

## AN INTERVIEW WITH Chief Judge Eric T. Washington

By Judge Michele D. Hotten

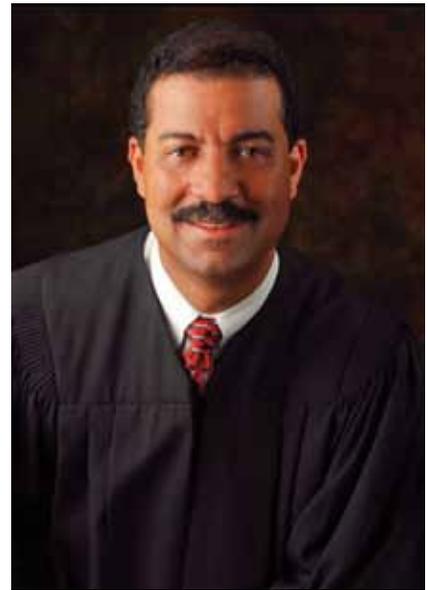
Chief Judge Eric T. Washington, a member of the District of Columbia Court of Appeals since 1999, has served with distinction as its chief judge since 2005. He is one of a small cadre of African-American chief judges in the nation. Prior to his appointment to the court by President Clinton, he served as an associate judge with the D.C. Superior Court and was a partner with the firm of Hogan and Hartson. His impressive résumé includes the following: past president, Conference of Chief Justices, where he tirelessly worked to enhance access and fairness in the nation's courts, spearheaded efforts to create Access to Justice commissions, and generated focus on pretrial justice reform initiatives; chair, Joint Committee on Judicial Administration, Washington, D.C.; past chair, Strategic Planning Leadership Counsel; and member, board of directors of Advanced Science and Technology Adjudicatory Resource Center, D.C. Access to Justice Commission, and the Boys and Girls Clubs Foundation of Greater Washington. Chief Judge Washington has been a strong advocate of issues regarding access to justice, pretrial reform, and judicial administration. His efforts to address the systemic, inequitable impact of money bonds on the poor and persons of color, when such determinations utilize monetary considerations over evidence-based risk assessments, has earned him the respect of many. It was an honor to interview Chief Judge Washington. His endeavors to improve the quality of justice, which are inextricably intertwined with a commitment to service, garner him the title of "Waymaker."

### What prompted your decision to pursue the law?

As someone who came of age in the 1960s and early 1970s during one of the most tumultuous periods of social unrest in American history and as someone who attended college in the Boston area from the early to mid-1970s, during the very bitter fight over school desegregation, I came to understand firsthand the power lawyers can wield in helping to bring about social change and right significant wrongs. I also lived in Newark, New Jersey, during the late 1960s around the time that riots broke out because of the unequal and unfair treatment of African Americans by the government and the predominately white merchant class. The situation was brought to a head by an "urban renewal" project that was widely viewed as one designed to divide and destroy the black community under the guise of a transportation advance. Those experiences inspired me to pursue a career in the law.

### What forces and people influenced or shaped your career as an attorney and as a judge?

There were many influences in my life, both people and forces, that helped point me down my career path. My parents were leaders in our community and taught me early on that "to whom much is given, much is expected." When I started law school, I knew I wanted to be a trial lawyer and I believed that my practice would be in the area of civil rights or criminal law. I didn't understand exactly what that meant at the time, but I knew that I wanted to make a difference and I knew that the courtroom was one place where one lawyer could make a real difference. It's funny, but I think I first came to appreciate that fact when I was young by watching TV shows like *Perry Mason*. I also knew fairly early on that eventually I wanted to be a judge because I felt that if one lawyer could make the system respond to the needs of so many, a judge could really make a difference. Also, unlike many young African-American men of



my generation, I was fortunate to be mentored by several of my parents' friends or parents of my friends who were African-American judges on either the state courts or municipal courts of New Jersey. Judges like Herbert Tate, Harry Hazelwood Jr., and John Teare would always take the time to talk with me and, on occasion, invite me to visit with them in their courtrooms when I got home from college. I was able to witness, firsthand, the impact these judges had on the development of the law and on the quality of life in our community. I was always impressed with their intellect and their commitment to ensuring equal justice under the law and so, professionally, I knew that one day I wanted to follow in their footsteps.

### What legal issues most impassion you as a judge?

As a judge, I try to decide each case that comes before me based on my best understanding of the law, its likely impact on our court's jurisprudence, and its effect on the litigants. However, those cases that raise constitutional claims, relate to permanency dispositions in family cases, or challenge the scope and application of relevant federal and district statutes are the types of cases that tend to capture my attention most quickly. I am most impassioned by these kinds of cases because they

are quintessentially why the framers of our Constitution were so insistent on ensuring the independence of the courts. They well understood the concept of tyranny by the ruling class or majority population and the impact that can have on the freedoms enjoyed by everyone. Hence, cases where the courts are called upon to find a balance between the individual liberties guaranteed by the Constitution and the interests of the state in providing for the collective good are the types of cases that really pique my interest.

### Did your race become an obstacle during your legal and judicial career, and, if so, how did you address it?

As an African-American lawyer in the late 1970s and early 1980s, race certainly played a part in my early career. I began my legal career in Houston, Texas, and, while it was a booming metropolis at the time, it was also becoming more of a melting pot and racial tensions were high.

I was recruited to a large and very-well-established Houston-based law firm with a variety of clients, some of whom were less than happy to see a black lawyer working on their cases. However, the firm wanted to increase the number of minority lawyers it employed because it also had a number of national and multinational clients that were a bit more enlightened and had already started to integrate their leadership ranks. Unfortunately, the subtle racism of low expectations that are part and parcel of conscious and unconscious racial bias made it very difficult to be successful. Because it was hidden or perhaps unconscious, the racial bias was subtle and first manifested itself through the type and quality of the conversations I had most often with firm partners when it was unrelated to cases on which I was working directly. Those conversations invariably focused on sports, music, or entertainment. Few, if any, conversations concerned the law, other cases being handled by the firm or by other young lawyers in the firm, the quality of my work, or the further development of my legal skills.

Moreover, despite the fact that the firm had a significant local and national client base, it seemed that I was always struggling

to ensure that my billable hours met the firm's expectations. For a while, I assumed my classmates at the firm were experiencing similar problems staying busy, but, over time, I came to understand that they were being assigned significantly better and more substantive work with clients that had significantly more resources to spare for their training and development.

In order to address this disparity, I had to confront my partners with my concerns, challenge them to rethink their treatment of me, and affirmatively document the efforts that I was making to seek additional work and training in order to protect myself from claims that I was not pulling my weight in terms of billable hours. Luckily for me the firm had one young African-American partner from Houston, Marty Wickliff, who supported me through those early years with his counsel and, more importantly, with some billable work that helped me survive what objectively could have been framed by the firm as a failed, but good-faith, attempt to hire additional minority lawyers.

I can't stress enough how important it is to not be complacent, to recognize disparate treatment even if it is being done unconsciously and with a smile, and to strive to overcome the stigma of low expectations that others may be imposing on you.

### What pearls of wisdom would you provide to appellate judges based on your experience?

First, you have to really enjoy the intellectual challenge that comes with a primarily academic practice of law. An appellate judge has to really enjoy thinking through difficult and thorny legal issues. Appellate judges also have to be good writers as well as good listeners, adept negotiators, and principled compromisers.

Unlike a trial judge, an appellate judge cannot make decisions by him- or herself. In our court, it takes at least two to tango when we sit on panels, so a judge sometimes has to convince others to agree with his or her legal analysis and the result that flows from the application of the facts of the case. In order to accomplish that goal, you have to have listened, heard, and

taken into consideration your colleagues' concerns; negotiated a way of addressing those concerns without undermining the legal analysis that you are promoting as consistent with your best understanding of the law; and then drafted language that evinces that compromise.

If you believe that you're smarter or more right than everyone else on your court, or that your reasoning is so unassailable that your colleagues' concerns are completely unfounded, you will be a very lonely dissenter in many, many cases and will have lost the opportunity to help develop the law in a meaningful way. Also, it is likely that you will have established relationships with your colleagues that make it difficult for them to hear and seriously consider your concerns about the analysis in opinions they may be authoring. So my pearl of wisdom is to remember the golden rule and treat your colleagues and their opinions as you would want them to treat you and yours.

### Do you perceive yourself as a trailblazer?

No, not really. I am simply trying to continue to promote issues that are important to ensuring the fair administration of justice. Initiatives that I champion—like access to justice, procedural fairness, and pretrial justice reform—are critically important to maintaining the public's trust and confidence that the courts can and will protect the rule of law. That concept is embodied in the vision statement of the courts of the District of Columbia, where we strive to be "Open to all, Trusted by all, Justice for all." ■



**Judge Michele D. Hotten** is co-chair of *The Judges' Journal* Editorial Board. She is an associate judge on the Court of Special Appeals of Maryland and has been a Maryland jurist since 1994.