rid of Spiro Agnew, his vice president, who resigned in disgrace. Archibald Cox, like the rest of the American public, learned that the Nixon White House had a secret taping system. Those tapes could have contained information regarding whether Nixon ordered the break-in of a Democratic Party office dur-

ing the 1972 election, or the subsequent "cover-up" of the break-in, which was the primary issue of the Watergate scandal. Citing executive privilege and national security concerns, Nixon refused Cox's request for the tapes. Richardson and Cox tried hard to reach a deal concerning the tapes, but to no avail, as Cox would not cave to Nixon's demands regarding who would listen to and control the tapes.

Cox issued a subpoena for certain specific tapes, which became a constitutional mini-crisis in and of itself. Many within the Nixon White House suggested burning the tapes, but H.R. Haldeman, Nixon's former chief-of-staff, urged Nixon to retain them in order to prove their innocence, if need be. The U.S. Court of Appeals issued an order requiring the administration to release the tapes to Cox and gave Nixon five days to appeal the issue to the U.S. Supreme Court. Gormley noted that, three hours after the order was

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3 City Judges Offer Pre-Trial Practice Tips

By Annie M. Kelley

IT IS LIKELY THAT YOU HAVE PONDERED over what a specific judge or program is looking for in pre-trial filings, or particular pet peeves to avoid. Three Court of Common Pleas judges provided such unique insight into the best practices in pre-trial litigation and their personal preferences. Judge Ellen H. Ceisler of the Motions and Statutory Appeals Program; Judge Ramy I. Djerassi of the Complex Litigation Center; and Judge Idee C. Fox, Team Leader of Arbitration Appeals and Non Jury Program; gave their do's, don'ts and preferences during a CLE program at the Bench-Bar & Annual Conference.

The judges began by explaining their judicial assignments, and noting that each was offering differing preferences, depending on their assignment. Ranging from venue motions, to discovery, to preliminary objections, through motions in limine and post-trial motions, together, the judges covered a broad range.

Judge Ceisler explained that because each motion she sees has a limited time in court, she spends much time preparing for a hearing the week before. This preparation takes a lot of time, so if the parties think that the case may settle, it is especially important to let chambers know. When coming into court for a motion hearing, it is helpful to bring full files and copies of proposed orders you would

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Funding Remains Courts' Top Issue

Gormley

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By Jeff Lyons

THE STATE JUDICIARY IS BEING ASKED TO deal with flat funding again this year, Pennsylvania Supreme Court Chief Justice Ronald D. Castille said during the closing State of the Courts program at the Bench-Bar & Annual Conference on Oct. 5.

"A lot of times they don't realize we're an equal branch of government," Chief Justice Castille said. He said the judiciary's portion of the state budget is one-half of one percent of the entire state budget.

"We are working to improve the delivery of justice. Right now there are 45 judicial seats that are unfilled at our request, because that's the way we can save money. Eighty-five percent of our budget goes to benefits and salaries. We've saved \$10 million over the last three years by not filling those seats," he said. Senior judges are helping with the extra work, he added.

"We have difficulty getting our message across to the legislature because they frankly don't understand what we do. If we decide a case that's not favorable to them they want to hold our foot to the fire politically," he said.

"Over the last six years, the state budget appropriation for us was \$1.8 billion, while the courts collected \$2.8 billion in fines, fees, costs and restitution. Last year we collected \$469 million to give to the state," the chief justice said.

Superior Court President Judge John T. Bender said his court is down two judges due to the appointment of Judge Correale Stevens to the Supreme Court and losing a senior judge. Each judge traditionally handles about 250 cases a year but that number is now closer to 300. "You can't do the same work with fewer judges and expect



State of the Courts panelists included (from left) Pennsylvania Supreme Court Chief Justice Ronald D. Castille, Municipal Court President Judge Marsha H. Neifield, Superior Court President Judge John T. Bender, Common Pleas Court President Judge Pamela Pryor Dembe and Commonwealth Court President Judge Dan Pellegrini.

to be current," he said.

Superior Court handles appeals of criminal cases and President Judge Bender said there are far too many people incarcerated in Pennsylvania and the cost to taxpayers is "astronomical." "And to be more specific, we have far too many African-Americans incarcerated in Pennsylvania and that's a crime."

Commonwealth Court President Judge Dan Pellegrini said the court's filings for the last several years have been static. "And that's remarkable, considering we are basically a civil court." He attributed that to a decline in appeals in workers' compensation cases. He said there are a lot of tax cases and forfeiture cases on the docket and election law cases "continue to occupy more and more of our time." Electronic filing begins in Commonwealth Court in January and although optional at the beginning, President Judge Pellegrini hopes it becomes mandatory in the future.

Common Pleas Court President Judge Pamela Pryor Dembe said "the courts in

Philadelphia are still open, while courts across the country are closing due to financial issues. We're holding our own."

She said the transition to electronic filing in the Criminal Division at the beginning of the year went very smoothly and all criminal records have been electronically scanned into the system.

She said the Mortgage Foreclosure Diversion Program has done wonderful things and has gotten different areas of the bar to work together. "The benefits of that are going to extend into the future."

Municipal Court President Judge Marsha H. Neifield said the court is working on the transition of Traffic Court into a division of Municipal Court. She said Judge Gary Glazer is the administrative judge of the Traffic Division and the changes put into place are coming along slowly. "We want to make sure everybody who goes down there has an even playing field with proper and fair access to justice. We're making changes slowly to make sure we're not making any mistakes along the way."

Pre-Trial Tips

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like the judge to sign. It is also helpful to bring actual copies of case law or statutes that are especially important. Judge Djerassi agreed, and noted that judges will often take a recess to look a particularly controlling case over, to be able to give the best decision from the bench.

Each judge stressed the importance of being sensitive to ex parte communications, and cautioned to be sure to copy opposing counsel when emailing or faxing letters to the judge. As for the use of faxes, Judge Fox noted that if a document is more than five pages, it is best to email instead.

Each judge emphasized a dislike of ask-

ing for continuances the day of a hearing, and rather, if necessary, a motion for extraordinary relief should be filed. In preparation for a hearing, especially on a motion in limine, it is best to provide a one-page summary to explain the precise issue, which can be included in a memorandum right before the factual averments. This helps the judge, who sometimes is getting the motion the same day as the hearing, to zone in on the issue and what rule you are trying to apply. The judges all noted that they often look at the memorandum of law before the motion itself, so summarizing the issues and facts quickly is important.

If planning to file a reply to a response, it is best to let chambers know in advance. While the judge won't likely give a 20-day response period, the motion can be held

for a short period of time while waiting for a reply. If a motion is filed uncontested, it is assigned to chambers right away, and is aimed for a two- to four-day turnaround. If contested, it is more of a two-week turnaround period. If you don't receive an answer or order within that time frame, you can contact chambers, especially if there will be an impact on other case management deadlines.

Lastly, always be on time, and always be respectful and professional with your interactions with chambers, including the judge's judicial staff.

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issued, Nixon appointed Gerald R. Ford as his vice president. Gormley opined that this was a strategic move on Nixon's part, as Ford was the most respected member of the House of Representatives, where impeachment would have to originate if Nixon defied the order and kept the tapes. Ultimately, before the case went to the Supreme Court, Nixon fired Cox as special prosecutor. This move served only to escalate the crisis that led to Nixon's demise.

Gormley recalled that Watergate made a permanent mark on the American political scene, with each new scandal that pops up assuredly being followed by "gate." Gormley also pointed out the positive developments of Watergate, including the Ethics of Government Act, and the institution of professional responsibility classes and ethics CLE requirements for attorneys. Also, the Supreme Court case which led to Nixon having to turn the tapes over, *U.S. v. Nixon*, is one of the most respected opinions of the Supreme Court, as it assured the public that not even the president is above the law. Gormley contrasted Cox's role as special prosecutor with that of Ken Starr, who Gormley felt acted without enough restraint and inflamed partisan rhetoric by aggressively investigating President Bill Clinton in the late 1990s.

Gormley shared that Cox was admittedly intimidated by taking on the president, but felt duty-bound to complete the investigation to the best of his ability. Apparently, Cox exercised great restraint in refusing to expand the scope of his investigation after learning of possible abuses of the Secret Service and public monies by Nixon. Gormley concluded his remarks by praising the work and life of Cox and hoping that bar associations like ours continue to inspire a new generation of public servants who are willing to risk self-advancement for the common good.

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