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First Person

A Conversation with Judge Ivan L. R. Lemelle

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On June 16, 2006, Suzette M. Malveaux, Associate Professor of Law at The Catholic University of America, Columbus School of Law, interviewed her cousin, the Honorable Ivan L. R. Lemelle (E. D. La). Judge Lemelle was born in 1950 and grew up in a small, rural town outside of Lafayette, Louisiana—Opelousas. He graduated from Xavier University and Loyola University, New Orleans School of Law, and then practiced law in the private and public sectors. He was appointed a United States Magistrate Judge in 1984 and then United States District Judge (Eastern District of Louisiana) in 1988 by President Clinton.

Judge Lemelle, one of many displaced citizens of New Orleans and the only African-American district judge on the United States District Court in the Eastern District of Louisiana, presided over *Wallace v. Blanco*, a federal lawsuit challenging Louisiana's emergency election plan for failing to sufficiently protect the voting rights of the primarily African-American New Orleans population displaced by Hurricanes Katrina and Rita. The NAACP Legal Defense and Education Fund (LDF) and local counsel from Louisiana argued that measures taken by the state legislature were inadequate and would disenfranchise temporary evacuees from participating in New Orleans's April 2006 primary and May 2006 run-off elections, in which the mayor and city council selections would be made. LDF contended that the state's voting scheme was inadequate and threatened to disproportionately impact Black voters, in violation of the Voting Rights Act. While the city's primary election did not take place on February 4th—as originally planned—it was later slated for April 22nd, a date many civil rights organizations and leaders challenged as too soon. Judge Lemelle—while recognizing room for improvement in the electoral process—refused to delay the election.

Judge Lemelle shared with Professor Malveaux his thoughts on why he permitted New Orleans's first municipal elections post-Katrina to go forward, how Katrina has impacted the city and himself personally, and what lessons can be learned for the future. Judge Lemelle also reflected on what it is like to be one of the few African-American federal judges in the United States Court of Appeals for the Fifth Circuit and on the pioneers that inspired him.

Professor Suzette M. Malveaux: Tell us about Opelousas, Louisiana and what that was like when you were young, growing up there.

Judge Ivan L. R. Lemelle: I was born in Opelousas, Louisiana. Most of my early and high school years were spent in the public and Catholic school systems in Opelousas. Upon graduation, I went on to obtain degrees from Xavier University in New Orleans and the Loyola School of Law. During those formative years in Opelousas, I still recall some of the used and marked books that were discarded by the white Catholic school and sent to us at the Black Catholic school—Holy Ghost Catholic School. My parents emphasized education as the key to overcoming racial barriers.

SM: So what made you decide to become a judge?

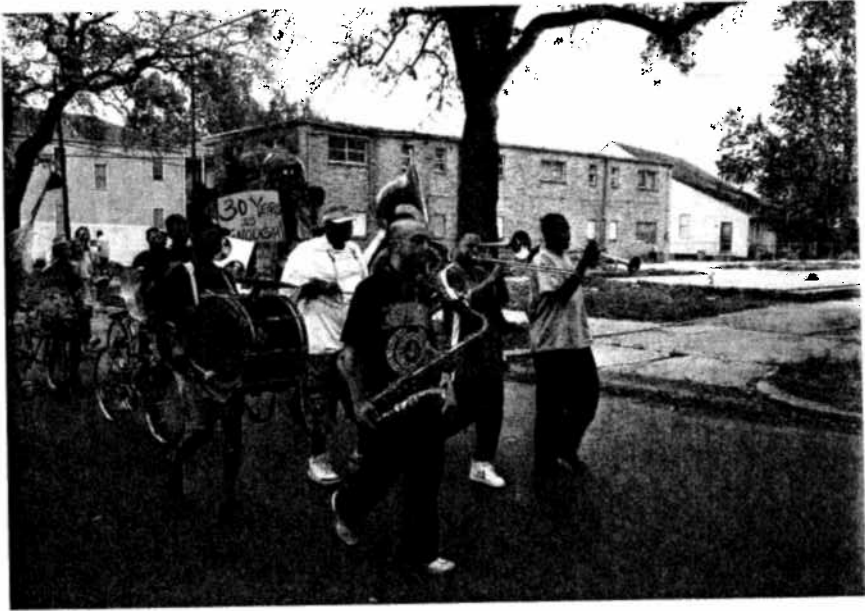
IL: A difficult decision made easy with the help of some heroes in the early civil rights era. Founding members of the law firm I practiced in, Judge Robert Collins—who later became the first African-American federal judge in the Deep South—Judge Nils Douglas—a magistrate judge commissioner in state court—and Lolis Elie—attorney, activist and frequent judge *pro-tem* in the state courts. Ron Nabonne, Jeff Wilkerson, and Okla Jones, II, all alumni like me from the same firm, provided encouragement and support. They thought the time was right for someone to be the first Black magistrate judge in the federal courts in Louisiana. Through their persistence and with additional support from my family, I accepted the challenge and applied. The Eastern District of Louisiana has a grand history of brilliant jurists. I was presented with a chance to walk in the footsteps of J. Skelly Wright, Alvin Rubin, Fred Heebe, and many others.

SM: What kind of challenges have you had being the only African-American judge in the Eastern District of Louisiana?

IL: We have ten African-American jurists in the Fifth Circuit, which is one of the busiest circuits in the country. The challenges that I face are no different than when Judge Collins was the first and only one, when Judge Okla Jones, II was the second and only one. . . . Court employees, especially minority members, would often present us concerns about working conditions, hiring and promotion practices. I was honored when our Chief Judge appointed me to be the chairman of our court's EEO (Equal Employment Opportunity) and affirmative action committee. Through the years, we were able to resolve a lot of complaints. People felt comfortable talking to us and not discouraged in bringing issues they might otherwise stay silent about. While not an issue for me, I could sense some misgivings in a few, not most, senior members of downtown majority firms who appeared in Title VII racial discrimination litigation. But I did not have the time or inclination to prove myself to anyone. Justice had to be served by an impartial application of law to facts, not by perceptions or one-sided thinking.

SM: Can you tell me about Hurricane Katrina? How has that impacted your life? You were in New Orleans. You've been in New Orleans for how long?

IL: Since 1967. Along with our fellow citizens, we were displaced from our homes by the storms and still coping with every imaginable and unexpected matter in the aftermath of our exodus. Our family home is in New Orleans East. Katrina's path came right over that area. It left us with an average flood depth of eight feet. My home had over six feet of water. It settled at four feet for about ten days before it finally drained out. My first floor was devastated. My second floor is intact but damaged by wind, hail and looting that occurred in our neighborhood. But, you know, I was lucky. My family safely evacuated



"Anti-Gentrification March-Treme" 2002 © Lewis Watts

before that momentous day, August 29, 2005. We lost close friends as a direct result of the storm and a sister-in-law's husband as an indirect result of the same. Our material losses pale in light of the human casualties. There was a total collapse of our infrastructure. New Orleans East is the largest land area of the city, composed of a significant number of middle-class African Americans, including my subdivision: Lake Willow. Solo practitioner lawyers, doctors, poor people, retirees, teachers who evacuated ultimately found, in many instances, better opportunities elsewhere. But most still want to return home to New Orleans. Many just could not afford to come back to New Orleans. As a Red Cross volunteer in Lafayette, Louisiana, where I eventually relocated to, I vividly recall meeting an 80 plus year old couple. . . evacuees from Betsy, and again Katrina. The only reason they are alive was because they recalled from Betsy that a lot of people died from drowning or suffocation in the attics of their homes, trying to escape the flood. Accordingly, this couple kept an axe to cut a hole in the roof of the attic, in the event that there was another hurricane that forced them into the attic. And that's what they did during Katrina. They were rescued from their home's rooftop in New Orleans East by helicopter. The wife told me, "Judge, I never saw him move so fast in chopping the hole in that attic!" And he said to me, "You know, judge, the only frightful moment I had was not when the flood came and when I was chopping that hole—because I know I was going to get us out and on the roof." He said the most frightening moment was when he was being lifted by helicopter up in the air towards roaring helicopter blades. They never flew on any aircraft before in their life. He related how the helicopter's basket kept swinging and turning. And he's laughing about it. And I'm almost in tears. Here they are telling me this story in a very nonchalant, casual, calm and soothing way. I'm listening and I told them, "You gave me more strength in the telling of that story than I'm giving to you and I'm supposed to be your comforter as a Red Cross volunteer." When I came back the next day, they were evacuated from the Red Cross shelter in Lafayette and sent to Houston. One of my biggest disappointments since the evacuation was not being able to locate and follow-up with this beautiful couple. God bless them for giving this ill-prepared "Red Crosser" comfort.

New Orleans municipal elections were initially set for February 4, 2006, but were postponed on account of state officials' contentions that the elections could not be held so soon after the devastation of Hurricanes Katrina and Rita. This postponement prompted a lawsuit by New Orleans citizens who argued that an indefinite delay in the electoral process deprived citizens of their voting rights, in violation of the Constitution and the Voting Rights Act. Consequently, the state set April 22, 2006 as the date for the primary election.

On February 23–24, 2006 and March 27, 2006, Judge Lemelle heard oral argument by Plaintiffs' counsel in Wallace v. Chertoff, Civil Action No. 05-5519 (which was consolidated with Tisserand v. Blanco, Civil Action No. 05-6487, and ACORN v. Blanco, Civil Action No. 06-611), arguing for a delay in the New Orleans municipal elections scheduled for April 22, 2006.

At the March 27, 2006 hearing, plaintiffs' counsel, among other things, challenged the state election law requiring first-time voters who registered by mail to vote in person at a Registrar's office or polling place. Counsel contended that requiring evacuees to return to Louisiana to vote imposed on them an unreasonable financial burden, comparable to a poll tax. Plaintiffs' counsel also challenged the state election law that provided for in-state satellite voting in cities in the state of Louisiana. Counsel contended that satellite voting should also be made available in cities outside of Louisiana.

On March 27, 2006, Judge Lemelle denied the Wallace Plaintiffs' Motion to Reconsider, Alter, or Amend. "Recognizing the importance of the issues raised and the need for further monitoring," Judge Lemelle also ordered that the parties' counsel meet within that week and submit, among other things, "an update on voter information/outreach initiatives, absentee balloting, polling locations and staffing of same, election day monitoring" so that he could address any remaining issues. See Order of March 27, 2006.

New Orleans first post-Katrina municipal elections were held on April 22, 2006 as scheduled. A run-off election was held on May 20, 2006. Incumbent Mayor Ray Nagin was reelected after defeating Louisiana Lieutenant Governor Mitch Landrieu.

SM: Let me turn to the litigation that came before you in your court. I've looked at some of the court filings and the record. The NAACP Legal Defense Fund and others have argued that the state of Louisiana's emergency election scheme was going to disenfranchise a lot of displaced New Orleanians, and disproportionately African Americans. The plaintiffs were concerned that first-time voters would have to come back to Louisiana to vote and that they could not vote by absentee ballot. The plaintiffs were also concerned that evacuees would be disenfranchised because there wasn't satellite voting outside of the state of Louisiana. The plaintiffs wanted Atlanta, Houston—some of the places where a lot of people had been dislocated—to also have satellite voting sites. Consequently, plaintiffs asked for a delay in the primary election. Can you tell me about your decision not to permit that delay?

IL: I will try giving you the procedural background, how it got started and, to some extent, how it ended. The first of three lawsuits was brought by a group contending that Governor Blanco's call for an election in September (2006) was going to lead to disenfranchisement of minority voters, and by not calling the election before then would have some impact on minority voters. So it was quite the opposite of what was eventually argued, when the NAACP LDF was allowed by me to join the case. After several hearings, there were two other lawsuits that brought somewhat similar, yet dissimilar, claims in terms of what relief they were seeking. The cases were heard on an expedited basis. After evidentiary hearings, I ruled that if the state did not take action to call the election on the date that the original plaintiffs wanted, I might be forced to do so—on the basis that it would lead to disenfranchisement of African-American voters. In ruling, I strongly urged the state legislature to consider some other methods of voting, because after Katrina a lot of things—not just in terms of elections, but in terms of everything that affected normal

life activities—changed and were being done in different ways. So I directed the parties to meet with the Legislature and the Governor’s representatives. I wanted everyone to get together to see if they could come up with a plan—resolve some of the differences. If they couldn’t, they would come back to me. A plan was eventually presented. Initially, the plan was rejected by the Legislature, causing the Legislative Black Caucus to walk out of the session. When I heard news of the rejection, then obviously, I was disappointed. I expressed that disappointment to parties’ counsel and told them to try again. Shortly thereafter, the Legislature reconsidered the proposals. All the proposals passed that were being sought, except for two. The two that did not get implemented, or were not considered were: the one that was going to set up satellite voting outside of the state and the other concerned first-time voters. The major changes that passed involved certain provisions for first-time voters and satellite voting outside of Orleans Parish in other parts of the state. Ultimately, another hearing was called by me to consider what was done and not done and whether or not there was evidence of voter disenfranchisement. None was found. I signed a judgment recently on all three cases and those cases are now closed. I’m told that the election returns showed the percentage of Black turnout was comparable to what it was pre-Katrina in mayoral elections. I don’t know if that’s correct or not. It’s possible that another lawsuit involving similar claims might urge similar issues for a different election. Courts of law can only rule based upon the record evidence and applicable law, not upon outside the record influences. I based my rulings on evidence presented to me in court and that evidence led to the relief I ultimately approved.

SM: I want to go to some of the media coverage at the time you made your decision. There were a number of civil rights organizations that argued that requiring first-time voters to vote in person was equivalent to a poll tax. Did that argument resonate with you at all, given the historical racial discrimination in Louisiana and other states in the South?

IL: I know the history of the Voting Rights Act. The firm that I was with—all of us in the firm—at one time or another, had a civil rights case. We worked on voting rights cases; we were involved in a number of election lawsuits as lawyers for Black litigants. I think that the lawyers in this case, particularly the lawyers for the original set of plaintiffs who are local evacuees themselves in Lafayette and Houston—did a fine job. Subsequently, when we allowed the NAACP Legal Defense team to get involved, they did, as I expected, excellent work on behalf of their clients. Their legal arguments were all on point. Did it influence me? It had influence. But again, we can argue legal points of view and argue what the Voting Rights Act stands for, but you still have that burden of proof, to show with factual evidence that this is a disenfranchisement in some manner or another. And if proven, the relief has to be balanced and focused in light of several factors. There was insufficient evidence to fashion any more relief than what was already obtained.

SM: Why not delay? If you could have permitted more people to be enfranchised, then why not push back the election to make that possible?

IL: There was a group of plaintiffs who wanted the election called earlier and I didn’t allow that; it would have been too early. There was also a belief that holding it too late would also lead to disenfranchisement. Voters were entitled to vote and the elections were supposed to be held in February (2006). They couldn’t be held in February (2006)—that was too early. Do you delay it until possibly September? Would that effectively lead to disenfranchisement because of a likely impact upon voter interest or turnout? Should that matter? It’s an important election—mayor, city council, assessor elections were designated under the city charter for a certain date. To delay it any further than necessary would be problematic. New Orleanians wanted to come home; they wanted normalcy in their lives—at least that road to normalcy, if not that exactly. And to do otherwise, to me, would deflate their expectations. The most powerful tool of minorities in any society, in a demo-

cratic society like ours, is the power of the vote. Every vote counts—regardless of wealth, color or any other factor—to determine the direction of society through elected representatives of the people. That’s power. The Voting Rights Act, while in some respects imperfect, is designed to help protect that power. The people of our city had a need, a right, to feel like they have a right to determine where this city’s headed. There were some angry voters out there. People, for one reason or another, justified or not, felt official efforts to promote normalcy and rebuilding were ineffective or untimely. I cannot speculate whether my decision—coupled with outside demonstrations related to it—contributed in positive ways to voter turnout. I like to think it did. My object or role in deciding a voting rights case is not what the turnout is, because that’s after the fact. It’s to deal with it before, and to make certain that legal rights are protected. There was some speculation that Black voters did not trust absentee or mail-in balloting. But more Black voters voted absentee and by mailing in this election than ever before, because they were out of town, displaced. The same motivations that cause a white person to vote absentee will be the same motivations that cause a Black person to vote absentee. Even more so here.

SM: Did you ever think, though, because the NAACP Legal Defense Fund, and ACORN, and Jesse Jackson and Marc Morial (Urban League President and former mayor of New Orleans)—because major civil rights organizations and leaders were taking a position counter to yours that your position was not the correct one?

IL: I respect anyone’s right to disagree. However, I would not be a good judge if I based my judicial rulings on matters outside the trial record.

In January 2005, Iraqi expatriates were able to participate in Iraq’s first democratic elections held in fifty years, by casting their ballots at satellite polling places located in five cities throughout the United States.

IL: Had the attorneys come into court and given me some evidence, some proof, something to show for instance, how did the government set up the system of voting for displaced Iraqi nationals, I could have considered such as evidence—they and such evidence were not offered. I asked them, “Well, how do you do that? How is that done? What did it take?” If I had gotten some proof along those lines, then it could have affected the extent of available relief, but I never got those answers to my questions. I cannot base my decision in any case on what I read about in the press, see on TV or hear on the radio. My sister-in-law participated in the march (challenging the state’s emergency election scheme). She was back in New Orleans. She felt as if my decision was going to make people come here and vote because they were going to be ticked off, they were going to be mad. Later, when she saw the electoral turnout, she said, “Maybe you did the right thing after all.” I hope she’s right. I called it based on the facts presented in court.

SM: There was an article that came out in the *New York Times* that said something to the effect that you had chastised social activists for using people who were suffering. (See Judge Orders New Orleans to Proceed With Election, *NYT*, March 28, 2006). Do you recall anything like that?

IL: One of the lawyers during a hearing argued what some protesters were saying. I asked in response, “Where are those civil rights leaders? They’re not in my courtroom today. I’ve asked for this before. If they have testimony on something bring them to court. I can’t go beyond the record. Where is that proof?” I respect Jesse Jackson. I respect Marc Morial. Particularly Jesse Jackson, for his early role in the hard and very dangerous period of the civil rights struggle. We’re the beneficiaries of his efforts. Certainly, I would have been impressed having Jesse Jackson in my courtroom. Just his presence, and listening to what he had to say in my courtroom, would have been a momentous occasion. But I couldn’t base my ruling on what he had to say to the press. So it wasn’t chastising them;

it was more to the lawyers saying, “Are you going to call them as witnesses, counselor?” My intent was not to chastise anyone. I didn’t have a right to. The press, perhaps, took it that way. I do question anyone’s underestimation of the human resolve, the will of the people to overcome Katrina’s wrath, by participating in the electoral process. Black voters, like white voters, have a right to participate in the electoral process. And to say that simply because you are going to have to now vote absentee or by mail is not in itself a violation of the Voting Rights Act. You have to show how that is going to negatively impact Black voters. My people are displaced. The evidence showed that they were going to vote—for a number of reasons. I had one witness who was a major civil rights leader in New Orleans and displaced to Georgia. He said that come hell or high water he was going to vote, no matter what. That impressed me. He disagreed with my ultimate findings. He thought there should be satellite voting outside the state. I respectfully disagree with the unproven notion that the absence of some, as a legal matter, would lead to voter disenfranchisement.

SM: Do you think there are lessons here that have been learned?

IL: Quite a bit. In terms of voter election laws, the public learned more about the electoral process. I authorized, for instance, election day monitors to further assist and educate voters and voting day commissioners. New Orleanians are rebuilding and are on that bumpy road to normalcy. Voters in New Orleans East, Gentilly, Lakeview and Lower Ninth Ward, among others, will probably have to return in the future to mega precincts in order to vote. I voted in Lafayette in both elections. I was thankful to see and hear about voter commissioners and registrars throughout Louisiana who were very hospitable, courteous and professional to displaced voters.

SM: If there’s data that shows that some of the election procedures had a disproportionate impact on African-American voters, then changes could take place for the September election. For example, satellite voting polls outside of Louisiana and permitting first-time voters to vote by mail. Maybe those kinds of changes could occur in time for the September election.

IL: And you’ve got some other variables too. A big unknown right now is, “Of the New Orleanians who evacuated, who’s returning back? Are they returning back? We did a lot of soul searching to determine whether or not we’re going to rebuild or return to New Orleans. I wish I could convince everybody who left to come back, but I realize they have to make their own personal decisions after assessing many factors that affect individual concerns.

SM: As the only African-American judge in the Eastern District, I would imagine that you are seen as a leader and a role model. Do you think that people understand what was behind your decision to return?

IL: I’m one little cog in the wheel amongst several cogs. Am I flattered by the thought that somehow I may inspire people to action? Of course. I’m taking a risk like everyone else does in rebuilding. The future is uncertain, with no guarantees.

SM: Did you ever think about not coming back?

IL: No, never did, that never entered my mind.

SM: Why?

IL: Suzette, when I came back the first time—and as devastated as my home was—I didn’t want to leave. I didn’t have power. I didn’t have water or gas. I didn’t have anything, but I wanted to stay on the second floor; just me, I wouldn’t put my family through that. But there was mold everywhere and people said, “Oh no, you’re going to get sick.” My family would have suffered more out of concern for me had I done that. So I didn’t stay. But every time I go back home, it’s very difficult for me to leave . . . very difficult. Concern over the suffering conditions of homes and neighbors drive me to return. Remembrances—Lake Willow constantly pulls me back and one day I will stay. What really hurts is when I hear people who are not coming back, like my neighbor, a physician,

at the peak of his career, in a home he and his wife put everything into. Yeah, (sighing) those are the hurting things—to lose neighbors, friends, family, etc. We learn our lessons and one of the things I guess you learn in this is who are your true friends. And you learn a lot about human nature as a result of it.

SM: And about yourself.

IL: Oh! A lot about myself. A lot of things I didn't even want to know! It scares me! (laughing) Like I told you when I didn't want to leave the house. I look back on that and I said, "Hmm, what would have happened to me had I stayed?" Then again, I was there yesterday. I go as often as I can. Life in the "Big Easy" has everyone Katrina-weary, yet steadfast in seeing the City's rebirth.

SM: Thanks for your time, Judge. I really appreciate you sharing your thoughts with me.