

## Sparks May Fly as Lawyers Pick Best, Worst U.S. Federal Judges

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I'm going to pass on an old journalistic trick: If you want a lot of readers and controversy, select the best and worst of anything and write about both extremes.

The current issue of *American Lawyer* magazine has gone out on what some might consider the ultimate limb in the best/worst sweepstakes for the legal field. It has selected, circuit by circuit, the best and worst federal judges in the country.

The results will probably surprise no one who really pays any attention to what goes on in federal courthouses around the country. There are hundreds of stories about judges swapped among attorneys in their offices and lawyers' lounges.

What is different is that *American Lawyer*—a 23,500-circulation monthly publication—has tried to compile some of those stories to support its conclusions about topics as unmeasurable as a judge's temperament.

The winners in the Washington, D.C. area: Harold H. Greene, best in the D.C. Circuit, with Gerhard A. Gesell a close second; and Robert Merhige Jr., of Richmond, best in the Fourth Circuit (which covers Maryland and Virginia), followed by Alexander Harvey II of Maryland.

The losers: June Green, deemed by the magazine as the worst federal trial judge in the District, edging out Charles R. Richey for that dubious distinction here; and Oren Lewis of Virginia, who edged out fellow Virginia jurist D. Dortch Warriner for the title of worst federal trial judge in the Fourth Circuit.

The staff members who worked on the article in this month's *American Lawyer* reportedly had a difficult time deciding between Greene and Gesell as the best judge here, but

Greene's shortage of ego apparently was the final decisive factor that slipped him just a notch above Gesell.

"While down-to-earth judges William Bryant and Thomas Flannery have their partisans, Harold Greene is probably the best district judge in Washington, D.C., with Gerhard Gesell a close second," according to the magazine. It noted that attorneys sometimes call Greene "one of the best federal judges in the country" and praise his courtroom conduct and his scholarship.

Gesell may be as incisive, but his "arrogance is offensive to many attorneys," according to the magazine.

"Perhaps if Greene doesn't reach conclusions as quickly as Gesell, it's not because he lacks Gesell's mental strength but because he's more willing to consider patiently the arguments of the lawyers who appear before him and to consider the possibility he might learn something. Not a bad quality in a federal judge," author Kevin Fogarty wrote.

The article noted that before Greene's arrival on the federal bench two years ago, Gesell—widely regarded as the most agile and

powerful mind on the D.C. bench—clearly would have been in first place. But the article notes as well that there always have been mixed feelings about Gesell's temperament—"a suspicion that he is too sure of his own abilities, that he is, perhaps, overbearing."

Merhige won his slot as the best in the Fourth Circuit because of his "evenhandedness, decorum and unflinching courtesy. Merhige's scholarship is solid, but his reputation rests to a larger extent on a temperament perfectly suited to the job." As for Maryland's Harvey, "his intellect

and ability seem so well respected among Maryland lawyers of all political stripes that he must be doing something right."

The magazine's analysis of June Green, who has been a judge here for 12 years, is not kind. It speaks of her perceived "intellectual deficiency" and makes it clear that "most lawyers still put her at the bottom."

"Green's critics complain that she is slow to assimilate facts and recognize key issues. Occasionally she will stray to an irrelevant point," the

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magazine states. The magazine also refers to her by various nicknames they said were mentioned by attorneys—obviously unnamed. (American Lawyer editor Steven Brill says the publication found a lot of attorneys willing to be named when praising judges but refused to be when criticizing them, which comes as no surprise to any reporter who has talked to a lawyer.)

"Green's faults are those of mediocrity, not viciousness or megalomania," the magazine concluded.

Richey is "somewhat brighter" but has a serious flaw, the magazine said. He is accused of being excessively image-conscious. "Lawyers say they know of no judge who spends more time in court talking up his own accomplishments" and seeking praise from attorneys before him, the magazine said.

**R**ichey, who has said he wants to be the best federal judge on the bench, "might come closer to his goal" if he didn't try so hard, the magazine said.

Oren Lewis might be intelligent, the magazine said, but it adds:

"If judicial temperament, the appearance of impartial justice or a sense among disappointed litigants that at least they received a fair trial count for anything, Lewis must go to the bottom of the list."

As for Warriner, he is "neither lazy nor—ordinarily—stupid, and his temperament (now, fortunately, reported to be mellowing) is not enough to qualify him for last place."

There are those who may say such a survey is useless. But there are others who might say it's about time some of the private stories about the capabilities of the lifetime-tenured federal judges are made public.