

Excellent judges: a description and prescription

By Robert J. Brink

A few Fridays ago I fielded a request from Ukraine for permission to translate the Flaschner Judicial Institute's book *Excellent Judges* into Ukrainian.

That same day, the Supreme Judicial Court and the Appeals Court convened at the Social Law Library for their annual Massachusetts Appellate Court Conference sponsored by the Flaschner Institute.

The two occurrences are actually related, and are connected by one person: the late, great SJC Chief Justice Edward F. Hennessey.

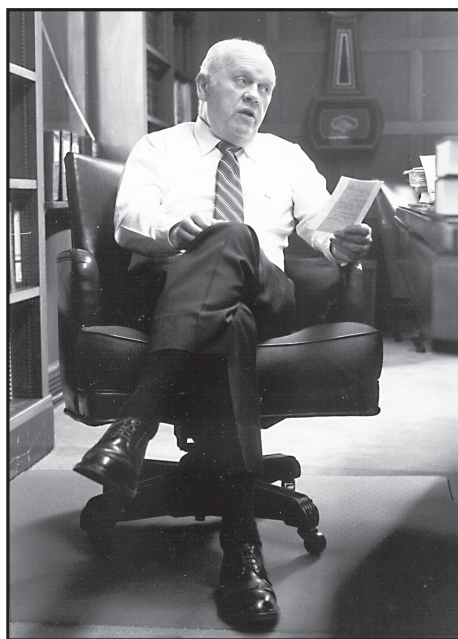
Qualities of great jurists

Written in 1997, Chief Justice Hennessey's *Excellent Judges* has become a classic in judicial circles.

The publication's premise is that individual judges embody the essence of justice. After all, even if court systems are exemplars of efficiency, the parties and the public perceive justice through the prism of individual cases, presided over by individual judges.

Ostensibly written as a guide to judicial selection, *Excellent Judges* is also an elegant examination of the professional qualifications and personal qualities that great jurists exemplify.

A sound education and success in practice are both essential, Hennessey gracefully explained, but they



SJC CHIEF JUSTICE EDWARD F. HENNESSEY

are not enough. Justice also requires judges with integrity, work ethic, courage, courtesy, compassion, and last but not least, modesty.

Given the steady demand for copies to distribute in other states and countries, Hennessey's meditation on what makes excellent judges has had multiple printings. It has been circulated more than once to judges throughout entire state systems.

Similarly, the request to translate *Excellent Judges* into Ukrainian explained that spreading its ideas will advance "judicial reform, which is now in progress" in that eastern European country.

Commitment to judicial education

Hennessey understood that judicial selection is merely the first step. Otherwise, his exhortations in *Excellent Judges* would be hollow.

Even the best-inclined judges must have opportunities for professional development so that they can stay abreast of the law and become adept at adjudicating cases involving individual rights and intense community interests.

Toward that end, Hennessey was an admirer of his like-minded District Court colleague Chief Justice Franklin N. Flaschner, who in the early 1970s had aptly stated that, "[a]part from the judicial selection process, the most meaningful factor in improving professionalism is commitment to judicial education."

The public expects "learned judges." Yet then, as now, there were insufficient educational opportunities for judges to stay current with the law and to study their craft.

Undaunted, Chief Justice Flaschner convinced conscientious and committed judges to voluntarily teach a continuing series of evening "self-help" educational programs to District Court judges throughout Massachusetts. The programs had to be after-hours and on a shoestring, since judges were not statutorily permitted to take CLE days until the mid-1990s.

While the seeds of continuing

judicial education in Massachusetts were sown by Flaschner (who died suddenly, and unexpectedly, in 1976), Hennessey nurtured his friend's idea. To provide judges from all courts with abundant opportunities for continuing professional development, he was the catalyst in 1977 for the creation of the Franklin N. Flaschner Judicial Institute.

Humility to hone their craft

By his efforts to create the Flaschner Institute, Hennessey cleared a pathway to judicial excellence. When he wrote *Excellent Judges*, he mapped out where that path would lead for those who followed it.

This explains the “Hennessey” connection between the request several Fridays ago to translate *Excellent Judges* into Ukrainian and the annual Massachusetts Appellate Court Conference that convened the same day.

This year, the justices — including the SJC's three newest — participated with staff attorneys and law clerks in a workshop taught by writing expert Timothy P. Terrell, a professor at Emory University School of Law. We are all taught to think like lawyers, but the justices must also think like writers. Their opinions must convey often-complex ideas clearly and convincingly. Public confidence depends on concise thinking expressed in coherent decisions.

Modesty was one of the attributes Hennessey emphasized in *Excellent Judges*. Encouraged by SJC Chief Justice Ralph D. Gants (who, like every chief justice since Hennessey, serves as the Flaschner Institute's honorary president), the writing workshop confirms that the justices of our highest state courts have the humility to hone their craft. They lead by example.

On the same Friday, nearly half of the Probate & Family Court bench

was at another Flaschner Institute educational program focused on cutting-edge issues in family law. Earlier that week, copies of the new edition of the institute's *Massachusetts Jury Trial Benchbook* were distributed to judges of the Superior and Boston Municipal courts.

Trial and appellate judges also participated in a late-afternoon discussion with Jeffrey Rosen, president of the National Constitution Center and law professor at George Washington University, on the implications today of the judicial philosophy of Justice Louis D. Brandeis.

Skin in the game

Judges plan, produce and participate in educational activities throughout the year that delve into every aspect of a judge's duties. Participation in typical Flaschner offerings is optional. Most classes continue to be in the evening. Personal integrity and work ethic alone motivate involvement.

Judges invest more than sweat equity planning programs and spending evenings attending them. An impressive percentage shows through annual charitable contributions that they have true “skin in the game,” to use Warren Buffet's telling assessment of how much people really value a long-term investment.

The term also applies to the Massachusetts Bar Foundation, which since 1982 has steadfastly invested in the institute's contributions to the administration of justice, and the Social Law Library, which provides space and essential administrative support.

Judges who reach for these goals

This coming year will mark four decades since Hennessey harnessed Flaschner's idea of self-help professional development. The volunteer ethic Flaschner inspired in the 1970s continues to be at the heart of the

institute's vitality.

The institute has won numerous awards during its nearly 40 years of service, including being honored by the American Bar Association as the best judicial education organization in the nation.

Today, its contribution to the administration of justice can be summarized statistically: 98 percent of Massachusetts judges participated in at least one Flaschner Judicial Institute program during the last fiscal year, 54 percent participated in two, 31 percent participated in three, and 21 percent participated in four or more.

As the annual attendance statistics show, by focusing on the educational needs of individual judges, the Flaschner Institute also fosters a collective commitment throughout the judiciary to aspire to high professional standards.

“In a sense,” Hennessey wrote in *Excellent Judges*, “the system is self-perpetuating, because the judge who reaches for these goals has, by example, a part in the decisions which inspire some men and women of excellence and ideals to become judges, and they inspire others in their turn to the next generation and the next and the next.”

Hennessey was one such power of example. His efforts to promote judicial excellence in Massachusetts are manifest.

Let's hope *Excellent Judges* contributes to similar success in Ukraine.

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