

# A Penchant for Prejudice

*Unraveling Bias in Judicial Decision Making*

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LINDA G. MILLS

*Ann Arbor*

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*Corde creditur ad iustitiam*

she who believes in the heart will do justice



*For Peter*



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## Preface

From as far back as I can remember, I could feel people's pain. When my grandfather spoke of his escape from Nazi Germany, I didn't feel the excitement but the sadness. When my mother described how relieved she was, at 14, to arrive safely in London, I felt her loss beyond words. And when Granny Mills celebrated the life of her husband, I felt the devastation of his death that eventually destroyed her. I hid this pain in my tummy. Needless to say, my childhood was riddled with stomachache.

The first year I represented claimants at Social Security disability hearings, I was always sick. The same pain that plagued my childhood overshadowed my advocacy effort. Even when I won, my stomach ached. I was ashamed when Diana Sampson\* revealed a childhood history of sexual abuse to a judge who objected to the time it took to tell her story. I couldn't help but feel Versie Hawkins's humiliation when she tried to explain why she felt suicidal when she received a denial letter from Social Security. And I was hurt when Dave Smith's intolerance for his own impotence was met with a judge's impatience. But most of all, I felt the pain of the two worlds colliding—judge and claimant—and the difficulty posed to me as go-between. I suppose that I have written this book to purge myself of these feelings and to place the pain where it belongs.

My contact or connection with clients was much deeper than might be expected of even a public-interest attorney. I started a community agency in a small, predominantly African-American city, Richmond, California, in Versie Hawkins's name. Mrs. Hawkins's reputation and support guaranteed my legitimacy and the Hawkins Center's success—people in Rich-

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\*All client names have been changed to protect their identities, except Versie Hawkins.

mond wanted and needed a place to be heard and were desperate for the legal assistance most white lawyers refused to give them.

I swore confidentiality when I spoke with clients about their experience with judges they only whispered were racist but believed deep down resented them, humiliated them, denied claims because those who brought them were other than white. I promised these clients that if they told me how they felt, if they told me what they thought, I would not tell. They were scared of losing their appeals or the benefits they had fought so hard to win. The point of this book is to do those conversations justice.

I got to know the judges both professionally and personally. I attended hearings with them—I knew their idiosyncracies, their likes and dislikes. I met their every whim. Short of breaking the law, I would do almost anything to win my clients' cases.

My most direct—and in some respects most revealing—experience with judges, though, was when I was invited in 1993 to design and participate in diversity training for administrative law judges (ALJs), an opportunity that followed on the heels of allegations from the General Accounting Office that Social Security's judges might be biased. The judges' feelings about certain applicants, impressions of certain neighborhoods and stereotypes about certain groups—most of which the ALJs never realized were biases—was the impetus for this book. However, the judges' particular secrets remain unrevealed.

So many people have influenced me and this work over a period of years. In the early stages of this project, I had the input and support of my cohort of Pew Fellows at the Heller School at Brandeis University, including Rochelle Rollins, Gwyn Barley, Jean McGuire, Stephen Wright, and Brian Gibbs. A very special thanks to Gwyn, Jean, and Rochelle for their love during my ordeal. Barbara Herbert, an honorary member of the Pew clan, was also a critical presence.

Thanks to Deborah Stone who helped inspire the project, and who cared deeply about the enterprise. Deborah was very instrumental in helping me get the National Science Foundation Dissertation Award that made this research possible. Martha Minow was central to the undertaking. She knew the meaning of *corde creditur ad iustitiam*, and she took the time to help me explore its contours. Shulamit Reinharz was an angel, her astute insight helped refine my critical analysis. Rosemary French and Marie Contreras of the Benchmark Institute worked with me on the Justice and Diversity Training. The precious time we spent together helped shape my views on judicial bias and on the training of judges.

Craig Snyder read and edited every page and got me through a hundred major tremors and aftershocks. Finding the watch serves as a metaphor for what went right. I also thank Rio and Shadow for their part in helping me sleep through the ordeal.

Friends who never directly touched the manuscript but who have influenced me in unquantifiable ways include Tatiana Flessas, Susan Greenwald, Sandy Horwich, Michael Fullerton, and Chris af Jochnick. Marty Schiffenbauer worked many late hours on the manuscript and contributed to its original form. Kelly Dunn was always there when I needed him. Dolly Saengswang, Christina Turcic, and Ed Cohen made taking off time from echoing green foundation possible.

Colleagues who have been supportive in multiple ways include David Caudill, Marianne Constable, Colleen Friend, Carole Goldberg, Laura Gomez, Joel Handler, Zeke Hasenfeld, Stuart Kirk, Harry Kitano, Duncan Lindsey, Jim Lubben, Dana McPhall, James Rubin, and Stan Wallack. Cindy Kamen was also invaluable when she did the herculian task of identifying relevant cases. I reserve in my heart a very special place for Karyl Kinsey, who understood what I was trying to do.

UCLA social work and law students and staff have also been wonderful. Phuong Hoang, Emily Maxwell, and Kimberly Yang are directly responsible for the details involved in putting this book together. Tamara Nestle checked and double-checked cites—she is nothing short of a saint. In addition, the UCLA Law Library staff has been invaluable in responding to my numerous requests. The National Organization of Social Security Claimants' Representatives is also deserving of appreciation. They provided both answers to my questions and advocacy to the claimants with whom this book is concerned.

My parents, who soothed my aching stomach, inspired and loved me. Their generosity modeled the spirit of giving for which I hope this book is remembered. I also thank Adele, Marissa, Paul, Sheri, Jim, Cara, Rita, Jack, Lee, and Stan for their tolerance and support and for putting up with my mishigas.

Chuck Myers at the University of Michigan Press was the kind of editor an author searches a lifetime to find. He was gentle and reassuring, committed and persistent. He understood me, and he was a friend.

Linda Durston's lessons in academic writing went beyond words, surpassing what employment, friendship, or love could expect. She made starting and finishing possible, and she was willing to do anything. I am indebted to her for life.

Ironically, while Peter Goodrich was, in some ways, least involved in the day-to-day nightmare of writing this book, he was most influential in its overall form and content. His presence in my life fuels my imagination and nurtures my perfectionism. While I cannot pinpoint exactly what effect he has had on the book, I can say that he is at the center of it, as he is with everything. Ronnie Goodrich naps while I write this preface. Sleeping or awake, he is the heart beating, he is the justice.

The work, most of all, is a gift to the claimants' whose cases I reviewed and to the countless conversations I have had with clients whom I represented. Versie Hawkins's experience with the Social Security Administration was the most poignant, and I thank her for her courage to share it with me.

Bias is not only particular to judges. My thanks to the judges who became friends in hopes that we can remain friends. The book is not personal—my thoughts of you as wonderful and kind beings remain unaltered by my findings and impressions of the hearing and decision-making practices of ALJs.

Finally, I blame no one but myself for the errors in this book or the attacks I am sure to take on its behalf.

Linda G. Mills  
New York, New York