

A HISTORY OF THE NLRB JUDGES DIVISION

With Special Emphasis on the Early Years



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NATIONAL LABOR RELATIONS BOARD

August 1, 2004

COVER PICTURE

The cover picture is a copy of the one taken of attendees at the May 1942 Trial Examiners Conference in Annapolis, Maryland. This photograph is reproduced, and the attendees are discussed, beginning at page 58. As there explained, Phoebe Smith Ruckle, of Charleston, West Virginia, graciously supplied a copy for this paper. Her grandfather, Judge Edward Grandison Smith, is one of the judges in the picture. Credit for the inspired thought of placing a copy of the photograph on the cover goes to David B. Parker, the NLRB's Deputy Executive Secretary.

DEDICATION

In grateful memory of the early-day judges of the National Labor Relations Board. They labored when the sun was high, the winds hot, and the honors few. The rest of us have followed in relative comfort, security, and respect.

PUBLICATION DATE

In this year of 2004, the August 1 publication date of this book is chosen to mark the 66th anniversary of the decision by the Board to switch, effective August 1, 1938, from a system of hiring most of its judges ("Trial Examiners," then) as day laborers ("per diem" judges), to a system of employing us as regular-staff salaried employees of the Federal Government. This book was printed by the NLRB in October 2004.

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NOTE: Judge Linton undertook to write this book as a retirement project. He retired on November 2, 2001, after serving over 21 years as an NLRB judge.

FOREWORD

You can almost hear Tom Kessel's gruff bark and smell Tom Ricci's lit cigar emanating from the pages of Judge Linton's magnificent historical piece. He captures the context of the early years of the Board in his own inimitable style and the comprehensive roster of all people who ever served as regular-staff NLRB trial examiners or judges is alone a justification for his efforts. The evolution of the judge's position at the NLRB is well documented, but some things do not change. Ironically, as Judge Linton mentions, the old-time practice of using part-time, per-diem trial examiners, who apparently worked out of their homes, is echoed, in some respects, by today's computer-age use of full-time, regular work-at-home judges.

Hopefully, no present-day judges will be hanged in effigy, as was Judge Edward Grandison Smith during the Weirton Steel trial. But they still have their share of contentious cases and have to sign and stand by their decisions, sometimes by announcing them from the bench in the presence of the losing party. Anyone who has presided over or participated in Board hearings will appreciate Judge Linton's paean to those triers of fact who have contributed mightily to justice in the workplace during the almost 70 years of Board history.

August 1, 2004
Washington, DC

Robert A. Giannasi
Chief Administrative Law Judge
National Labor Relations Board

Table of Contents

Foreword		Annapolis Conference of May	
Table of Contents		1942	57
Acknowledgements and Goals		Identification help from Agency's	
Photograph Credits		1938 Conference Photo	62
 		Table of Comparison Photo-	
C H A P T E R 1		Images	69
Reflections	1	Nonjudge Attendees in May 1942	
 		photo	70
C H A P T E R 2		Methodology	72
Introduction	15	Reconstructed Roster for June	
Purpose	15	1937	73
Sources	15	Reconstructed Roster for June	
Per Diem System Initially		1938	77
Significant	19	Reconstructed Roster for August 1,	
The Chief Judges	21	1938	80
Officials and Other Early-Day		Reconstructed Roster for February	
Judges	28	1940	82
LIFE Magazine, <i>Weirton Steel</i>		Reconstructed Roster for July	
and Judge Edward Grandison		1940	84
Smith	32	Reconstructed Roster for May	
Presiding Over Both "C" and "R"		1942	85
Cases	37	Before Covering Rules	87
The Judges' Decisions	39	 	
Judges Who Have Been Board		C H A P T E R 5	
Members or General Counsels	40	Some Changes After 1947	93
 		Introduction	93
C H A P T E R 3		Applying Symbols and Adjusting	
Office Locations and Photos	47	EOD Dates	94
 		The List of Separations (LOS)	96
C H A P T E R 4		Reconstructed Roster for June 30,	
Staffing Numbers, Conferences,		1950	100
and Rosters	57	The Division Roster of January 10,	
		1957	102

The 1960s—Women and Minorities		Honorable Mention	171
Join the Corps of Judges	104		
The Division Roster of March 7,		C H A P T E R 7	
1961	106	Retirements	175
The Division Roster of May 1,		C H A P T E R 8	
1965	109	Deaths	179
The Division Roster of June 30,		C H A P T E R 9	
1970	116	The ABC List—All NLRB	
The Division Roster of March		Judges, Past to Present	181
1981	120	C H A P T E R 10	
The Division Roster of January 27,		Symbol—Marked Names	
1983	124	Extracted From ABC List	191
Virginia Beach Conference of		C H A P T E R 11	
September 1985	125	The EOD List—All Judges	
Ellenville Conference of May		by Office	195
1990	128	C H A P T E R 12	
The Division Roster of January		Unified EOD List of All Judges	205
1992	131	C H A P T E R 13	
The Division Roster of March		Concluding Note	215
1999	133		
Reno Conference of May 2000	135		
The Division Roster of September			
2001	138		
At the Third Millennium	140		
The Division Roster of March			
2004	141		
C H A P T E R 6			
Preface To The ABC List	143		
Regular-Staff Judges	143		
List Methodology	144		
The Deeming Process	145		
Some Mysteries Solved	152		
“Browned” Judges	155		
One Presided First; The Other			
Served the Longest	158		
Temporary Judges	159		
Turnover in the Early Years	160		

ACKNOWLEDGEMENTS and GOALS

This personal project could not have begun without the courtesy of Chief Judge Robert Giannasi who, in January 2002, sent me copies of the available Division rosters. (A couple of these rosters, from many years ago, were called "Seniority List." In this paper, they all are simply called "rosters.") Thereafter, Judge Giannasi drafted a list of the Chief Judges. For the most part, the list that he drafted is the one which appears in this paper. Still later Judge Giannasi sent me a copy of the 1945 Trial Examiner's Manual (itself an historical document). Along the way he has looked at most every step of the paper-in-progress. And when a full draft was finally available, he did a proofreading "sweep" through the full draft. Nearly all his many suggestions and ideas are incorporated into this paper, even if only one or two are mentioned specifically. I am most grateful to him for his courtesies and assistance. I hasten to emphasize that this paper is not an official (or even authorized) publication of the Board or its Division of Judges, and I do not suggest that the courtesies extended to me by Judge Giannasi or others in any way shows that they endorse or approve of the format or statements reflected in this paper.

(Respecting the "1945" Trial Examiner's Manual, Judge Giannasi cautions that the "1945" appellation is his terminology based on the fact that he found it, marked "Draft," in a file with several 1945 memos attached. It may have been "a work in progress" dating back before 1942. The dates of the memos, plus 1945 being the last year before the Administrative Procedure Act was enacted, persuaded Judge Giannasi to dub the document the "1945" Trial Examiners Manual.)

On my first draft (2-4-2002) of the List of Judges, there were many gaps for the EOD (entered on duty) dates and incomplete names. (Particularly during the last 40 years or so, the Agency, by press releases, has announced the appointments of judges to the Division. Unfortunately, I did not retain copies of all the press releases that I received.) Only by the invaluable interest and search of records by the now-retired Division Staff Assistant Anna Marie Wehausen (ably assisted by Carletta Davidson), did most of those gaps (those principally after about 1961) get filled with EOD dates and additional names. I am most grateful to them. Also, as a precautionary word in their defense, note that I am the one responsible for using, wisely or not, the "deemed" (approximated) EOD date option, described later, that is applied at times in the List of Judges. Ms. Wehausen's successor, Administrative Specialist Malissa Lambert, graciously has carried forward with the same pattern of courteous helpfulness.

For example, Ms. Lambert has been a great help in sending me, on temporary loan from Chief Judge Robert Giannasi, the Division's copy of the panoramic group photo of attendees at the Agency's 1938 conference, plus copies of the group photos of the Judges 1985 and 1990 training conferences at, respectively, Virginia Beach, Virginia and Ellenville, New York. Several judges (including Judges Giannasi, William Cates, William Schmidt, Martin Linsky, and Bruce Rosenstein, plus key support and assistance from Eleanor ("Ellie") Harvey in the General Counsel's Office of Employee Development) willingly helped in the identification process needed for some of the judges in the 1985 and 1990 group photographs, as well as for some of the judges in the 2000 group photograph for the Judges conference at Reno, Nevada.

It is Ellie Harvey, an employee development specialist with the General Counsel's Office of Employee Development, who coordinated the arrangements with the Division, the program speakers, and the outside facilities for the Division's training conferences of 1985 (Virginia Beach, VA), 1990 (Ellenville, NY), and 2000 (Reno, NV). Ellie graciously searched in her files, not only, as noted above, to help in the identification process mentioned above, but also to assist in finding, to the extent possible, the photographers. Her help is gratefully appreciated.

In light of the important assistance of the four ladies, it is fitting that their photo images be included in the paper; and here they are:



Anna Marie
Wehausen



Carletta
Davidson



Malissa
Lambert



Ellie Harvey

Former Chief Judge David S. Davidson (now retired) contributed very helpful clarifications for the List of Judges, as did former Associate Chief Judge Hutton S. Brandon (Atlanta; now retired). Judge William Pannier (a former Deputy Chief Judge at the San Francisco office; now retired) gave helpful information concerning the approximate year that the San Francisco office opened. I thank them for their time and help. Before leaving this group of names, I need to emphasize that Judge Davidson has helped on several occasions. More than once Judge Giannasi has observed that Judge Davidson has “the best institutional memory of the Division.” Judge Davidson has been both patient and generous in sharing that institutional memory, and his assistance has been invaluable.

I am very grateful to Deputy General Counsel John Higgins (he of most every position at the NLRB) for alerting me to the existence of the LIFE magazine article about Weirton Steel Company. One section of the paper is devoted mostly to the Weirton Steel case. John Higgins also located and graciously faxed to me a copy of the Agency’s November 8, 1937 press release announcing the appointment of George O. Pratt as the Chief Trial Examiner, a matter I cover later in the section on the chief judges.

The Agency has an internal newsletter — *All Aboard* — that has a nine-member editorial board (including John Higgins and Enid Weber) and whose editor is Kenneth E. Nero, chief of the Agency’s library section. Beginning in its May 2003 issue, *All Aboard* began a series “based upon excerpts from” (a draft of) this paper, plus some added “historical references.” Besides her excellent work in organizing and presenting (under severe space limitations) the abbreviated excerpts from a draft of this paper, Associate Executive Secretary Enid W. Weber’s addition of the “historical references” (covering the Regional Offices and other divisions of the Agency besides that of the Judges) gave the series a professional quality.

Surely I must acknowledge the place where I did most of my research, the law library at South Texas College of Law, in Houston, Texas. And I say “Many Thanks” not only to that law school, but also to the gracious reference librarian, there, Jessica Alexander. Toward the close of my work, and when she learned of the noncommercial and historical nature of this paper, Ms. Alexander generously gave of her time and talent on WestLaw, and the Google

search engine, either to confirm my research on a name or to fill a gap, and then gave me the printouts. She is a gracious, kind, friendly, and helpful person, and a great librarian.



Jessica Alexander — Reference Librarian,
South Texas College of Law
Houston, Texas

And I must not fail to give thanks to Division Office Managers Susan George, at San Francisco, and Willene Heflin, at Atlanta, for their occasional help in checking files for answers to questions I had regarding the arrival date of a judge or two.

This final acknowledgment is for my wife, Marcia, who wondered whether I would ever complete this “retirement” project, but who nevertheless maintained our home and tolerated my inattention to all the weeds sprouting in our yard and flowerbeds. I am blessed. May the Lord bless her for her charity, patience, and love.

The List of Judges is off to a good start. My goals, however, have been limited. My intention has been to research in the Board's bound decisions only far enough to find the data needed to deem original EOD dates not otherwise available for most of the 27 names on what I call the LOS (List of Separations, July 1, 1949, through November 15, 1961). Many of these names do not show up either in the early years or on the first available roster of judges, that roster being dated January 10, 1957. My limited goals included reaching trials occurring about the time of the second available judges roster, this second one dated March 7, 1961. These items, plus finding the names of the regular-staff judges who presided during the early years, but who left before either the LOS or the roster of January 10, 1957, formed my primary goals.

Actually, I have extended beyond 1961. In the bound volumes, I turned the pages through NLRB Volume 271. I then moved to the Board's website, where the reported Board decisions begin with Volume 272, and continued there by clicking on each unfair labor practice case, proceeding through Volume 315. (The latter covers Board decisions extending into January 1995.) I am fairly confident that virtually all of the regular-staff judges not named on the rosters, from the early years through the time of the January 1992 Division roster, have been found. To that extent, I have exceeded my limited goals.

Perhaps the balance of the 1990s, from January 1992 up to the Division's alphabetical roster of March 1999 (rosters after that are both available and reasonably frequent), can be inspected before the first annual supplement for this paper issues, it is hoped, on August 1, 2005. This inspection of the decisions of the Board in the bound volumes for those years (meaning NLRB Volumes 316 through about Volume 332, the latter covering Board decisions into January 2001) would serve to locate the name of any Division Judge who served a relatively short time, perhaps even just a few weeks or months, and who came and left between the January 1992 roster and that of March 1999. Hopefully, the several judges who have been with the Division during the 1990s will be able, from their collective memories, to recall whether the ABC List or EOD List in this paper is missing one or more names of Division Judges. The impression here is that probably no names are missing.

There is room for improvement on the start made by this paper, and hope that names will be added as new judges arrive. Most of all I am grateful that, by the aid and courtesies that were extended, all of us will have this List of Judges as a source for confirming, and remembering, that a particular person served on the Division's regular staff as a trial judge for the National Labor Relations Board.

So now, kick back with a copy of this paper. Put on an old 45 from the 1950s (well, a CD version would not be as scratchy), listen to **The Four Lads** singing that 1955 classic song by Al Stillman and Robert Allen, *Moments To Remember*, and pause at these lines:

When other nights and other days
may find us gone our separate ways,
We will have these moments to remember.

August 1, 2004
Katy, Texas

Richard J. Linton
Administrative Law Judge (retired)
(EOD 7-13-1980; Retired 11-2-2001)
rjlinton@msn.com

P.S.

The book format that you are reading, or the book format on the Agency's website/Surfboard that you are reading over the Internet, is an unplanned, but pleasing, development. Much appreciation is owed to three individuals for the format of what you are viewing. These three are Deputy

Executive Secretary David B. Parker, Barbara L. Smith, Chief, Editorial and Publications Services Section, and Gladys R. Hardy, Senior Editor.

As the paper was approaching completion, Chief Judge Giannasi asked David Parker about the possibility of having the Agency's Print Shop bind the paper and run some copies for distribution on a limited basis. Their discussion has evolved into the format you see. Indeed, it was David Parker's idea that the cover be a reproduction of the picture of the attendees at the May 1942 Trial Examiners Conference in Annapolis, Maryland. Dave Parker asked Editorial to format the paper for presentation in book form, or for posting on the Board's website/Surfboard, and they willingly launched into that tedious project. That which you see is the result of Barbara Smith's and Gladys Hardy's prodigious and graceful efforts. I am very grateful to them.

	<p>Deputy Executive Secretary David B. Parker</p> <p>It was his inspired idea that the front cover be a reproduction of the attendees at the May 1942 Trial Examiners Conference</p>
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PHOTOGRAPH CREDITS

Several photos, including snapshots, appear in the paper. Most are listed in the Table of Contents. When they appear in the paper, the source generally is either acknowledged or implied. Some of the photos have appeared in publications that are identified, such as NLRB publications. A few of the photos deserve mention here.

1. Photo of George O. Pratt page 24

This is the picture of George Pratt as a 21-year old member of the 1925 graduating class of Yale College (Yale University's name at the time). In October 1937, George O. Pratt became the first person appointed to the newly created office of the Chief Trial Examiner of the NLRB.

2. Photo of Judge Ringer, 1938 page 30

This is a 1938 photo of Judge William Ringer emerging from an apparent "bench view" of a lead and zinc mine in Picher, Oklahoma. It is a copy of the photo that appears in *The First Sixty Years, The Story of the National Labor Relations Board, 1935-1995* at 13 (ABA, 1995).

3. Individual Photos of Some DC Judges pages 48-53

4. Photos of Some San Francisco Judges pages 54-55

5. Photo of Atlanta Judges, 1981 page 56

This snapshot was taken with Judge Hutton S. Brandon's camera. For years after the film was first developed, it was feared that the negatives were lost. Credit for their discovery goes to Associate Chief Judge William N. Cates who found them in late April 2003, and graciously supplied copies of the relevant photographs for this paper.

6. Photo of Judges, May 1942 page 58

As with the photo of Judge Ringer, a group photo of the attendees at the May 1942 Trial Examiners' conference held in Annapolis, Maryland, also appears in *The First Sixty Years* at 19. As discussed in the paper, the particular copy of the photo used here was graciously supplied by Phoebe Smith Ruckle of Charleston, West Virginia, a granddaughter of Judge Edward Grandison Smith, one of the attendees.

7. Photo of Attendees at November 15, 1938 Agency Training Conference, Washington, DC pages 64-66

This photo is reproduced at page 28 of the Board's publication, *NLRB, The First 50 Years* (photo number 2 on the page), and can be viewed, in its reduced size, at page 17 (photo number 3) of the Board's commemorative publication, *The First Sixty Years*. To fit into this paper, it is divided into three panels.

8. Photo of Judges, 1985 page 126

Group photo taken at 1985 Judges Conference at Virginia Beach, VA.

9. Photo of Judges, May 1990 page 129

Group photo taken at Judges Conference at Ellenville, NY.

10. Photo of Judges, May 2000 page 136

This photo is of the attendees at the May 2000 Judges Conference held in Reno, Nevada. The photo appears courtesy of the commercial photographer, DeCapua's Photography of Reno, Nevada.