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## Foreword: Judiciary Special Issue

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## FOREWORD

**The Honorable Glenn T. Harrell, Jr.†**

For a judge, a natural recreational pursuit that may leaven his or her grappling with the majesty of the law in writing judicial opinions can be a field trip into creative writing, essays, or other forms of expository writing. While there occasionally may be an opportunity in a judicial opinion for a humorous aside (for example, illustrating the principle of contractual good faith with an episode of *Seinfeld*)<sup>1</sup> or literary allusion (for example, tracing the occasional judicial reference to insurance contract interpretation problems as a “Serbonian Bog” to Milton’s *Paradise Lost*),<sup>2</sup> for the most part, writing opinions is a very serious and focused business. I admire, therefore, those colleagues, represented in this volume of the *University of Baltimore Law Review*, whose Muses channeled through them the energy and desire to step outside their daily routine and pen the pieces shared here.<sup>3</sup>

My friend, Chief Justice Thomas J. Moyer of the Supreme Court of Ohio (the longest serving state supreme court chief in the land), begins this volume with a grounding essay recalling why most of us became lawyers and ultimately judges, committing ourselves to the high ideals of the law.<sup>4</sup> Tom, who plans to retire at the end of calendar year 2010, commends us to fix our gaze on the transcendent, rather than the mundane, aspects of our professional lives.

Following Chief Justice Moyer’s essay, one of his colleagues, Justice Judith Ann Lanzinger, shares her knowledge, experiences, and observations regarding judicial elections.<sup>5</sup> Justice Lanzinger’s

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1. See *Clancy v. King*, 405 Md. 541, 570–71 n.27, 954 A.2d 1092, 1109 n.27 (2008) (citing *Seinfeld: The Wig Master* (NBC television broadcast Apr. 4, 1996)).

2. *MAMSI Life & Health Ins. Co. v. Callaway*, 375 Md. 261, 272 n.2, 825 A.2d 995, 1001 n.2 (2003) (citing JOHN MILTON, *PARADISE LOST* book 2, l.592 (n.p. 1667)).

3. As for myself, my recreational writing seems limited to law review tributes to fallen (retiring) comrades. See, e.g., Glenn T. Harrell, Dedication, *Tributes: The Honorable Irma S. Raker*, 57 AM. U. L. REV. 1547, 1551–55 (2008); Glenn T. Harrell, Dedication, *Tributes to Judge Alan M. Wilner*, 66 MD. L. REV. 835, 840–43 (2007).

4. See Thomas J. Moyer, *Beauty of Law*, 38 U. BAL. L. REV. 5 (2008).

5. See Judith Ann Lanzinger, *What Have You Done for Me Lately? Lessons Learned From Judicial Campaigns*, 38 U. BAL. L. REV. 11 (2008).

twenty-three years of service on the Ohio bench (at every level) required her to undergo nine elections, all of which, save one, she won. Many were contested. The lessons learned from running this gauntlet are invaluable and imparted here with vision and in a straightforward, unvarnished style.

Representing a more traditional “law review” product, Justice Patience Drake Roggensack of the Wisconsin Supreme Court analyzes a recent opinion of the U.S. Supreme Court<sup>6</sup> regarding the subject matter jurisdiction of Native American tribal courts over non-tribal defendants.<sup>7</sup> Justice Roggensack points out along the way important considerations for Congress as it moves to act on a pending, related legislative proposal—the proposed Tribal Law and Order Act of 2008.<sup>8</sup>

The next offerings, a collection of short pieces, may inspire an entirely different connotation for the description “Hobbesian.”<sup>9</sup> Justice Gregory J. Hobbs of the Colorado Supreme Court unfolds some poetic reflections on the law, judging, and the search for truth.<sup>10</sup>

Exchanging Justice Hobbs’s poetical lyricism for narrative lyricism, without losing a jot of creativity, Justice J. Michael Eakin of the Supreme Court of Pennsylvania (who frequently works into his appellate opinions streaks of poetry)<sup>11</sup> describes a fanciful world where an imaginary National Football League is refereed by judges (hopefully not dressed as “zebras”).<sup>12</sup>

Until this point, all of the works contained in this volume are authored by state appellate judges (and high court ones at that because intermediate appellate court judges are too busy). Lest the reader think we are the only ones who have the time and energy to write outside of our job descriptions, Judge Dana M. Levitz of the Circuit Court for Baltimore County, Maryland, who is counting down the days until his retirement, composed the final judge-created

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6. *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 128 S. Ct. 2709 (2008).
  7. *See* Patience Drake Roggensack, *Plains Commerce Bank’s Potential Collision With the Expansion of Tribal Court Jurisdiction by Senate Bill 3320*, 38 U. BALT. L. REV. 29 (2008).
  8. S. 3320, 110th Cong. (2008).
  9. I concede that the philosopher’s name and the jurist’s name discussed here are spelled slightly differently. I invoke the defense of poetic license.
  10. *See* Gregory J. Hobbs, *A Collection of Poetry*, 38 U. BALT. L. REV. 43 (2008).
  11. *See, e.g.*, *Commonwealth v. Noel*, 857 A.2d 1283, 1289 (Pa. 2004) (Hobbs, J., dissenting) (quoting RAY EVANS & JAY LIVINGSTON, *Theme, on MR. ED* (CBS television broadcast, 1961–1966)); *Liddle v. Scholze*, 768 A.2d 1183 (Pa. Super. Ct. 2001); *Busch v. Busch*, 732 A.2d 1274 (Pa. Super. Ct. 1999).
  12. *See* J. Michael Eakin, *NFL Justice*, 38 U. BALT. L. REV. 49 (2008).

article.<sup>13</sup> Based on his considerable experience (and bringing us back a bit to Justice Moyer's inspirational essay that leads off this volume and Justice Lanzinger's reflections on judicial selection and election), Dana explains, in personal terms, for all judge-want-to-be's how and why he achieved a seat on the Bench.

Anchoring this volume is an extensive, "one-size-fits-all" article for present and future judicial law clerks, prepared by Assistant Professor Jennifer Sheppard of Mercer University School of Law, on how to write for their judges, be they trial or appellate.<sup>14</sup> I read it with gusto and intend to compel future generations of my appellate clerks to do likewise, noting to them only my personal preferences (in mild disagreement with the author) regarding footnotes (she suggests they are "less appropriate in a judicial opinion," whereas I proudly am known in certain circles as the "Crown Prince of Footnotes"), "fancy" words (she urges that readers not be forced to resort to a dictionary; I say help people improve their vocabulary, whenever possible), and humor (she says "avoid it"—I do not). There is a place for everything, as long as you put it in its proper place.

On behalf of my colleagues represented in this volume, I express gratitude to the *University of Baltimore Law Review* staff for fostering extracurricular judicial writing.

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13. See Dana M. Levitz, *So, You Think You Want to Be a Judge*, 38 U. BALT. L. REV. 57 (2008).

14. See Jennifer Sheppard, *The "Write" Way: A Judicial Clerk's Guide to Writing for the Court*, 38 U. BALT. L. REV. 73 (2008).