

**Judicial Independence and the Rule of Law –
A Panel Discussion Dedicated to the Late Mark I. Harrison**
Presented by the American Constitution Society, Arizona Lawyer Chapter

Thursday, January 25, 2022
12:00 MST

Featuring:

Hon. **Diane M. Johnsen**, former Judge, Arizona Court of Appeals

Myles V. Lynk, Professor of Law Emeritus, Sandra Day O'Connor College of Law,
Arizona State University

Hon. **Ruth V. McGregor**, former Chief Justice, Arizona Supreme Court

Keith Swisher, Professor of Legal Ethics, James E. Rogers College of Law,
University of Arizona

Moderator:

Dan Kaplan, Member, ACS Arizona Lawyer Chapter Board of Directors



Mark I. Harrison
1934-2021

Mark was born in Pittsburgh, Pennsylvania on October 17, 1934. His father Coleman was an attorney, professional musician, and journalist, and his mother Myrtle owned and operated a children's summer camp. Mark attended Antioch College, where he met his wife of 62 years, Ellen Gier. (Sadly, Ellen passed away this month.) After college, Mark attended Harvard Law School. In 1960 Mark and Ellen moved to Arizona, where Mark clerked for Arizona Supreme Court Justice Lorna E. Lockwood. He then began a long and highly successful legal career, first in various iterations of his own firm, including Harrison, Harper, Christian & Dichter, then at Bryan Cave, L.L.P., and finally at Osborn Maledon, P.A. Mark's practice focused on legal ethics, lawyers' licensure, professional liability, judicial ethics and discipline, risk management, and representation of psychologists and other professionals facing disciplinary proceedings. Throughout his long career, Mark was deeply involved in organizations and projects designed to improve the legal profession. He served as President of the State Bar of Arizona Board of Governors in 1975, and was again elected to the Board at the age of 85, 40 years later. He chaired the ABA Commission to Revise the Model Code of Judicial Conduct, as well as the Board of Justice at Stake, a national non-profit organization dedicated to preserving fair and impartial courts, and he sat on the Board of the American Constitution Society's Arizona Lawyer Chapter. He taught legal ethics as an adjunct professor at the University of Arizona and Arizona State University law schools. He received numerous national and state awards for his work, including the ABA's Michael Franck Award for Professional Responsibility, the Burnham "Hod" Greeley Award for contributions to understanding the role of the judiciary, the Arizona State Bar's Walter E. Craig Lifetime Achievement Award, the Charles W. Kettlewell Legal Ethics Advisory Award, the Judge Learned Hand Award for Community Service, and the Planned Parenthood Peggy Goldwater Award. Through it all, Mark served as a supportive, cheerful, and above-all wise, mentor to many younger lawyers. He is and will continue to be greatly missed.

Pertinent Materials

Mark Harrison, *Merit Transcends Partisanship*, THE ARIZONA REPUBLIC, June 11, 2019, A12 (op-ed signed by 21 former presidents of State Bar of Arizona advocating avoidance of partisanship on Arizona Appellate Nominating Commission)

Mark I. Harrison, *Can We Allow Justice to Become a Saleable Commodity?*, 30 YALE L. & POL'Y REV. INTER ALIA (July 2012) (discussing work as chair of ABA Commission to Revise the Model Code of Judicial Conduct)

Mark I. Harrison, Sara S. Greene, Keith Swisher, Meghan H. Grabel, *On the Validity and Vitality of Arizona's Judicial Merit Selection System: Past, Present, and Future*, 34 FORDHAM URB. L.J. 239 (January 2007) (surveying history of judicial election and selection in Arizona, addressing attacks on merit selection, and assessing performance of Arizona's merit selection system)

Hon. Diane M. Johnsen, *Picking Judges: How Judicial-Selection Methods Affect Diversity in State Appellate Courts*, 101 JUDICATURE No. 1 (Spring 2017) (analyzing results of study of state appellate benches produced by various methods of judicial selection, with particular focus on diversity)

Hon. Diane M. Johnsen, *Building a Bench: A Close Look at State Appellate Courts Constructed by the Respective Methods of Judicial Selection*, 53 SAN DIEGO L. REV. 829 (Fall 2016) (discussing various methods of state appellate court selection and analyzing results of study of benches produced by the various methods)

Hon. Sandra Day O'Connor & Hon. Ruth V. McGregor, *Judicial Selection Principles: A Perspective*, 75 Alb. L. Rev. 1741 (2012) (discussing concerns arising from judicial elections and comparative merits of merit selection/appointment system)

Hon. Ruth V. McGregor, *Arizona's Merit Selection System: Improving Public Participation and Increasing Transparency*, 59 SYRACUSE L. REV. 383 (2009) (discussing Arizona's adoption of merit selection system, and subsequent debates over and evolution of the system)

PANELISTS

Retired Judge Diane M. Johnsen graduated from the University of Arizona, then spent five years as a political reporter and editor at the Arizona Daily Star in Tucson. She left journalism in 1979 to attend Stanford Law School, after which she clerked for Judge Ben Duniway on the Ninth Circuit Court of Appeals. She then practiced with Munger Tolles & Olson in Los Angeles before returning to Arizona in 1985 to join the firm now known as Osborn Maledon, P.A., where her practice included media law, contract and tort matters and environmental litigation. Governor Napolitano appointed her to Division One of the Arizona Court of Appeals in 2006. She served as that court's Chief Judge, chaired the Phoenix Judicial Selection Advisory Board and was a member of the Arizona Commission on Judicial Conduct. She earned a Master's of Judicial Studies from Duke University and is a member of the American Law Institute. She stepped down from the bench in February 2020 and now works part-time as Division One's Special Projects Attorney. Retired Judge Johnsen was named the Arizona Judicial Branch's Judge of the Year in 2020 and that year also received the Arizona State Bar's James A. Walsh Outstanding Jurist Award.

Professor Emeritus Myles V. Lynk was the first Peter Kiewit Foundation Professor of Law and the Legal Profession at the Arizona State University (ASU) Sandra Day O'Connor School of Law, specializing in legal ethics, business organizations and civil procedure. Prior to coming to ASU he was a partner in the Washington, DC, office of a large national law firm, served on the White House Domestic Policy Staff in the Carter Administration and was a law clerk to Judge Damon J. Keith of the U.S. Court of Appeals for the Sixth Circuit. A past President of the District of Columbia Bar, where he also served on the legal Ethics Committee and chaired the Clients' Security Trust Fund, Professor Lynk now serves as the Senior Assistant Disciplinary Counsel for appellate litigation in the District of Columbia Courts' Office of Disciplinary Counsel. Professor Lynk has served as chair of the ABA's Standing Committee on Ethics and Professional Responsibility, Standing Committee on Professional Discipline, and Special Committee on Bioethics and the Law.

Retired Chief Justice Ruth V. McGregor served on the Arizona Supreme Court from February 1998 until June 30, 2009. She was the Court's Chief Justice from June 2005 until her retirement. She was also a member of the Arizona Court of Appeals from 1989 until 1998, where she served as Chief Judge from 1995 to 1997. Before her appointment to the bench, Justice McGregor engaged in the private practice of law as a member of the Fennemore Craig law firm in Phoenix, Arizona. She served as law clerk to Justice Sandra Day O'Connor during Justice O'Connor's first term on the United States Supreme Court. Justice McGregor received a Bachelor of Arts degree, summa cum laude, and a Master of Arts degree from the University of Iowa. She received her Doctor of Jurisprudence degree, summa cum

laude, from Arizona State University in Tempe, Arizona, and a Master of Laws in the Judicial Process from the University of Virginia. Justice McGregor has participated extensively in professional activities, particularly in those organizations dedicated to assuring a fair and impartial judiciary. Among other activities, she has served as an officer and a member of the Board of Trustees for the American Inns of Court Foundation, the National Association of Women Judges and Justice at Stake; as a board member of the Conference of Chief Justices and the American Judicature Society, and as a member of the Legal Council of the American Bar Association Section of Legal Education and Admission to the Bar, including a term as Chair. Justice McGregor currently serves as a member of the Board of Directors of the Center for the Future of Arizona and of the Institute for the Advancement of the American Legal System. Since her retirement, in addition to chairing several commissions for the Arizona Supreme Court, she has completed a number of investigations for public entities and acted as a special master for the United States District Court for the District of Arizona, as mediator for the City of Phoenix in public transit disputes, and as special administrator for the Arizona Supreme Court. Justice McGregor has received several state and national awards for her work in the judicial system, including the Dwight D. Opperman Award from the American Judicature Society; the A. Sherman Christensen Award from the American Inns of Court Foundation; the James A. Walsh Award from the Arizona State Bar; the Marilyn R. Seymann Award from the Arizona Foundation for Women; the Sarah Herring Sorin Award from the Arizona Women Lawyers Association; and outstanding alumna awards from Arizona State University and the University of Iowa.

Professor Keith Swisher is Professor of Legal Ethics and Director of the Bachelor in Law and Master of Legal Studies Programs at the University of Arizona James E. Rogers College of Law. Professor Swisher is an ethics expert, law professor, and former Associate Dean of Legal Scholarship and Faculty Development at Phoenix School of Law. His scholarship is regularly published and cited in the areas of legal and judicial ethics and disqualification. He is a member of the ABA's Ethics Committee, the Vice Chair of the State Bar's Ethics Advisory Group, and a board member of the Judicial College of Arizona. He has also served on the Editorial Board of ABA/BNA Lawyers' Manual on Professional Conduct. Previously, Professor Swisher clerked for Ninth Circuit Judge William C. Canby, Jr., and practiced at Osborn Maledon, P.A. in Phoenix.