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Professor Daniel J. Meador
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Dear Dan,

It brought me great joy to learn that you are still active and involved in so many appellate projects. I have cited several times your little book on Appellate Courts in the U.S. which you were kind enough to send me when it came out. So I am glad to learn that you are doing an updated version.

I too have been thinking just these past few days about the appellate legal aid project because it feeds into some of my thoughts about the current French demonstrations and the role of the courts. I just wrote a piece on this which the International Herald Tribune said they expect to publish on their Op-Ed page. I enclose it as it is only a 1000 words and you may find it of interest. I am also enclosing a piece I wrote just after Rehnquist's death entitled "What makes a great justice?" or something similar. It too is short and may possibly be of interest.

Thanks to our son, Daniel, now completing his PhD in Medical Ethics at Imperial College London after collecting a couple of degrees from Oxford, I have learned how to write in a new form. It is the Op-Ed page form and consists of a piece of about 800 to 1100 words. It is not an easy form for a lawyer. There is no space to qualify anything, and the article must be interesting which usually means some human interest aspect. Daniel is extremely good at this and has been publishing pieces just about everywhere ranging from major newspapers to medical journals to the BBC. Under his vigilant guidance I have slowly learned how to write in this form. It is a lot less strenuous than writing a law review article or a book. Unfortunately, I have not discovered any outlets other than the International Herald Tribune which is uniquely suited to my topics, but it would be nice to have a few other places where I might publish an occasional piece. I have tried to limit myself to law-related subjects and resist the temptation to pontificate on subjects on which I have opinions but no particular standing.

My background education in constitutional litigation in the federal courts and a lot of reading of Supreme Court opinions in my youth coupled with the years I have been practicing here gives me a cocktail of ideas.

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Last Wednesday I went to Paris to argue a case in the trial court in which I represented an American woman plaintiff; the defendants were her Lebanese husband and the government of Belize, and there were issues of diplomatic privilege and abuse, sovereign immunity, a decision from a religious court in Lebanon which states in the judgment that the man is superior to the wife as well as other issues. I had a wonderful time. I had prepared a 40 minute oral argument which probably would have been the longest oral argument I have ever made. I don't think I have prepared a case as carefully as this one since I prepared a capital case in the 4th Circuit in 1964. In fact, in preparing the case I thought quite a bit about how you would have approached the case because of its complexity and the multiplicity of legal issues.

When I got to Court the chief judge said he was only going to allow each lawyer four minutes (there were only myself and one lawyer for each defendant plus the Procureur who gives the view of the French government). Although I had prepared my argument in modular form and could rapidly adjust it, there was no way I could reduce it to four minutes. I was first, and I said I could not make my argument in that time. It was impossible. The judge said he didn't want any argument. He would let me say a few words and then let the other lawyers reply. We thereupon proceeded to have a dialogue with me making an argument and then the judge asking the other lawyers their response. This went on for a full hour. So much for the 4 minutes, and turned out to be very advantageous to me as I had so carefully prepared the case. This was the first time in all my years in French courts that I have seen this kind of interplay which began to approach what one sees in a US appellate court. I am not at all optimistic about winning the case as the easy path for the court is to allow the diplomatic immunity. I shall know in mid January.

Despite my age, which is now 66, I have no plans to retire, although I notice that my classmates are slowly slipping out of the profession. My mother just turned 100 in September. She is in good health, lives in her own house, hears without a hearing aid, sees well, and is as sharp as can be. She is frail, but still goes out and plays bridge twice a week, another day for mahjong and goes out to restaurants. So as her doctor said to me a couple of years ago when he gave me a physical exam, "You are on the same train as everyone else, but it is a slower train." That is the way I feel. So I guess I'll just go on until it feels like the train is getting too near the station.

I would enjoy taking a break now and then as I did with the Cambodia venture which you helped arrange almost a decade ago, Are you still involved with that organization? At the end I sent a report which I don't think they liked. I was probably too sceptical of the whole undertaking. It is hard for me to be away from my office for more than a short time as I cannot run a law practice and be absent for more than short periods, but if you know of any similar ventures, keep me in mind.

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I knew that appellate practice had become more of a specialty than in the 1960's when I wanted to do just appellate work, but I had not realized until I read your letter to what extent it has become an organized specialty. So your brief synopsis was enlightening.

I knew that Jan had Parkinson's, but I did not know that she had descended into the abyss of dementia. I tried to peer into that abyss when my father developed Alzheimer's starting at the age of about 80. He died in 1988 in his 89th year, and the last four or five years were bleak. It was hard on my mother and hard on me as I had been closest to him. I am sure it is not easy for you. I hope that you are able to maintain your own health.

My father's Alzheimer instilled in me a fear of ending with it myself. Partially to assuage that fear and partially for amusement I started memorizing poems. First, I memorized a lot of my favorite poems of Yeats and then gave a recital of them at two different venues. That was about a year ago. I got so good at memorizing quite long poems that I decided to take on a real challenge and see if I could learn by heart the Rime of the Ancient Mariner. I have just recently completed the whole poem by heart and am now working on perfecting the presentation. As you probably know, it is a long poem, but if you take it a bit at a time, it is surprising how easy it is to learn long passages by heart. I rather doubt that it will stave off dementia, but it has been a good source of amusement and if I have trouble sleeping I need only start reciting the poem and after awhile I discover in the morning that I fell asleep somewhere during the poem. It is also quite useful when stuck in traffic jams.

It gave me enormous pleasure to hear from you again, and I hope you will keep me up to date on your activities.

My wife Junko and our four children are all thankfully healthy and doing well.

With warmest regards.

INTERNATIONAL
Herald Tribune

# The French riots: A higher calling for the courts

**By Ronald Sokol** International Herald Tribune
TUESDAY, NOVEMBER 22, 2005

With French judges having been working overtime to convict, and in some cases deport, the troublemakers who were recently burning cars and sacking property, it is worth recalling a more positive use of a judicial system.

The role of judges need not be limited to punishment. Courts assume a more constructive social role when they act to redress wrongs and relieve grievances. They can be a safety valve, serving to channel and ease some of the pent-up pressures that exist in every society.

For many reasons - a dominating executive branch, a divided and historically weak legal profession, a judiciary that is a civil service and hence bureaucratic, a lack of financial resources - French courts generally fail to fulfill this role. The French court system is honest, competent, accessible in terms of cost, and relatively quick as legal systems go, but it has no history of providing redress for the kinds of social problems that France is currently undergoing. By failing to use its judicial system as a pressure valve, France neglects a useful tool of social control.

Even if France takes the steps necessary to mend the problems underlying the current unrest, it will still take decades for those problems to be resolved. In the interim they must be managed.

The French government could act to encourage its minorities to seek judicial redress of their grievances and encourage the courts to grant it, despite the fact that some of that financial redress would undoubtedly be against the government itself. The Ministry of Justice could actively prosecute discriminators as well as troublemakers. It could encourage and perhaps finance friend-of-the court (amicus curiae) briefs by interested parties and require the courts to accept them. This would raise the level of legal representation. It could push for higher damages to be awarded.

The American experience provides constructive examples. The West Coast received waves of Chinese immigrants in the second half of the 19th century, which resulted in anti-Chinese sentiment. In the 1880's San Francisco passed a city ordinance requiring Chinese laundries to close but allowing non-Chinese laundries to remain open. Yick Wo sued. The case ended up in the Supreme Court, which held that the city had violated the equal protection clause and that the Constitution protected all persons and not just citizens.

The movement for U.S. racial equality had a long history. City zoning on racial grounds was struck down in 1917; discrimination in interstate commerce in 1941; racial covenants in deeds for the sale of land were declared unlawful in 1948. There are many other examples, but the point is that beginning in the 1960's, private organizations like the National Association for the Advancement of Colored People, the American Civil Liberties Union and the American Bar Association, as well as the Justice Department, played significant roles in assisting minorities to assert their rights and to obtain damages in cases where they were appropriate.

The courts thus played a vital role, not only in implementing rights that were part of the national mythology but often not available to minority individuals, but also as a safety valve. With persistence and good legal counsel it was possible to prevail. Many people failed to get the benefit of rights to which they were legally entitled, but enough did so to make many minority citizens believe that they could prevail through the judicial system rather than by trashing the nation's institutions and private property.

In theory, minorities in France have access to the French courts. They get the benefit of

French law and the European Convention on Human Rights. They can get legal aid if they are too poor to retain counsel. To a limited extent, that access is used, but not enough to provide a real safety valve, and the reason for that is simple. The redress is too feeble, and the access is not that simple. There are few organizations to help. On all counts, there is much that France could do to improve the situation.

There is talk of different social models, but when it comes down to it, America is not that different from France. Where America has done much better is in giving access to minorities to rise to the highest levels. There are no blacks or people of North African origin on the French Supreme Court or as ministry heads or mayors of large cities or chief executives of major French companies.

While there is much mythology in America's proclamation of "equal opportunity," it remains nonetheless an active quest. The quest is totally absent in France, and until it occurs the current social problems can only get worse.

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INTERNATIONAL
Herald Tribune

# What makes a great justice?

**Ronald Sokol** International Herald Tribune
TUESDAY, SEPTEMBER 6, 2005

PUYRICARD, France With the death of Chief Justice William Rehnquist on Saturday bringing to two the number of vacancies on the U.S. Supreme Court and with the Senate about to ponder whether it should consent to the president's nomination of Judge John Roberts Jr. as the new chief justice, the question of what makes a great Supreme Court judge has come into sharp focus. The answer, I believe, has less to do with what a nominee has done - the usual priority of a Senate hearing - than with what he is willing to become.

A deep knowledge of the law and a razor-sharp mind are not enough. Felix Frankfurter had both; yet I would not put him down as a great judge. Earl Warren had neither, yet he is commonly considered one of the greats. Oliver Wendell Holmes Jr. had both; almost no one would deny him his place at the summit.

In any case, any reply must begin with the singularity of the court itself. Every judicial system has one court at the peak of its pyramid. In France it is the Cour de Cassation, in England the House of Lords. Yet none bears more than a passing resemblance to the U.S. Supreme Court. The Cour de Cassation decides more than 25,000 cases a year. The U.S. Supreme Court decides about 80.

In contrast to those in most foreign courts, the decisions of the Supreme Court are accompanied by long opinions. Relevant facts are set forth in detail; precedents are discussed; the reasoning that underpins the decision is explained. If judges disagree, they will write an equally long dissent explaining why the decision is wrong. The legal briefs submitted to the judges by both sides in a case are published. The oral argument of each case is open to the public, and transcripts are available. The whole process is intensely transparent compared with the process before courts outside the United States.

Even though the justices decide relatively few cases compared with their counterparts in other countries, it has been said that every important issue in America ends up before the Supreme Court. Robert Jackson, who served on the court from 1941 to 1954, noted that "lawsuits are the chief instrument of power in our system" and added, "Struggles over power that in Europe call out regiments of troops, in America call out battalions of lawyers."

In a system in which the courts are the linchpin of democracy, what then makes a great Supreme Court judge? Insight into the springs of human action coupled with an ability to speak in simple, memorable language that resonates by its analogies - those are the traits of great judges.

When Holmes rejected an absolute right to free speech by saying that "the most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic," he showed that genius. So too did John Marshall when he wrote that "we must never forget that it is a Constitution we are expounding," one "intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs."

Holmes knew that "the training of lawyers is a training in logic" that promises certainty. But he also knew that "behind the logical form lies a judgment ... often an inarticulate and unconscious judgment ... and yet the very root and nerve of the whole proceeding." It is not knowledge of the law nor intellectual ability that matters, much as each is needed, but the "root and nerve."

Although every president tries to predict how the "root and nerve" of his appointee will play out over perhaps several decades, their forecasts have often been wrong.

President Franklin D. Roosevelt thought Frankfurter was a liberal. President Dwight D. Eisenhower believed Earl Warren was a conservative. Both presidents were right at the time of appointment, but the justices grew in different ways during their years on the court. As Jackson had already observed while attorney general, "the court influences appointees more consistently than appointees influence the court."

Supreme Court judges must decide perplexing moral, social and economic dilemmas. By so doing they find their own "root and nerve." More than one Supreme Court justice has been surprised by this voyage of self-discovery. The least desirable traits are rigidity in thought, a belief that logic alone yields answers, neglect of the human impact of a decision, and blindness before the complexity and contradictions of human behavior.

What the senators who will question John Roberts should try to determine is how willing he is to make his own voyage of self-discovery.

*Ronald Sokol, a lawyer in Aix-en-Provence, France, is the author of "Justice After Darwin.'*