

Alabama Native Becomes Chief Judge of Eleventh Circuit Court of Appeals

By Dean John L. Carroll

On June 1, 2009, Judge Joel Dubina was sworn in as the seventh Chief Judge of the United States Court of Appeals for the Eleventh Circuit. He becomes the second Alabamian to hold this important position. Judge John Godbold was the first (*see article on page 273 of this issue*). Judge Dubina's elevation is yet another milestone in a long and distinguished career as a lawyer and a judge.

Judge Dubina was born in Elkhart, Indiana and graduated from the University of Alabama in 1970 and from the Cumberland School of Law at Samford University in 1973. Following graduation, he clerked for Judge Robert Varner, who was a United States District Court Judge in the Middle District of Alabama in Montgomery. He then entered the private practice of law with the Jones, Murray, Stewart & Yarborough firm where he became a skilled and respected litigator with a special expertise in cases in federal court.

In the early 1980s, Judge Dubina's and my professional paths crossed for the first time in the ongoing litigation involving the Alabama Department of Mental Health. I was representing the plaintiff class and Judge Dubina represented the then-governor, Fob James. During the course of that representation, Judge Dubina and I took depositions, visited the state mental health facilities with expert witness and argued against each other in court. It was during that litigation I came to realize Judge Dubina was an exceptional lawyer, but more importantly, an exceptional person. The litigation involved very deep and serious constitutional issues and was hotly contested. Judge Dubina represented his client with great skill. He was the classic respectful yet forceful adversary.

In 1983, Judge Dubina began his judicial career as a United States Magistrate Judge in the Middle District of Alabama. He served in that capacity until 1986 when President Ronald Reagan appointed him as a United States District Court Judge. As fate would have it, our professional paths crossed again. I was fortunate enough to be appointed to fill the vacancy created when Judge Dubina was elevated. In my capacity as a United States Magistrate Judge, I was a judicial colleague of Judge Dubina and had the opportunity to observe, firsthand, his great contribution to the cause of justice as a federal trial judge. It is impossible to overstate the respect that the practicing bar had for Judge Dubina as a trial judge. He was the perfect judge—fair, efficient and respectful of the parties and their lawyers. In 1990, Judge Dubina was appointed to the United States Court of Appeals for the Eleventh Circuit, the court he now leads.

The hallmarks of Judge Dubina's tenure as a judge have been fairness and courage. There are two cases which serve as perfect examples of his display of those attributes. The first is *United States of America v. Thomas Reed*. Thomas Reed and Fred Gray were the first African-Americans elected to the Alabama legislature in November 1970. Reed had a distinguished career as a legislator and was one of the leaders in the movement to remove the Confederate flag from the Alabama state capitol building. In May 1988, Reed was charged with taking \$10,000 to use his influence as a state legislator to help an inmate obtain an early parole. The case garnered national attention because of Reed's status as one of the first black legislators and his fight over the Confederate flag. There were allegations that he was being selectively prosecuted for his stand.

The case was assigned to Judge Dubina who had been a federal district court judge less than two years. One of his first acts was to grant a motion to transfer venue filed by Reed to ensure that the publicity over the Confederate flag would have no effect on the proceedings. Judge Dubina then presided over

the trial and was praised by both the prosecution and defense for his fair and even-handed rulings. He passed his early test of fire with flying colors.

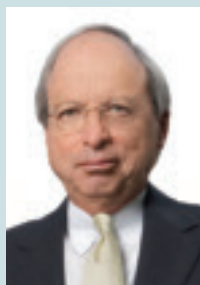
The second case is *Gonzalez v. Reno*, more commonly known as the Elian Gonzalez case. By way of brief background, Elian Gonzalez was a refugee from Cuba who became the center of a dispute between his father, who was living in Cuba, and American family members over whether Elian should remain in the United States or return to Cuba. The case garnered national publicity which became even more intense after federal law enforcement officials stormed the house of his uncle where Elian was staying, seized him and returned him to his father who by this time was in Washington, D.C. The whole nation became transfixed over the issue of whether Elian should remain in the United States with his Cuban-American relatives or return to Cuba.

The case generated an incredible amount of media coverage. The Center for Public Affairs reported that the network news coverage of this case exceeded coverage of the massacre at Columbine High School, the Oklahoma City courthouse bombing and the death of John F. Kennedy, Jr. The random draw of the Eleventh Circuit threw Judge Dubina into the firestorm generated by the case. He was assigned as a member of the panel to hear the case, along with Judges J. L. Edmondson and Charles Wilson.

On June 1, 2000, following oral argument, the panel decided that the decision of the Immigration & Naturalization Service that Elian should be returned to his father was not arbitrary and capricious. It was a decision that was both courageous and correct. In the fall of that year, the Supreme Court declined to review the decision and Elian and his father returned to Cuba.

The story of Judge Dubina's fairness and courage is not his whole story. He has a full and rich life outside the law. There are occasions when I have called his chambers and found that he was in Texas shooting mule deer or at the Gulf coast fishing. There are other occasions when I was informed he has taken up a new avocation—mountain climbing (see article in the November 2007 issue of *The Alabama Lawyer*). In the past few years, Judge Dubina has climbed Mt. Ranier, in the state of Washington, and Mt. Kilimanjaro in Africa.

Judge Dubina has had a unique career to say the least. I believe he is the only judge in the United States to have been appointed to all three of the federal judge positions below Supreme Court—Magistrate Judge, District Judge and Court of Appeals Judge. In each of those positions, Judge Dubina has been a leader for the cause of justice, the rule of law and the fair administration of our justice system. I can think of no one more suited to lead our Court of Appeals than Judge Joel Dubina. ▲▲▲



Dean John L. Carroll is dean and Ethel P. Malugen Professor of Law at Cumberland School of Law, Samford University. He received his undergraduate degree from Tufts University and holds law degrees from Cumberland (J.D.), magna cum laude, and Harvard University (LL.M.). Dean Carroll has served as a U.S. Magistrate Judge in the Middle District of Alabama, a professor of law at Mercer University School of Law and the legal director of the Southern Poverty Law Center.