



Custodians of the Law: Pitt Law Review hosts “A Federal Courts Symposium in Honor of Professor Arthur Hellman”

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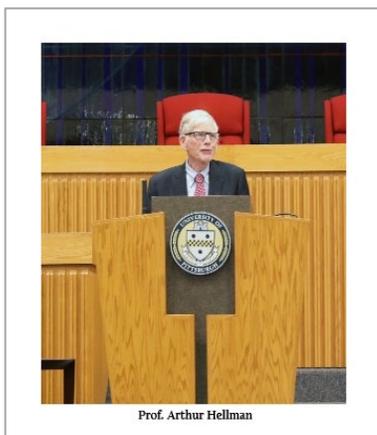


Prof. Arthur Hellman with Pitt Law Review students Daniel Tublin '24, Anna Miller-Little '24, Danny O'Byrne '25, and Prof. Peter Oh

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In the first volume of *Democracy in America*, Tocqueville records the apparent supremacy of jurisprudence in adolescent America: “Scarcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate.” “Tocqueville’s prediction has come full circle,” says Mark Hornak, Chief Judge of the U.S. District Court for the Western District of Pennsylvania. “Few of the most significant decisions and questions our society faces are considered without traveling through, or at least bumping into, the federal courts.”

Despite the nearly two centuries separating Tocqueville’s American sojourn from the University of Pittsburgh Law Review’s “A Federal Courts Symposium in Honor of Professor Arthur Hellman,” held at the University of Pittsburgh School of Law’s Barco Law Building on April 4, the success of the American experiment still hinges on the architecture of its courts—particularly those at the federal level. These structures “are akin to a legal Jenga game,” mused Chief Judge Hornak in his opening remarks to the symposium.



If the federal court system in America relies on precise and subtle architecture, longtime Pitt Law professor and symposium honoree Arthur Hellman is one of the master builders (and watchdogs) who’s kept it from toppling. Hellman’s career has been illustrious. In addition to nearly 50 years of service on the Pitt Law faculty, Hellman drafted legislation relating to federal jurisdiction and judicial ethics, repeatedly testified before the House and Senate Judiciary Committees, and directed the Congressional Commission to explore realignment of the Federal Courts of Appeals (Hruska Commission). He continues to publish groundbreaking scholarship and is often called upon by national news outlets to provide analysis on current issues in the federal judiciary. Such an abbreviation of Hellman’s career only scratches the surface of its depth and influence.

Hellman’s scholarly work on the federal courts spans myriad topics yet maintains a common thread: the investigation of the institutional arrangements affecting the judiciary and how those arrangements impact judicial decisions. For Hellman, judicial outcomes—whether at the Supreme Court, within the federal judicial circuits, or in judicial misconduct proceedings—are determined not only by the substance of the issues but by the formal and informal processes of judges, litigants, and even Congress.

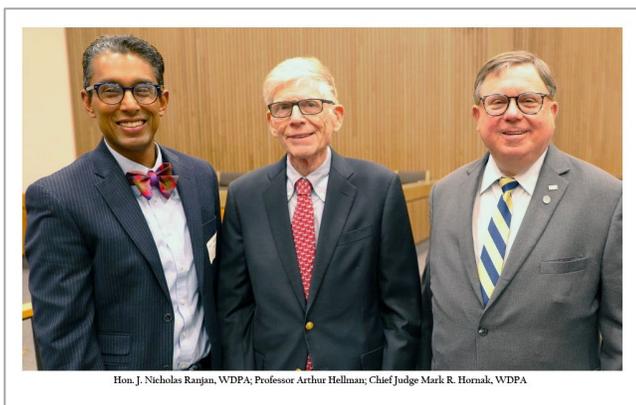


The day’s program assembled jurists and scholars from across the country to celebrate not only Hellman’s impressive career but also his sincerity and dedication to the art of teaching. “It has been more than his intellectual horsepower that has fueled Professor Hellman’s work. Although his mind has enabled his scholarly pursuits, it is his heart that is the engine of his work,” said Chief Judge Hornak (one of Hellman’s former students) in what was to become the symposium’s refrain of praise for Hellman’s mastery of both scholarship and instruction. “Our world has become so cynical a place that calling what academics do ‘a pursuit of truth’ is derided as naïve, if not laughable,” said Professor Charles Geyh of the Indiana University Maurer School of Law. “But if truth seekers are an endangered species, Arthur is our unicorn. He is a scholar’s scholar who richly deserves today’s celebration of his career.”

The symposium, organized by current members of the *University of Pittsburgh Law Review* (including Anna Miller-Little, Daniel Tublin, and Danny O’Byrne, with the advisement of Professor Peter Oh), featured four centerpiece panels, each focusing on a component of federal court scholarship and debate: the Supreme Court, the Federal Courts of Appeals, federal jurisdiction, and federal judicial ethics. Panelists included members of the federal bench and a panoply of deans, professors, and other scholars from around the country. Alumni, local attorneys, and students



packed the Teplitz Memorial Moot Courtroom to hear the panelists’ presentations and moderated discussion.



The Federal Courts Symposium opened with warm remarks from Hon. Mark R. Hornak, Chief Judge of the Western District of Pennsylvania (WDPA). Judge Hornak, a former student of Professor Hellman, said this of his mentor: “Arthur Hellman knows the central role that the federal courts play in the search for equal justice under law. Beyond that knowing, he as much feels the special place that they hold in the American experiment both structurally and symbolically.”

An exchange concerning the Supreme Court’s recent and allegedly uncharacteristic behavior was one of the day’s many highlights. Panelists emphasized the Court’s controversial procedures, including its practice of establishing precedent through a “shadow docket” and its taste for granting certiorari well before relevant lower courts have issued their rulings. Professor Stephen Vladeck of the University of Texas School of Law opined that the striking substance of the Court’s recent decisions as well as the Court’s unusual procedural behavior are not simply a result of its conservative supermajority, its “rather casual relationship to precedent,” or its penchant for “decisions that are divisive publicly.” The Court, after all, has exhibited these attributes throughout its long history. “What makes this moment unique is how unaccountable the Court has become,” said Vladeck. “Part of that is because we have stopped talking about and teaching all of the levers Congress used to pull, and we’ve stopped talking about why Congress doesn’t do it anymore.” Judge Thomas Hardiman of the U.S. Court of Appeals for the Third Circuit noted the danger of abandoning what he called the Supreme Court’s “countercultural” character. “We’re living in a society that is immediate, intense, frequently rude and intemperate, and often wrong,” said Judge Hardiman. “What I love about the judiciary is that we’re slow, we’re patient, we’re cordial. And I’d like to think that we’re frequently right. And I’m a little concerned that to the extent that the courts are under pressure to sort of stop being countercultural, I fear that that’s going to conduce to worse decision-making.” Both Vladeck and Hardiman appeared to agree with Columbia Law Professor Bert Huang’s argument that, regardless of how one feels about the Court’s behavior, “a sense of history of the Court’s practices can really frame a lot of these current changes.” Huang’s statement encapsulated much of Hellman’s project: how does the operation of the federal court system affect the decisions themselves? The final remark in the Supreme Court discussion came from Judge Hardiman: “It’s really important to look at Professor Hellman as a model because he has shown us what constructive criticism is like, and we’re living in a world right now that is so full of destructive criticism. And I want to personally thank you for that, Arthur.”

While the federal courts and Hellman's scholarly success were the primary subjects of the day's celebration, the discussion eventually shifted to the legacy of the University of Pittsburgh—Hellman's academic home of nearly half a century. In introductory notes to her remarks on the structure of the federal judicial circuits, Judge Mary Schroeder of the U.S. Court of Appeals for the Ninth Circuit recounted her connection to Pitt. "My mother and father both went to Pitt, and they met in the 1930s in the Cathedral of Learning," said Judge Schroeder. "During the 1930s, Pitt was the salvation for many folks in western Pennsylvania who couldn't find work and who turned to education as a way out of hopeless poverty . . . So, when you walk around the campus, take a minute to reflect on what this university has meant—what that remarkable cathedral symbolizes to this region for nearly a hundred years."



Prof. Stefanie Lindquist, Hon. Mary Schroeder, Hon. Maryellen Noreika, Prof. Hellman, Robert Byer, Dean Merritt McAlister

In characteristically engaging and organized concluding remarks, Hellman himself remarked on his tenure at Pitt and the outpouring of praise from colleagues and former students heard throughout the symposium: "There's an old adage that a good teacher's lessons don't end with the school year. They last for a lifetime. And based on what has been said, well . . . maybe I was a good teacher."

As for the federal courts, his great love, Hellman concluded by quoting an inspired passage from Professor Henry M. Hart Jr.'s 1953 article, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*:

"[T]he judges who sit for the time being on the court have no authority to remake by fiat alone the fabric of principle by which future cases are to be decided. They are only the custodians of the law and not the owners of it. The law belongs to the people of the country, and to the hundreds of thousands of lawyers and judges who through the years have struggled, in their behalf, to make it coherent and intelligible and responsive to the people's sense of justice."

Many of the most influential living scholars, lawyers, and judges who have struggled to craft a law responsive to a shared sense of justice sat shoulder to shoulder in the Barco Law Building on April 4 to celebrate one of their most esteemed thinkers. By the end of the day, it had become clear: the law is in good hands.

- Written by Daniel McTiernan (JD '24)



Hon. D. Michael Fisher sums up the day's discussions.

Complete List of Symposium Speakers and Moderators:

- Professor Jessie Allen, *University of Pittsburgh School of Law*
- Robert Byer, *Duane Morris*
- Dean Mary Crossley, *University of Pittsburgh School of Law*
- Hon. D. Michael Fisher, *U.S. Court of Appeals for the Third Circuit*
- Professor Charles Geyh, *Indiana University Maurer School of Law*
- Hon. Susan Graber, *U.S. Court of Appeals for the Ninth Circuit*
- Hon. Thomas M. Hardiman, *U.S. Court of Appeals for the Third Circuit*
- Hon. Mark R. Hornak, *U.S. District Court, Western District of Pennsylvania*
- Professor Bert Huang, *Columbia Law School*
- Professor Stefanie Lindquist, *Sandra Day O'Connor College of Law*
- Dean Merritt McAlister, *University of Florida Levin College of Law*
- Hon. Maryellen Noreika, *U.S. District Court, District of Delaware*
- Kedric Payne, *Campaign Legal Center*
- Hon. J. Nicholas Ranjan, *U.S. District Court, Western District of Pennsylvania*
- Hon. Mary M. Schroeder, *U.S. Court of Appeals for the Ninth Circuit*
- Professor Carolyn Shapiro, *Chicago-Kent College of Law*
- Emma Shoucair
- Hon. D. Brooks Smith, *U.S. Court of Appeals for the Third Circuit*
- Professor Fred Smith Jr., *Emory University School of Law*
- Professor Michael Solimine, *University of Cincinnati College of Law*
- Hon. David R. Stras, *U.S. Court of Appeals for the Eighth Circuit*
- Professor Sandra Strokoff, *George Washington University Law School*
- Professor Stephen Vladeck, *University of Texas School of Law*
- Russell Wheeler, *Brookings Institution*