

REGIONAL REPORTS

Texas Judge's Eligibility Questioned

A TEXAS JUDGE who took a leave of absence to spend time with her children is appealing a decision that she was ineligible to run for her position in last fall's election because of that leave and that she should step down.

Lubbock County Court of Law Judge Susan Scolaro ran for her position last November, capturing 84% of the vote. Her rival, Lubbock sole practitioner Robert E. "Bob" Jones II, said that her leave of absence left her 15 days short of the continuous four years of practice required to hold the job.

Judge Scolaro, the mother of three young boys, said that the battle over her job began as an attempt by Mr. Jones to have her removed from the ballot during the election. Mr. Jones filed a complaint with the 7th District Court of Appeals, in Amarillo, which found in Judge Scolaro's favor.

Mr. Jones pursued the issue. Judge Bill McCoy, a district court judge in Ector County, Texas, granted a summary judgment against Judge Scolaro on Feb. 3. Judge Scolaro's attorney, H. Grady Terrill III, of Lubbock's Craig, Terrill & Hale L.L.P., appealed to the 7th District Court of Appeals. On Feb. 23, Judge Scolaro was informed that she is within her rights to continue working as a judge until the case is heard.

The appeal is expected to be heard in the next six to



JOE-DON BUCKNER

Susan Scolaro

eight weeks. In the interim, Judge Scolaro is not presiding over any jury trials and, instead, is arranging jail and court arraignments.

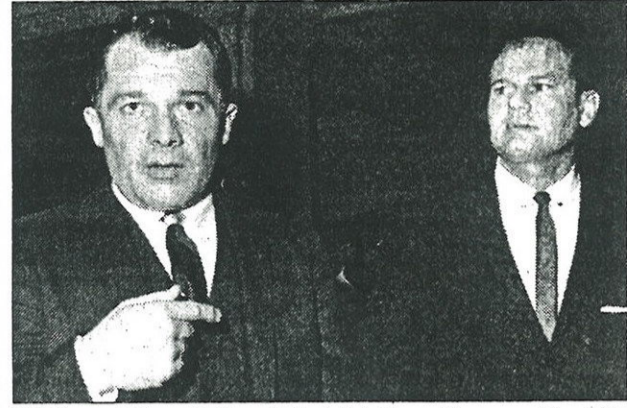
"It doesn't matter if you are 15 days shy or one day shy; if you don't meet the qualifications, you're not qualified," Bob Jones said. "She had taken inactive status and not reactivated her license, which she is required to do in order to practice law."

According to Mr. Jones, the only people who could have challenged Ms. Scolaro's qualifications before the election were the state attorney general or the Lubbock County district attorney. "The attorney gen-

eral refused to challenge her," said Mr. Jones. "The Lubbock County district attorney also refused to take any action." Because the primary had already taken place and no Democrat was fielded to run against Ms. Scolaro, a Republican, the only other potential challenger was a write-in candidate, Mr. Jones, who lost.

"There is no precedent on any of these issues, and there is hardly any case law," said Judge Scolaro. "My sense is that eventually, in the long run, it will go my way, but I don't know how far I'm going to have to travel by foot with a pack on my back to get there."

—CYNTHIA SCANLON



Old Case: F. Lee Bailey, left, with Sam Sheppard in 1966

OHIO

F. Lee Bailey Subpoenaed

CLEVELAND—Prosecutors trying to clear up the 41-year-old case against the late Dr. Sam Sheppard are seeking records from defense attorney F. Lee Bailey. Mr. Bailey was subpoenaed on Feb. 19 for any documents he has about Dr. Sheppard, whom he successfully represented in a 1966 murder retrial. Dr. Sheppard, who was charged with murder for the 1954 beating death of his wife, Marilyn, was found innocent. The case was the basis for the TV series and movie "The Fugitive." Cuyahoga County Prosecutor William D. Mason is seeking Mr. Bailey's records in an effort to defend the county against the Sheppard family's lawsuit, which claims that the doctor was wrongfully imprisoned for 10 years.

OREGON

ADA Suit Calls Tests Biased

PORTLAND—A group of parents sued Oregon's Board of Education on Feb. 22, claiming that new statewide tests for high school students discriminate against those with dyslexia and other learning disabilities. The federal lawsuit claims that Oregon's refusal to grant testing exceptions to the students violates the Americans with Disabilities Act. On Feb. 22, the plaintiffs and their children came out to denounce the tests, which high school sophomores must pass to enroll in advanced classes, or on to the next grade or attend state universities.

Habeas Counsel Not a Right in Ga.

ATLANTA—Jeffrey Ertel's quest for a few good lawyers has been made all the more difficult now that the Georgia Supreme Court has ruled 4-3 that condemned murderers have no constitutional right to have an attorney appointed to represent them during post-conviction death sentence appeals.

As interim director of the Georgia Appellate and Educational Resource Center, Mr. Ertel is charged with finding counsel for death row inmates, and the Feb. 22 ruling gutted his most effective recruiting pitch—that everyone deserves a lawyer.

"The Georgia Supreme Court has just said that they are not concerned whether there's an attorney or not," said Mr. Ertel. Wyoming is the only other state that does not provide counsel. It has one inmate on death row. Georgia has 123.

Exzavious Lee Gibson was one of 17 death row inmates for whom the Resource Center could not find an attorney. In *Gibson v. Turpin*, No. S97R1412, Mr. Gibson asked for a new evidentiary hearing because he was not represented when a lower court denied his request for further review. Christian S. Genetski and Courtland L. Reichman, associates at Atlanta's King & Spalding, handled the case before the state Supreme Court.

Justice Harris Hines wrote the majority opinion. Presiding Justice Norman S. Fletcher, in dissent, pointed to a Mississippi Supreme Court ruling which found that recruiting volunteer lawyers was not constitutionally adequate. Ironically, Georgia Supreme Court Chief Justice Robert Benham sent a letter in 1996 to 80 firms in Georgia seeking volunteers for death row cases.

—MARK BALLA

Compiled from National Law Journal staff, correspondent and Associated Press reports.

ARIZONA

German Killer Executed

FLORENCE—Karl LaGrand, a German citizen, who initially chose the gas chamber in a bid to avoid execution, was put to death by lethal injection on Feb. 24 here for the 1982 slaying of a bank manager. Germany, which does not have the death penalty, had tried to persuade state officials to commute his sentence to life imprisonment, but the U.S. Supreme Court earlier on Feb. 24 overturned a lower court's stay and cleared the way for the execution. A federal appeals court had ruled the use of cyanide gas cruel and unusual punishment, just as Mr. LaGrand had calculated. Mr. LaGrand, 35, asked for the switch to lethal injection a half hour before the execution. Attorney General Janet Napolitano and Governor Jane Hull approved the request.

HAWAII

Marcos Torture Case Settles

HONOLULU—The government of the Philippines and the estate of its former president, the late Ferdinand Marcos, agreed on Feb. 25 to pay \$150 million to settle claims of human rights violations—including torture, summary executions and disappearances—in a class action brought in U.S. district court here by more than 9,500 Filipinos. The deal brings to an end 13 years of litigation in courts around the world. Robert Swift, of Philadelphia's Kohn Swift & Graf, who acted as lead counsel for the plaintiffs, said the ruling sends a message that "a despot who abuses his people will pay."

INDIANA

AGs Take On Sweepstakes

INDIANAPOLIS—State attorneys general are targeting companies that run allegedly fraudulent and misleading sweepstakes. The AGs appear convinced that sweepstakes companies intentionally lead unsuspecting customers down a road to financial destruction—dangling the prospect of winning big bucks and implying that purchases increase the chance of winning. A public hearing on sweepstakes, held on Feb. 24, brought 11 AGs together here for a session that included a cross-examination of three sweepstakes association representatives. Suits here and in Wisconsin are pending against sweepstakes operators American Family Publishers and Publishers Clearing House. Some AGs are interested in banning sweepstakes mailers altogether.

LOUISIANA

Man Gets Hate-Crime Max

GRETNA—A white man convicted of a hate crime for trying to set fire to two cars belonging to black motorists



has been sentenced to the maximum of 20 years in prison. Prosecutors said it was the first trial involving Louisiana's hate crimes law. Frank Palermo, 32, was convicted in December of two counts of committing a hate crime. He was sentenced on Feb. 22 by state District Judge Walter Rothschild. One of the cars that Mr. Palermo tried to set fire to had a small child in it. The cars didn't burn because it was raining at the time of the incident last September. The hate crimes law, passed in 1997, allows judges to add up to five years to a felony sentence if the actions stemmed from hatred on the basis of race, age, gender, sexual orientation, national origin or membership in an organization.

MAINE

Victims' Kin Sue Insurer

PORTLAND—The families of three men who were shot to death in 1997 are trying to get the insurance company that wrote their killer's homeowner's policy to pay compensation. At his trial, Mr. Raia testified that he acted in self-defense when he killed Nicholas Patenaude, Dana Matthews and Kevin Pinette outside his home. North Carolina-based Royal Insurance Co. maintains that it does not have to pay because Sabato Raia intended to cause injury. The case hinges on definitions of what a homeowner's insurance policy must cover.

NEW YORK

Term Reduced Due to HIV

NEW YORK—In a decision made public on Feb. 22, a Brooklyn federal judge ruled that a drug convict's HIV condition may be used as a basis for leniency under the federal sentencing guidelines. Conceding that federal courts have reached "different conclusions" regarding the impact of a defendant's HIV status on sentencing, U.S. District Judge Jack B. Weinstein, of Brooklyn, N.Y., nonetheless said the illness is an "extraordinary physical impairment," which can justify a downward departure. That reasoning formed the basis for the judge's decision to reduce the sentence of a man with HIV who was convicted of a narcotics offense from a range of 37 to 46 months' imprisonment, as called for by the guidelines, to 13 months. *U.S. v. Hammond*, CR-98-51.