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So, You Think You Want to Be a Judge

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SO, YOU THINK YOU WANT TO BE A JUDGE

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The American public is fascinated by judges. How else do you explain Judge Wapner, Judge Ed Koch, Judge Judy, Judge Roy Brown, Judge Joe Brown, Judge Hatchett, etc.? Every major television network has a show featuring a judge. The judge shows are often among the most highly rated shows on the network.[1] Many of the shows claim that the judges depicted are or were real judges. They claim that the disputes these television judges resolve are real. Many intelligent people are shocked to learn that the disputes are scripted and that the judges portrayed are often caricatures. Were real judges to say the things that are said routinely on these shows, they would quickly be facing judicial disciplinary panels and fighting to keep their jobs.[2] Nevertheless, these shows have fostered the impression that being a judge would be an interesting professional goal.

Interestingly, there is no school that one can attend to become a judge. No accredited American law school offers a course of study in

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1. For example, *Judge Judy* was rated third in viewership for the week of September 7, 2008 by Nielsen ratings behind only *Jeopardy* and *Wheel of Fortune* and ahead of popular programs such as the *Oprah Winfrey Show* and the *Dr. Phil Show*. Top TV Ratings, Nielsen Media Research, http://www.nielsenmedia.com/nc/portal/site/Public (follow "Inside TV Ratings" hyperlink; then follow "Top TV Ratings" hyperlink; then select "Syndication" from the drop-down menu) (last visited Sept. 7, 2008).
2. *See In re* Lamdin, 404 Md. 631, 655, 948 A.2d 54, 68 (2008) (suspending a district court judge for thirty days without pay for peppering litigants with disparaging remarks). The court held in relevant part that "[a] judge's lack of courtesy to defendants creates the appearance of impropriety." *Id.* at 650, 948 A.2d at 65. The court found that "[c]onduct reminiscent of the playground bully of our childhood is improper and unnecessary." *Id.* at 651, 948 A.2d at 66 (quoting *In re* Eastmoore, 504 So. 2d 756, 758 (Fla. 1987)).

judging.[3] Doctors go to medical school; engineers get a degree in engineering. Students who want to be architects study architecture. Accountants study accounting. And so it is with every profession except for judges. There are no schools for would-be judges in America like there are in other countries.[4] One must first be successful as an attorney to be considered for a judgeship. Graduation from law school and years of practice as an attorney are prerequisites.[5]

Few, if any, law students enroll in law school with a goal of being a judge. Many, if not the majority, of the second and third year law students I taught for the last twenty-three years do not have a clear idea as to what they want to do when they graduate. Few students know which area of law they intend to practice or whether they want to practice at all. Many students enroll in law school without a definite plan. They were college graduates interested in continuing their education, and law school seemed a good way to do that. Most had not given serious thought to their long-term career goals.

Unlike many law students, I knew exactly what I wanted to do from the time I was thirteen years old. It was in the summer of my thirteenth year that my career goals were unalterably fixed. I knew I wanted to be a judge. That summer, my parents allowed me to take public transportation on my own for the first time. Almost every day that summer, I would take a bus to Calvert and Fayette Streets in downtown Baltimore and spend the day listening to cases presented to the judges of the Supreme Bench of Baltimore, now the Circuit Court of Baltimore City. The courtrooms were comfortable and

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3. The University of Nevada, Reno, has a Judicial Studies Program that is geared towards judges and court administrators, but admission is limited to sitting judges and it is not a preparatory course for would-be judges. MAX BAER ET AL., THE JUDGES BOOK 372-73 (Alfred J. DiBona, Jr., ed., Am. Bar Assoc. and Nat'l Judicial Coll., 2d ed. 1994); *see also* University of Nevada, Reno, Judicial Studies 2008 Program Description (2008), http://www.judicialstudies.unr.edu/MJSDescription08.pdf.

4. For example, by decree of the President of Russia, the Supreme Court of the Russian Federation established an Academy of Justice to train candidates to become judges. Russian-American Judicial Partnership, Decree of the President of the Russian Federation on the Russian Academy of Justice (1998), http://www.rajp.org/documents/en/109_en.pdf.

5. The American Bar Association recommends that "[t]he length of time that a lawyer has practiced is a valid criterion in screening candidates for judgeships." Nebraska Judicial Branch, American Bar Association's Guidelines for Reviewing Qualifications of Candidates for State Judicial Office, http://supremecourt.ne.gov/commissions/aba-manual.shtml (last visited Aug. 28, 2008); *see also* The National Center for State Courts, Judicial Selection and Retention: FAQs, http://www.ncsconline.org/WC/CourTopics/FAQs.asp?topic=JudSel#FAQ623 (last visited Aug. 28, 2008) (providing a comprehensive discussion of judicial qualifications).

impressive. I was told that I could walk into any courtroom and watch what was going on for free. There was no charge, a significant consideration for a thirteen-year-old with no money. The marble walls, impressive furniture, and great seal of the State of Maryland over the raised judge's bench all made quite an impression on me but were nothing compared to the people. There were police officers in uniform and detectives in plain clothes. There were clerks and court reporters. There were jail guards from the Baltimore City jail and officers from the Division of Correction. They would bring numerous defendants, handcuffed and wearing shackles on their legs, from the side doors of the courtrooms. Some looked menacing and dangerous, but most looked like average people. It was exciting. This was real, not some television show.

But what impressed me the most were the lawyers. The defense attorneys were generally older and seemed more experienced. Their clothes looked really good. The prosecutors were generally young, but it was the prosecutors who seemed to be orchestrating the whole event. They were the people to whom the police officers wanted to talk. The defense attorneys also wanted to talk to the prosecutors. I learned to get to court early to watch the negotiations that occurred before court began. It seemed as if the prosecutor made the decision as to how the case would ultimately proceed.[6] If I had to be a lawyer before I was a judge, I thought being a prosecutor would be neat. It was exciting to watch the defense attorneys talking to the defendants' families and trying to explain the best way to proceed. The defense attorneys could be very persuasive. They almost always talked about the judge who would be hearing the case. The choreography of the courtroom was fascinating. It seemed as if everyone had a part to play and each person knew their role.

Yet, everything paled into insignificance when the bailiff called out in a loud voice, "All rise." It was then that the most impressive person of all came into the courtroom. The judge in the black robe was the center of attention.[7] Everyone stopped speaking,

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6. JOHN W. SUTHERS, NO HIGHER CALLING, NO GREATER RESPONSIBILITY: A PROSECUTOR MAKES HIS CASE 1 (2008). John Suthers, a former local prosecutor, State Attorney General, and U.S. Attorney, points out that the impact of the prosecutor in his or her cases is so great that the prosecutor can essentially "ruin a hard-earned reputation with the careless stroke of a pen or protect one by showing cautious restraint." *Id.*

7. The judicial robe has its roots in the English judiciary where the robe evolved from ecclesiastical tradition. The color of the robe varied by the subject matter of the proceeding. BAER ET AL., *supra* note 3, at 26–27. "The tradition of wearing a black

immediately rose to their feet, and stood there until the judge was seated. From that moment on, all attention was directed to the person in the black robe. The lawyers seemed to listen intently to everything the judge said. They were respectful and deferential.[8] Everyone in the courtroom complied with every direction or request immediately. If there was a trial, the judge decided which questions were allowed and which could not be asked. The judge seemed to be in total command. In the trials that I watched that summer, it was often the judge who decided guilt or innocence.[9] The judge seemed omniscient and omnipotent. Roy M. Cohn, Special Counsel to the House Committee on Un-American Activities during the McCarthy era, once remarked, "I don't want to know what the law is, I want to know who the judge is."[10] If the defendant was found guilty, the most impressive act of all occurred. The sentencing of a criminal defendant was then, and is now, dramatic.

I knew this was what I wanted to do when I grew up. I wanted to be a judge. Then I found out that to be a judge, you first had to be a lawyer.[11] It didn't matter what kind of lawyer you were as long as you were respected in the legal community. I was told that to become a lawyer, you first had to graduate from college, then go to law school, graduate, and take the bar examination. I made up my mind that was what I would do.

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robe began in 1603 when English judges wore the robes to mourn the death of Queen Elizabeth I." R. Shelly Horne, *Uinta County Complex*, WYO. LAW., Feb. 2000, at 23, 24. Even today, although judges generally wear black robes, on some courts other colors are worn. For example, judges on Maryland's highest court, the Court of Appeals of Maryland, wear red robes with white tabbed collars. RUDOLF B. LAMY, A STUDY OF SCARLET: RED ROBES AND THE MARYLAND COURT OF APPEALS (2006), http://www.courts.state.md.us/lawlib/aboutus/history/judgesrobes.pdf.

8. *See* MODEL RULES OF PROF'L CONDUCT R. 3.5 (1996). Rule 3.5 requires, as it is titled in part, "Decorum of the Tribunal." The rule demands that even when faced with abuse by a judge, an attorney "may stand firm . . . but should avoid reciprocation . . . and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics." *Id.* cmt. 2.

9. It is still true today that the "great bulk of lawyering goes on before judges . . . not juries." PETER MURRAY, BASIC TRIAL ADVOCACY 17 (1995). For example, in fiscal year 2007, the Third Judicial Circuit of Maryland, comprised of Baltimore and Harford Counties, conducted 3258 trials, of which only 376 were tried by a jury. MD. JUDICIARY ADMIN. OFFICE OF THE COURTS, COURT TRIALS, JURY TRIALS AND HEARINGS tbl. CC-13 (2007).

10. LAWYER'S WIT AND WISDOM 75 (Bruce Nash & Allan Zullo eds., 1995).

11. William J. Bennett, the first Director of the White House Office of National Drug Control Policy (familiarly called the U.S. Drug Czar), humorously commented that "a judge is just a lawyer who somebody's blessed." Interview by Rowland Evans & Robert Novak with William J. Bennett (CNN television broadcast Dec. 16, 1989).

I. PRE-LAW SCHOOL PREPARATION

Quite frankly, I gave no more thought about my goal throughout my public school years. I finished high school and began college. I knew I had to finish college in order to be admitted to law school. No one asked me why I was going to college or what my goals were. No one suggested a course of study in college that would help me succeed in law school or in my career after law school. It was generally thought among those students who expected to go to law school following college that a good major was political science.[12] Where this belief came from, I have no idea. Yet, I imagine that if you were to check the major course of study for most students headed to law school today, an inordinate number of students would be political science majors. The fact that political science has virtually no connection to law school studies is, understandably, not generally acknowledged by political science professors or colleges. Any other liberal arts course of study will prepare the student for success in law school as well as political science.[13] While I took a number of political science courses, I was intrigued by sociology. I thought I would be a sociology major with a minor in political science. That was until I was told that a course in statistics was a requirement. That ended my intention to major in either sociology or political science.

Fortuitously, I was told that I could major in theater without needing a course in statistics. I immediately became a theater major. By accident, I majored in a course of study that provided me with the best possible preparation for what I ultimately wanted to do. While any liberal arts course of study can help one succeed in law school, courses that require a good deal of reading, particularly reading for

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12. For example, Political Science majors comprise 18.40% of the Fall 2008 incoming law school class at the University of Baltimore School of Law. Admissions Office, Univ. of Balt. Sch. of Law, Entering Class Profile (2008) (unpublished report, on file with author). That is more than double the next largest group, English majors, which make up 7.67% of the class. *Id.* Interestingly, Philosophy majors, a course of study that certainly develops critical thinking skills, and Communications majors, a course of study that develops advocacy skills, each comprise only 2.15% of the class. *Id.* Students majoring in the Performing Arts, which provides great training for trial lawyers, make up a very low 0.31% of the class. *Id.*

13. The Law School Admissions Council recommends that "[a]s long as you receive an education including critical analysis, logical reasoning, and written and oral expression, the range of acceptable college majors is very broad." Law School Admission Council, Getting Started – Questions, http://lsac.org/AboutLawSchool/getting-started-questions.asp (last visited Oct. 14, 2008).

comprehension, are most helpful. Theater majors are constantly reading plays and have to understand the thoughts and emotions conveyed by the characters. Also, courses that require the student to practice speaking before groups of people and to orally interpret written materials are excellent preparation for a career as a trial lawyer. In acting classes, I practiced being convincing and sincere. To succeed, I had to have the audiences believe I was the character I was portraying. In oral interpretation classes, I practiced reading materials aloud so they were believable. In speech classes, I learned how to modulate my voice and studied techniques of persuasion. In my theater arts classes, I learned to develop a certain stage presence. It was fantastic preparation for becoming a trial lawyer.

While my college professors did not know it, they were allowing me to practice the skills that I would use on a daily basis once I began my career. In my opinion, every college student who wants to go on to law school and who thinks they want to be a trial lawyer should take courses in theater regardless of their major. In my years of teaching trial advocacy, I have noticed that students who have taken performing arts courses enjoy an advantage over those who have not. The fact that no one makes this known to students has always been curious to me.

II. LAW SCHOOL PREPARATION

For most students, law school provides the first opportunity to study material that finally has something to do with what they will be doing for the rest of their lives. It is a complete departure from their education up to that point. Most students find that what they learned in high school and college has nothing to do with what they study in law school. It is difficult to see how the courses up to this point have any relevance to what they are now studying. For most students, it is the time to study areas of the law they never knew existed and many students are surprised that these areas of law are of interest to them. It surprised me to be interested in so many diverse subjects in law school. Some students begin to get a sense of the areas of the law that would be attractive to them after they finish the first year courses. Unfortunately, most students still do not have a clear sense of what kind of lawyer they will try to be. Law school is the chance to experience a wide variety of law. Students who do not have a clear sense of what they want to do should try to be exposed to as wide an array of courses and subjects as a school allows.

Students who know what kind of law they intend to practice have the advantage of being able to focus on those subjects that will help them in practice. I knew exactly what I wanted to do. I wanted to be a trial lawyer to prepare for being a judge. Courses in trial practice

would help any would-be trial lawyer. Internships that allow a student to appear in an actual courtroom and speak in a real case are very useful. Evidence classes unquestionably help a trial lawyer present their cases to fact finders. No one can be an effective trial lawyer or judge without a thorough knowledge of the rules of evidence. Someone who is preparing to be a trial lawyer, and ultimately a trial judge, should take every course available that involves evidence or trial practice.

Law schools now give students the opportunity to observe what happens in a courtroom and to watch lawyers and judges in action through internships.[14] Watching good lawyers practice their craft is invaluable. If there is anything more valuable, it is watching bad lawyers. The law is one of the few professions that allows practitioners to plagiarize. Copying techniques and speeches that are particularly effective is totally acceptable and avoiding what does not work just makes sense. Lawyers do not score points for being original, just effective. Students aiming to become trial lawyers, and ultimately judges, who do not avail themselves of an internship with a judge are missing an experience of incalculable value.

While any accredited law school can provide a basic legal education that allows the student to sit for the bar examination,[15] it must be pointed out that the location of the school can be of importance to the student who wants to be a trial lawyer and ultimately a judge. Students who attend school in the area in which they intend to practice have a distinct advantage. The opportunity to make contacts and to do a judicial internship is often lost if the student goes to law school in another state. No matter how uniform procedures become, the ability to observe the unique idiosyncrasies of the court in which the student hopes to practice is lost if the student goes to school in another state. Developing relationships with clerks, sheriffs, and other court personnel cannot occur. The ability to come to court on a free morning or afternoon and observe lawyers and judges at work is lost. It has never made sense to me

14. The University of Baltimore School of Law, for example, runs a judicial internship program that is offered for credit, where a student spends a semester working in the chambers of either a trial or appellate judge. *See* University of Baltimore School of Law, Judicial Internships, http://law.ubalt.edu/template.cfm?page=401 (last visited Oct. 14, 2008).

15. "An applicant shall . . . have a degree of juris doctor or its equivalent from a law school . . . ." MD. CODE ANN., BUS. OCC. & PROF., § 10-207(d)(2) (LexisNexis 2004). *See also* MD. RULES GOVERNING ADMISSION TO THE BAR R. 2(d) (2008) (requiring that "pre-legal education requirements" be met).

why someone would go to law school in a different state from the one in which they intend to practice. Students seem to think that going to a school with a higher *U.S. News & World Report* ranking[16] will help them get a job and start their career. For any school other than the very top of the top-tier law schools, this thought is erroneous. Those students who intend to practice in state court when they graduate from law school should go to school in the state where they intend to practice. As a Maryland trial lawyer, I was fortunate to have obtained my legal education at the University of Baltimore School of Law.

Law students going to the same law school naturally develop relationships based on their common experiences. One should be conscious of the fact that these law school relationships can have a definite impact on one's career. The students with whom you share law school experiences are the same people with whom you will practice. In future years, you will encounter them often. Some will be colleagues and some will be opponents. Some will refer business to you. Their evaluation of your skills and abilities will start while you are still in school together. They will get a good idea as to whether you are precise or sloppy, prepared or unprepared, smart or dull. Also, they start to form an opinion about the kind of person you are. It makes good sense to be as friendly and helpful as one can be with your fellow students. The reputation that a law student develops while still in law school can have a definite impact later in one's career. Often small acts of kindness or assistance to fellow students will yield remarkable results years later.

III. JOB PREPARATION

While any lawyer can become a judge, it is hard to imagine lawyers who practice in certain areas of the law ever being appointed to the bench. It is surprising to the public that most graduates of law school rarely, if ever, see the inside of a courtroom.[17] There are lawyers who spend their days advising corporations and businesses. There are lawyers who work full-time on real estate matters. Many lawyers

16. *U.S. News & World Report* conducts an annual ranking of ABA accredited law schools. *See* U.S. News & World Report, Best Graduate Schools, Guide to Law Schools, http://grad-schools.usnews.rankingsandreviews.com/grad/law (last visited Oct. 14, 2008). The Law School Admission Council and the American Bar Association both "disapprove of all rankings of law schools." Law School Admissions Council, 2009 Official Guide to ABA-Approved Law Schools, http://officialguide.lsac.org/ (last visited Oct. 14, 2008).

17. Less than 10% of lawyers appear regularly in court in adversary proceedings. JAMES W. JEANS, SR., TRIAL ADVOCACY § 1.5, at 5 (2d ed. 1993).

are involved in estate planning and drafting related documents. There are many areas of the law that do not require a lawyer to ever appear in court. It is difficult to imagine that a transactional lawyer ever be appointed to a judgeship. Almost all lawyers who are appointed to the bench were litigators at the time of their appointment—that is, lawyers who spend their day either in a courtroom or preparing to be in a courtroom. Many people refer to litigators as trial lawyers.

Trial lawyers develop skills that are different than the skills of the transactional lawyer. The ability to listen is essential to a trial lawyer. Teachers of trial advocacy have said that the ability to listen with discernment is the trial lawyer's most important skill. Having a feeling for when someone is lying or telling the truth is necessary. The ability to distinguish oratorical flourish from substance is necessary for a successful trial lawyer.

Unquestionably, without a thorough knowledge of the rules of evidence, a trial lawyer cannot be successful.[18] A successful trial lawyer develops the techniques to present positions that are reasonable and persuasive. Effective trial lawyers learn to use vocal skills and body language to enhance their message. Many of these skills can only be developed by spending long hours in the courtroom. There is no way to read a book or take a course to develop these skills. Law school alone cannot produce a successful trial lawyer. Practicing techniques and different approaches in a courtroom is the only way trial lawyers can hone their craft.[19] Years of practice are necessary.

At times, I have heard it argued that criminal lawyers are the best trial advocates. At other times, I have heard it said that the most talented trial lawyers are civil litigators. I personally do not believe that a trial lawyer's practice area matters. Advocacy is advocacy. The techniques of persuasion do not change depending on the subject matter.[20] An excellent civil trial lawyer is just as likely to be a good

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18. Litigators have been compared to storytellers. There exists, however, a crucial complexity that differentiates the art of a storyteller from the skills crucial to a litigator. "A storyteller is seldom burdened by procedural rules . . . [whereas the litigator] has to create the desired fact image while contending with a complicated series of evidentiary and procedural rules designed to ensure fairness and reliability in the proceedings." MURRAY, *supra* note 9, at 10.

19. STEVEN P. GROSSMAN, TRYING THE CASE 1 (1999). The old adage that trial attorneys are born, not made, has largely been abandoned by trial technique instructors. *See* MURRAY, *supra* note 9, at xvii.

20. Professor Thomas Mauet, one of the leading authorities on trial technique, explains that his texts generally employ examples of personal injury and criminal trials because

trial judge as an excellent criminal trial lawyer. It is not the type of advocacy that prepares one for the bench but the frequency of the advocacy. Many respected and admired trial lawyers will tell you that they must go to court on a regular basis in order to maintain their competence. For example, I have had lawyers tell me that unless they are in a courtroom on a monthly basis advocating their clients' positions, they start to lose their skills.

It is easy to understand why lawyers appointed to the bench come from the ranks of trial lawyers. Many of the skills that judges need to effectively do their jobs are the same skills that trial lawyers must develop. Yet the roles of trial lawyer and judge are very different.

A. Do You Really Want to Be a Judge?

After developing the skills of a successful trial lawyer, many people who thought their ultimate goal was to be a judge decide that the bench would not be a satisfying alternative to what they do professionally. Without question, the excitement an advocate can feel when presenting a case does not generally exist for a judge. The ability to use one's persuasive skills to convince others of your position is exhilarating. The freedom to advocate one position without having to give due weight to the opposite point of view is liberating. Many lawyers who have spent their professional careers improving their advocacy skills do not want to stop using those skills.

Another major consideration for a lawyer who has spent fifteen to thirty years becoming a successful trial lawyer is financial compensation. An accomplished trial lawyer will often make significantly more money practicing their craft than they would make as a judge.[21] Some very qualified lawyers ask not to be considered for a judgeship because they just cannot afford it even though they

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these represent the large majority of cases tried before juries, and if one masters those recurring sample of cases, more complex cases can be mastered as well. THOMAS A. MAUET, TRIAL TECHNIQUES, at xix (Aspen Publishers 7th ed. 1996).

21. In 2008, Maryland Circuit Court judges' salaries started at $140,352. Maryland Judiciary, Salaries of Maryland Judges, http://www.mdcourts.gov/judgeselect/judicialsalaries.html (last visited Sept. 5, 2008). In contrast, entry-level attorneys with Venable LLP, a prestigious firm with offices in Maryland, are paid starting salaries of $160,000. National Association for Law Placement, Directory of Legal Employees, http://www.nalpdirectory.com (follow "Quick Search" hyperlink; then search "Employer Name" for "Venable" and "State/Province/Territory" for "Maryland"). Womble Carlyle Sandridge and Rice, a national firm with an office in Baltimore, Maryland, paid entry-level attorneys $145,000 in 2008. *Id.* (follow "Quick Search" hyperlink; then search "Employer Name" for "Womble" and "State/Province/Territory" for "Maryland").

believe it would be professionally satisfying. Families become accustomed to a certain income level. Many choose to pay their children's tuition payments. Moreover, there have been judges who gave up their judgeships so that their children could attend the college of their choice. The disparity of compensation is the most serious threat to maintaining a high caliber judiciary.[22] Even for judges to whom this disparity of income is not a major obstacle, it is still vexing.

While a trial lawyer and a judge share many of the same skills, it must be emphasized that being an accomplished trial lawyer does not automatically assure success on the bench. Trial lawyers are often surprised when a respected colleague assumes the bench and does not exhibit anything close to the skills of a good judge. An ability to make both the lawyers and their clients feel that their case has been given serious consideration is necessary. Treating all parties with respect, even ones that are unrespectable, is a must. A willingness to listen to all relevant arguments and to review the law is required. Patience is not only a virtue; it is an indispensable trait for a successful judge.[23] Often, maintaining patience is a Herculean task.

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22. Chief Justice William H. Rehnquist discussed the issue of judicial compensation in an address before the National Commission on the Public Service, stating that "[i]nadequate judicial pay undermines the strength of our judiciary." William H. Rehnquist, Chief Justice, U.S. Supreme Court, Statement Before the National Commission on the Public Service: Judicial Compensation (July 15, 2002), *available at* http://www.supremecourtus.gov/ publicinfo/speeches/sp_07-15-02.html. This issue is frequently raised in the Chief Justice of the United States' Year-End Report on the Judiciary. In his 2006 report, Chief Justice Roberts noted that "[b]eginning lawyers fresh out of law school in some cities will earn more in their *first year* than the most experienced federal district judges before whom those lawyers hope to practice some day." JOHN G. ROBERTS, 2006 YEAR-END REPORT ON THE FEDERAL JUDICIARY 2 (2007), *available at* http://www.supremecourtus.gov/publicinfo/year-end/2006year-endreport.pdf. He continued to explain that there was a time when salaries of the judiciary were comparable to salaries of practicing attorneys. *Id.* However, now that the disparity between the two has grown significantly, it seems more accurate to draw comparisons between judicial salaries and those of law professors. *Id.* Nonetheless, Chief Justice Roberts concluded that federal district judges are paid about half of what deans and senior law professors at prestigious law schools are paid. *Id.* This represents a huge shift from 1969, when district judges were paid 21% more than deans and 43% more than law professors at prestigious law schools. *Id.*; *see also* National Center for State Courts, Survey of Judicial Salaries (2008), http://www.ncsconline.org/WC/Publications/KIS_JudComJudSal010108Pub.pdf (providing a comprehensive study of judicial salaries).

23. The Maryland Code of Judicial Conduct provides that "[a] judge shall be courteous to and patient with jurors, lawyers, litigants, witnesses, and others with whom the judge

The ability to be decisive is one characteristic that a judge cannot be without. So many excellent trial lawyers find it very difficult to make decisions when faced with two reasonable but opposite positions. Judges who cannot be decisive will be poor judges, regardless of their intelligence or talent. Often, the conflicting positions presented to the judge are both well thought-out and persuasively presented. Very few cases presented before a judge are completely one-sided. I have often heard it said that lawyers would rather have a case decided wrongly than not decided at all. It has to be remembered that if the case is truly decided wrongly, it can be appealed. A judge has to have the ability to make a thoughtful, reasoned decision and then move on to the next case without dwelling on the result. No matter how weighty the decision, there will be other litigants waiting for the judge to decide their case. Without question, these litigants will consider their case equally as important as the one the judge just decided. Judges who cannot help but dwell on a ruling, and keep thinking about it when they leave the courthouse, are in for a very difficult professional life. After twenty-three years on the bench, I am convinced that a judge must be able to feel comfortable with each decision made and move on. If one cannot do that, considering a judgeship is a mistake.

One of the surprising traits I have observed in some judges is how upset they get when their decision is reversed by an appellate court. While it is never flattering to be told that a decision you made was wrong, I have always taken comfort from the fact that if I really make a mistake, it can be fixed. Certainly, there are occasions when the appellate court says I made a mistake, and I disagree and am convinced my decision was accurate. On those occasions, a judge must remember that the appellate court is not necessarily right—they are just last. As Justice Robert Jackson famously commented about the Supreme Court, "[w]e are not final because we are infallible, but we are infallible only because we are final."[24]

There are some judges that cannot adopt that view; being reversed is extremely upsetting to the extent that it affects their physical health. Such a person should not seek a judgeship. If a judge is going to be effective and courageous, that judge will from time to time be reversed by the appellate court. It is just a fact of life. Judges who boast about never being reversed on appeal are usually judges who make few memorable decisions.

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deals in an official capacity." MD. CODE OF JUDICIAL CONDUCT Canon 3(B)(5) (2008).

24. Brown v. Allen, 344 U.S. 443, 540 (1953).

The one trait that is common to most trial lawyers is their large egos. Certainly, to be effective, a trial lawyer must appear confident and assured. The ability to have total strangers adopt positions that the lawyer suggests is pretty intoxicating. It is easy to see how the lawyer could become convinced of the superiority of their own talents and abilities. It is understandable when the lawyer comes to believe in their own importance.

This common trait of trial lawyers can be fatal in a judge. Judges can understandably come to believe they are very important. Every day they are addressed as "Your Honor." People are instructed to stand when judges enter the courtroom and when they leave. All correspondence is directed to them as "The Honorable." Often they have privileged parking spots at the courthouse, private elevators, and staff whose job is to serve them. People who they do not even know will greet them warmly. Lawyers are always respectful and cordial.[25] Their phone calls are almost always accepted or returned promptly. It is understandable that these things, plus many more, could allow a person to mistakenly come to believe in their own importance. It is easy to forget that the respect shown is more for the position than for the individual. Judges who come to believe in their own importance often appear pompous and aloof. There are no other traits that lawyers dislike more in a judge. Unfortunately, it is not uncommon for judges to succumb to this condition. It takes effort to remember how offensive judges exhibiting these traits are to a practicing lawyer.

Trial lawyers are usually outgoing, socially active, gregarious people. They often have a wide group of friends and associates with whom they socialize. It is shocking to some new judges how cloistered the life of a judge can be. While many people express a desire to be the judge's friend, the motivation for that friendship is always of concern to the judge. While there is no prohibition on a judge maintaining the friendships established before taking the bench, the fact is that many of those friends are trial lawyers. This can be problematic for the judge. Can the judge hear a dispute when

25. *See* Attorney Grievance Comm'n v. Mahone, 398 Md. 257, 920 A.2d 458 (2007). In *Mahone*, an attorney cut off opposing counsel's argument and was discourteous to the presiding judge. *Id.* His conduct was held by the Court of Appeals of Maryland to be a violation of Rule 8.4(d) of the Maryland Rules of Professional Conduct. *Id.* at 264, 920 A.2d at 462. Rule 8.4 is a general rule prohibiting misconduct on the part of an attorney. MD. RULES OF PROF'L CONDUCT R. 8.4(d) (2008).

a friend is one of the attorneys?[26] What disclosure, if any, must the judge make regarding the relationship that exists between the judge and the advocate for one of the parties?[27] Will it appear, no matter how unfounded, that the judge decided the case in his friend's favor? Will the judge bend over backward not to appear to favor the friend and thereby be unfair to the friend's client? Should the judge recuse himself or herself?[28] These issues are often of real concern to the judge.

It is not surprising that judges usually confine their socializing to a small number of people, many of whom are judges. It is just easier. Also, the manner of socializing changes when one is appointed to the bench. It may not be viewed as appropriate for judges to engage in the same activities or go to the same places that the judge did before being appointed to the bench.[29] This is so even though the places and activities are completely lawful and allowed.

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26. *See In re* Turney, 311 Md. 246, 533 A.2d 916 (1987) (censuring a respected district court judge for failing to recuse himself when a defendant who was a friend of the judge's son appeared at trial before him). *But see* MD. CODE OF JUDICIAL CONDUCT Canon 3(d)(1) (stating that "[a] judge shall recuse himself or herself from a proceeding in which the judge's impartiality might reasonably be questioned . . . when: (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer or extra-judicial knowledge of a disputed evidentiary fact concerning the proceeding"). *See also* Jefferson-El v. State, 330 Md. 99, 622 A.2d 737 (1993). In *Jefferson-El*, the court held that a judge should have recused himself after openly expressing displeasure at a jury's finding the defendant "not guilty" in a case prior to the one at hand. *Id.* at 112, 622 A.2d at 743. *But cf.* Boyd v. State, 321 Md. 69, 76, 581 A.2d 1, 4 (1990) (holding that when the prior knowledge of the case was gleaned in the trial of a codefendant, there was "no personal knowledge or bias requiring disqualification"). Courts have extended *Boyd*, finding that even when the grounds for recusal are based on the behavior of a party himself, the trial judge need not recuse himself because the knowledge and opinion of the judge was formed in a judicial atmosphere and without personal knowledge of a party. Goldberger v. Goldberger, 96 Md. App. 313, 624 A.2d 1328 (1993).

27. Canon 3(E) of the Maryland Code of Judicial Conduct allows parties to consent to having a judge participate in a matter from which he or she would be ordinarily required to recuse him or herself, based on a personal relationship or knowledge.

28. Given their past experiences as practicing attorneys and continuing daily interaction with many attorneys, judges are often faced with this question. Courts have held that, absent specific bias or prejudice, recusal is in the discretion of the judge. Marzullo v. Kovens Furniture Co., 253 Md. 274, 252 A.2d 822 (1969). An interesting situation often arises when former law clerks of judges appear before them, as many trial court law clerks naturally pursue a career in litigation. The Maryland Court of Special Appeals held that, absent specific bias, a judge need not recuse himself from a case where the judge's former law clerk is counsel for one party. Hill v. Hill, 79 Md. App. 708, 558 A.2d 1231 (1989).

29. Canon 4 of the Maryland Code of Judicial Conduct governs a judge's extra-judicial activities. For example, a judge may not participate in activities that may "demean the

I have been asked over the years on many occasions whether I am afraid for my safety or my family's safety due to being a judge. Occasionally, judges are required to hear cases that involve dangerous, ungovernable people; however, this is not an issue in the vast majority of cases.[30] In those cases where this concern could arise, judges are given the support necessary to minimize the danger. I can honestly say that this has never been a real concern to me.

IV. WHY SO MANY TALENTED LAWYERS WANT TO BE JUDGES

Often when a vacancy is announced on the bench, a long list of qualified lawyers announces that they will seek appointment to the vacancy.[31] Unfortunately, many qualified candidates will never be appointed to the bench. Timing, politics, connections, and luck all play a part in obtaining a judgeship. Many qualified candidates spend years seeking appointment with disappointing results. For those fortunate enough to be appointed, a fulfilling life awaits. There is nothing more satisfying than the ability to change people's lives for the better. Judges, more than any other group of people I know, have that opportunity almost daily. Being allowed to resolve the disputes of everyday life in a fair and just way is pleasing. The ability to help protect your community from danger is gratifying.

For the lawyer who enjoys studying and practicing a wide range of the law, a judgeship is rewarding. Judges are some of the last

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judicial office," but "[a] judge should not become isolated from the judge's community." MD. CODE OF JUDICIAL CONDUCT Canon 4(A)(2) & cmt. This Canon specifically permits a judge to "lecture, speak, teach, write, and otherwise participate in other extra-judicial activities." Canon 4(B). *But see* Canon 2(C) (prohibiting a judge from holding "membership in any organization that practices invidious discrimination on the basis of national origin, race, religion, or sex," while there is no prohibition against private citizens holding such membership).

30. Between 1979 and 2005, three federal judges were killed as a result of their involvement in court cases. Rick Lyman, *Focus on Safety for Judges Outside the Courtroom*, N.Y. TIMES, Mar. 11, 2005, at A18. Although that is three lives too many, it is a small number in comparison to the thousands of cases heard in courtrooms annually. *See* Neil A. Weiner et al., *Safe and Secure: Protecting Judicial Officials*, CT. REV., Winter 2000, at 26, *available at* http://aja.ncsc.dni.us/courtrv/cr36-4/36-4SafeSecure.pdf

31. For example, in 2008, three vacancies were announced on the District Court for Anne Arundel County, Maryland. Maryland Judiciary, Judicial Vacancies, http://www.mdcourts.gov/judgeselect/judicialvacancy.html (last visited Sept. 7, 2008). There were thirty-four applicants for those three positions. *Id.* The same year, there were twenty-three applicants for two posted vacancies on the Circuit Court for Montgomery County, Maryland. *Id.*

generalists in an age of specialization. It is not unusual for me to preside over a serious criminal case one week, a medical negligence case the next week, and a contract dispute the following week. Few lawyers today can comfortably practice the wide range of subjects routinely encountered by a judge.

Being a judge should be a humbling and satisfying experience. The fact that your fellow citizens allow you to sit in judgment and accept your decision even if it is against their own interest is exceptional.

I can honestly say that I have, for the last twenty-three years, enjoyed a profession where I have felt intellectually challenged and stimulated. Unlike many professions that I imagine can come to be routine, there has not been a single week when something did not surprise me. At times, I was amused by what happened in my courtroom. At other times, I was shocked and saddened. But, it was always interesting. The reason is that people are interesting. While the disputes people have brought to my court are the same ones people have brought for hundreds, if not thousands of years, each case is made different by the people involved. The stories of the cases I have heard over the years have fascinated and at times appalled my friends. I cannot think of a more interesting occupation.

Hopefully, this paper will be of help to those interested in pursuing a life on the bench and give some suggestions on how best to try to achieve that goal. While following every suggestion expressed in this paper will not guarantee a place on the bench, it will point out some of the things one should consider before pursuing that quest as well as some things one should consider if the stars do align and a judgeship is obtained.