

James K. Robinson— 56th President of the State Bar of Michigan

By John W. Reed

On September 14, 1990, James Kenneth Robinson became the 56th President of the State Bar of Michigan. The process that has brought him and the Bar to this good hour has produced a fortunate match between man and mission.

I first met Jim Robinson in 1975 when I was appointed reporter to the Michigan Supreme Court's Committee on Rules of Evidence, of which Jim was chairman. I remember being surprised that one so young (nearing his 32nd birthday) had been placed in charge of that distinguished committee, but I quickly came to understand the Court's wisdom in having chosen him.

First, he was broadly knowledgeable in the field, not only from his trial practice but also from having taught Evidence at Wayne State University Law School. Second, he was an adroit presider, encouraging full discussion but wisely sensing when to move on. Third, he marshaled the resources of a number of law firms, including his own, to produce analyses of existing law—which I particularly appreciated because it lightened my load. Finally, he drove the project to completion ahead of schedule. From that time on,



James K. Robinson

I have never had any doubt about his abilities as a leader.

Jim's father, the late Kenneth Robinson, was the esteemed regional director of the United Auto Workers for outstate Michigan, a position in which he was preceded by Leonard Woodcock and succeeded by Owen Bieber. Raised in such a family, Jim was introduced, at an early age, to many in the labor movement and men and women of political power in the state. It is not surprising that he came to maturity with a commitment to public service and a concern for the underdog.

Jim attended public schools in his native Grand Rapids before entering Michigan State University. According to the stories I have heard about those early days, he was not a serious student and he compiled an academic record that did not bode well for future success in intellectual pursuits. At some point, however, he, like the prodigal son, "came to himself," and he began to perform at warp speed. He graduated with honors from MSU and with high honors from Wayne State University Law School, where he was editor-in-chief of the *Review*. His case is an inspiration to those "late bloomers" who fear it may be too late for success.

After a United States Court of Appeals clerkship with Judge George Edwards, Jim became an associate at Detroit's Miller, Canfield, Paddock & Stone for two years, and an associate and then partner at Honigman, Miller, Schwartz & Cohn, where he specialized in litigation. (The rhyme and meter of those two names surely would have prompted my late colleague Wade McCree to create here a piece of doggerel with successive lines ending: "... Miller, Canfield, Paddock & Stone, ... Honigman, Miller, Schwartz & Cohn.")

At the age of 33, Jim was named United States Attorney for the Eastern

District of Michigan, which had one of the heaviest case loads in the entire nation. His tenure in that position was marked by able management and a high degree of professionalism. Although the Department of Justice provides general guidelines for the running of U.S. Attorneys' offices, Jim developed a comprehensive office manual that for the first time put in black and white the procedures to be followed in the Eastern District. Similarly, he prepared a handbook of grand jury procedures which no one theretofore had written down. He instituted a valuable CLE program of Monday lunches, maintained to this day.

Although young and without managerial experience, Jim was not fazed either by the grindingly heavy case load day to day or by the periodic crises that inevitably hit such a visible office. A major reason why all went so well was that he appointed highly talented assistants. He clearly knows how to find good people, to persuade them to serve with him, and to get them to work in concert toward high-minded common goals. In short, he was the epitome of the wise and efficient administrator.

In 1984 Jim's accomplishments as U.S. Attorney, well recognized at home, were acknowledged by his peers, who elected him President of the prestigious National Association of Former U.S. Attorneys.

While Jim was United States Attorney, there were widely publicized leaks about an investigation of a Detroit police official's possible involvement in narcotics. Though Jim's office was not the source of the leaks or at fault in any way, he took the then unusual step of calling a press conference to report that indeed there had been an investigation, that the investigation had produced no incriminating evidence, that no charges would be brought, and that the official had been cleared. This episode, revealing of Jim's passion for fairness, is admirably replicated in the script of the

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film "Absence of Malice," by former *Detroit Free Press* editor, Kurt Luedtke.

In 1981, Jim returned to a partnership in the Honigman firm, where he has specialized in major civil litigation and white collar criminal defense. Now head of the firm's litigation department, he is widely regarded as a superb litigator, with outstanding trial, appellate, and negotiating skills. Attesting to the high regard in which his abilities are held are his election as a Fellow of the American College of Trial Lawyers and of the International Society of Barristers.

The acquaintance began when we were on the Michigan Rules of Evidence Committee which led to our serving together on the committee of the National Conference of Bar Examiners which prepares the evidence questions for the Multistate Bar Examination—a confession that will not endear either of us to the several thousand young Michigan lawyers who have taken the bar examination in the last dozen years. Twice each year that committee meets for a long weekend to revise and approve question drafts. With judges, teachers, and lawyers from across the country, the discussions are thorough, instructive, often heated, always enjoyable. Jim's rich experience as judicial clerk, litigator, public official, evidence law reformer, and sometime law teacher makes him an extraordinarily useful member of the committee, and he significantly improves the quality of the examinations.

As a dean, I appreciate Jim Robinson as a loyal and useful alumnus. He has served Wayne State University Law School as president of its law alumni association, as commencement speaker, as an adjunct faculty member

for more than a decade, and as informal adviser to successive deans, including this one. Recognizing his service, the law school bestowed on him its Distinguished Alumnus Award only 11 years after his graduation; and the University gave him its similar award a half dozen years later. When the law school was granted an Order of the Coif charter, Jim was elected by the faculty as the first honorary member of the Wayne chapter. Obviously there is mutual admiration between him and the school.

I suppose the quality in Jim that impresses me most is his ability to do so many different, useful things and to do them well. Not content merely to practice law with high distinction, he repeatedly accepts assignments in the service of the public and the profession. In addition to "doing the usual bar association things"—State Bar commissioner, Detroit Bar director, Federal Bar director (Detroit chapter), American Bar committee member in the Litigation and Criminal Justice Sections—Jim has served repeatedly as lecturer for the Michigan Judicial Institute, ICLE, ALI-ABA, and PLI, and as a faculty member in trial advocacy and evidence programs for the National College of District Attorneys, the U.S. Attorney General's Advocacy Institute, the ABA Litigation Section, the Federal Bar Association, and the University of Virginia.

It is not only the number of these teaching activities that is remarkable but also the fact that he is invited back, again and again. Countless lawyers and judges have better understandings of the law of evidence, civil procedure, and trial advocacy because of Jim's lectures and workshops. And his numerous law review articles, book chapters,

and CLE materials on Michigan bookshelves make his contributions to the profession's competence more lasting and influential.

One of his most significant services was as chair of the Governor's Commission on the Future of Higher Education in Michigan. The Commission's work in 1983-84 was a masterpiece of organization, like the evidence rules project. Jim led a widely disparate group to a general consensus, producing a report that was comprehensive and thoughtful, sensibly proposing among other things that

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duplication of specialized programs be reduced or eliminated. A number of recommendations have been implemented; some, not surprisingly, have foundered on the shoals of self-interest. But the shape of higher education in Michigan will be affected for years by the study Jim led.

Among the consumers of that education are Jim's children, Steven and Renee, who are students at MSU and Kalamazoo College, having thus far committed themselves, like their father, to their native state. Jim's wife, Marietta Sebree Robinson, is a talented and successful trial lawyer, who has been a partner in Dickinson, Wright, Moon, Van Dusen & Freeman and in Sommers, Schwartz, Silver & Schwartz, but now has her own firm, and serves also as a trustee of the Dalkon Shield Trust.

Jim and Marty are thoughtful and generous hosts to their wide and varied circle of friends. My wife and I have been guests in their home and on their boat, "Class Action," and each visit has been memorable because both the hosts and the other guests live busy, useful lives, have had a rich variety of experiences, and are stimulating conversationalists.

This is a time in which the practice of law is in transition. Transition *from* what *to* what is the question. Scholars have suggested that the history of Anglo-American law has been one of movement from status to contract to status again. The history—at least the recent history—of the legal profession has been one of movement from profession to business, but not yet to profession again. Whether we can reverse the movement remains in doubt, but at least we must try, and the lead role falls to the organized bar. It must deal creatively and diligently with the structures that will insure competence and will encourage maximum commitment to all those things that are subsumed under the rubric of "professional responsibility." That is why the quality of the bar and of its leadership is so important now. We must have leaders who have a high vision of the profession and the clear eye and steady hand needed to realize it.

The characteristics that Jim Robinson brings to the State Bar presidency are exactly what the position calls for at this stage of our history: Skilled lawyer, persuasive advocate, principled professional; effective leader; old enough to understand the past and young enough to live in the present and challenge the future. It is the good fortune of the Bar and of the people of Michigan that he is willing to serve us in this way.

Because of the wide publicity given the matter, I think I cannot fail to acknowledge the questions that have been raised about Jim Robinson's representation of a fellow lawyer and his dealings in that connection with a

former administrator of the Attorney Grievance Commission.

First, as should be plain from what I have written, I have absolute confidence in Jim's honesty and professional probity.

Second, Jim took a procedural position (resisting an *ex parte* subpoena) on behalf of his client that was not merely legitimate but, almost surely, required by the obligation of zealous advocacy. If there was doubt on that score, then it should have been judicially tested, not met with the *in terrorem* device of opening a disciplinary investigation—a device wielded by the very person whose authority in the matter was being challenged. It is difficult to think of a more effective way to chill advocacy.

The Commission's later destruction of that investigation file through no action of Jim's—indeed without his knowledge—led ultimately to a series of articles and editorials in the *Detroit News* which, like drumfire, repeatedly implied wrongdoing on his part and steadily diminished his good name. With no proceedings (except by the *News*) against him, Jim was placed in a limbo of being charged-but-not-charged, with no complainant to respond to and no forum in which to be heard, and with no obvious way to dispel the growing cloud on his reputation.

In response to concerns largely generated by the *News* series, the Supreme Court appointed special counsel to investigate allegations regarding the work of the Attorney Grievance Commission. Eight months later the counsel filed a report which, while purporting not to determine facts in the particular matter, nevertheless asserted that Jim's conduct "merited investigation by the AGC." This, of course, was duly reported in the press. And still no complaint was filed and, therefore, no proceedings held in which any alleged misconduct could be determined with due process.

This state of affairs was unfairly harmful not only to Jim but also to the State Bar of Michigan, whose president he was about to become. In this Kafka-esque setting, Jim took a characteristically creative and courageous step. He filed with the Michigan Supreme Court an emergency petition requesting that it either determine that the matter does not warrant investigation or appoint special counsel to determine whether disciplinary proceedings should be initiated against him. In response, the Court remanded the matter to the Attorney Grievance Commission (now with a new Chairperson, a new Grievance Administrator, a new Deputy Administrator and a majority of new members) with direction that it expedite disposition of the case.

Five weeks later, shortly before the State Bar Annual Meeting, the Supreme Court announced that following a thorough investigation of the allegations the Attorney Grievance Commission had concluded that no formal proceedings were warranted and that the file would therefore be closed without further action. The newspaper that so fully and repeatedly reported the charges barely mentioned the outcome.

In part, I mention all this to illustrate what can happen when an investigative procedure lacks the safeguards of an adversary system. At least since the days of *Hickman v Taylor*, in which a lawyer was sentenced to jail for refusing to provide "work product" in response to a discovery demand, we have understood that a lawyer may have to suffer in order to advocate his client's position. But in *Hickman*, the lawyer was able to get a ruling, appeal it, and ultimately prevail. Here, Jim Robinson took an action on his client's

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behalf the legitimacy of which was challenged both directly and indirectly, but in no forum in which—until he brought his unusual petition to the Supreme Court—he could get a ruling and, if necessary, test it by appeal. That such a series of develop-

ments could occur must disturb every lawyer as he or she contemplates the perils of conscientious advocacy.

But, primarily, I mention these developments by way of saying that I wish to attest to Jim's sterling personal and professional character, to express my dismay that his actions (in my opinion ethically required) on behalf of his client have produced so much defamatory innuendo, and to assure my colleagues at the bar and the citizens of Michigan that it would scarcely be possible to choose a more able, more principled president of the State Bar of Michigan than James K. Robinson. ■

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