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Introduction

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TOURO COLLEGE

JACOB D.
FUCHSBERG



LAW CENTER

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INTRODUCTION

JUDGE PRATT:

Good morning, everybody. This is, as noticed on the manual, this is the fifteenth annual presentation of this program. A cynic might say, Maybe this time you will get it right. Our view is, Well, maybe the Supreme Court will get it right. I'm told that the audience we have here, audience, students, participants, is the largest group we have ever had at any PLI function, not just this program, but any program. I was told, by their standards, this is a blockbuster. Of course, those of us up here on the ascending end of this program like to think this is a tribute to and recognition of the fine quality of, not only the PLI program, but this program in particular. Caution counsels me to think maybe the mandatory CLE requirements have a little to do with the amount.

Anyway, you are here, we are here, there is great deal to talk about, because this whole area of Section 1983 litigation is one that never stands still. It keeps changing.

It would be very interesting to go back and look at what we were saying about some of these issues back in when we first started this program. Many of them looked much different than they do today. Of course, that's what makes the practice of law interesting, it's never the same, it makes the practice of law in this area of particularly fascinating.

Out of curiosity, how many of you have attended one of these seminars before? Would you just raise your hand. Another question: How do you think of yourselves in this area, as representing plaintiffs, representing defendants, or possibly switch hitters? How many think of yourselves as plaintiffs' attorneys? A lot more than we had last year. How about defense attorneys? Usual amount. Any switch hitters? They are the people who really understand the problems. You have to go both ways.

Let me just outline our mode of operation here. Primarily, you will hear people speak on a topic and it will then be followed by discussion. My function, basically, is to keep time, important things like that. Occasionally, I will throw questions at the various members of the panel. We have a group here, all of whom are quite capable of tossing out questions, trying to develop points that seem to be significant. We encourage you to give us questions if you have some. We will try to answer all questions that are presented to us. There are far too many people to take the questions orally, but if you write them out and give them to me, if the question is addressed to a particular panelist or particular speaker, indicate that, and I'll exercise a chair's prerogative of assigning who is going to answer it. We can't always answer it immediately, but we have two days to work with here. Our job is to convey information that will be helpful to you.

Before I introduce the panel, one other thing I want to mention to you, Leonard spoke of the book on jury charges that Professor Schwartz and I just completed. We had a long battle with the publisher over whether it should be a bound book or whether it should be loose-leaf. Marty and I fought valiantly and won for loose-leaf format. The reason for that is, we are painfully aware that there is a great need for more instructions on more varied subjects than what we have been able to include in the initial book, which is chapters, chapters, and jury instructions, but our goal of all times has been to try to make it a useful tool for lawyers and judges, so I urge you, request you, if you have done or prepared a jury charge or even a request you think is sound, it may not have been accepted by the court of the particular circumstances, a jury charge on a particular aspect of which is off

the beaten track, we don't really need one on excessive force or malicious prosecution, but the additional kinds of things you might run into only four or five times in a lifetime of practice, we are already working on the first supplement to this book that hasn't yet been published, so if you would just send it to either Professor Schwartz or myself at the Touro Law Center in Huntington, we will do our best to keep this book up to date so it will be helpful and useful to the members of the profession.

As to who our panelists are here, Karen, is that you at the end? Oh, Kathy. I didn't even know you were here yet. Kathryn Urbonya. Washington, I believe.

PROF. URBONYA: William and Mary. Virginia. It's close.

JUDGE PRATT: She is a professor. She has written extensively in the Section 1983 area. Most of our panelists here have been here many times before. It's nice to see you again Kathy. Next to Professor Urbonya, we have Judge Reena Raggi of the Eastern District of New York. Judge Raggi has been here I don't know how many times before. We call on her to do all sorts of varied services. She has a background as, not only a prosecutor, US Attorney in the Eastern District of New York, private practice, she has spent a number of years in the Eastern District, is an excellent judge, as you will see, and will have many insightful comments to add here.

Next to Reena is Judge Deborah Batts of the Southern District of New York. She has been on the District Court five years, just about the same time that I have been off the federal bench. She didn't quite replace me, because I was in the Eastern District in the Second Circuit, but Judge Batts, in just the short five years, has developed a fine reputation. This is her first time on our panel here. She has tried cases. Generally, we like to have judges on the panel, because all of this stuff doesn't mean a thing unless you have a judge's perspective on it. Ultimately, you want judges ruling in your favor, and we invite the judges and are very grateful

for their taking time to come here and offer us whatever comments seem to be appropriate.

Next to her is Professor Erwin Chemerinsky from the University of Southern California Law School in Los Angeles. We welcome Erwin back. He is one of the leading constitutional scholars in the country and has written extensively. I'm sure that articles and books he has written would cover pages. You will find his comments are particularly helpful and enlightening for us.

Next to Erwin is Dean Steven Steinglass of Cleveland-Marshall College of Law in Cleveland. Steve is an old-timer with us. I think he was probably here at our first one years ago. His particular focus has been in the of litigation in state courts. He has written, I believe, the only book on the subject, and, in addition to his writings, he has litigated a number of these cases. He was not with us last year, but we are delighted to have you back, Steve, and we look forward to your comments this morning.

All right. I have talked enough. We are moving ahead. We lead off, as usual, with a review of what the Supreme Court has done to or for us, depending on your point of view, in the past term, and, for that, we would turn to Professor Marty Schwartz.