

The Quality of a Judge's Experience

**Making the transition from lawyer to judge is not always smooth.
Here are some of the pluses and minuses.**

By Robert Satter

BREATHES there a lawyer . . .

- Who never to himself has yearned to be free of the hustle of obtaining clients and the hassle of serving them and, on considering the alternative, longed to exchange the telephone jangle of his office for the peaceful atmosphere of a judge's chambers, or

- Who, independent of a desire to escape the frenetic pace and pressure of the practice, has not dreamed of sitting on Olympian heights and exercising the power of ultimate decision rather than suffering the frustration of attempted persuasion, or

- Who, having earned all the money that could reasonably be spent, has not contemplated the more meaningful life objective of working toward the goal of achieving justice.

These lawyers, when their friends become judges, eagerly ask them, "What is it like to be on the bench? Are you really enjoying it?"

After 28 years in active practice, I, who had asked those questions, now found myself a judge trying to answer them. At first my responses were en-

thusiastic, having realized a lifetime goal and excitingly undertaking a new career. I gradually became aware that a simple answer was not adequate. The judicial experience has turned out to be much more complex than I had initially perceived, and true ambivalences have arisen. I have found there are minuses and pluses. The minuses have had an immediate and sharper emotional impact because I had not anticipated them. The pluses have developed as intellectual and teleological in nature and on balance have a longer lasting satisfaction.

As one who has served as a trial judge in the state courts of Connecticut for four years, let me relate my views and feelings. My length of service permits a description of the nature of the judicial experience—long enough for me to have sensed the heft and texture of the job; short enough not to have succumbed yet to one of the judicial maladies. My views are personal, but not unique. They may dissolve some of the judicial mystique and give you some insight into the mind and heart of the black-robed eminence ruling over the court.

From the judges' point of view, the judicial experience, at least in the beginning, has to be compared with their former positions as lawyers. As they remain on the bench, the job itself influences their perceptions and affects their personalities.

To lawyers the courtroom is a boxing ring. They enter it to fight. They stand shoulder to shoulder with clients or high on the soapboxes of their causes, doing battle. They may in the end meet triumph or disaster, but there is joy in the fray.

Judges who come to the bench after many years of trial experience are surprised to find the courtroom is no longer a bloody arena but a quiet, dignified place. If they ask questions of witnesses, they must take the bite from their voices and the sharpness from their phrasing so as to seem to be inquiring rather than cross-examining. They have to remain, both in fact and in appearance, above and not participants in the battle.

Neutrality requires impartiality. If as lawyers, they had mainly represented plaintiffs in personal injury cases against insurance companies, or had

formerly been prosecutors in the criminal courts, judges must shed both the biases and the mind-bent of their past practices. They have to give up the whole notion of "winning a case" and must be concerned primarily that the game is played according to the rules. This is the initial cultural shock of the judicial experience and for some judges requires almost a physical rephrasing of courtroom behavior and point of view.

The lawyer's job is to present a client's case. The judge's duty is to decide according to the law. Here lies the critical distinction between advocate and judge. An advocate's job is to persuade; a judge's duty is to be right.

Lawyers come into court prepared to make any argument that supports their side of the case. They are entitled to be selective and are not expected to be scholarly accurate. Being right may help them to be persuasive, but their immediate task is to convince, and their ultimate purpose is to win.

In contrast, judges determine what the law truly is or should be. They must warily travel the apparently smooth highways mapped by counsels' briefs, carefully negotiate the twisted curves of arguments, pick their way past the bumps and potholes of specious case citations, and come to correct decisions.

In short, advocates deal in arguments, judges in answers. An attorney can justify an argument on the ground that it is up to the judge to decide. While the winning lawyer usually takes the credit for victory and the losing one rarely takes the blame for loss, the judge must always take the final responsibility for decision.

Fulfilling that responsibility requires countless hours of reflection and research. Reflection goes on all the time: while dressing, while driving alone in a car, by letting some time pass and permitting the case to simmer through both the judge's conscious and unconscious mind. Research, at least for a trial judge, must be done in the evenings and on weekends. A judge's job is never done. It consumes both the central and a major portion of his life.

Attorneys and clients work closely together on a common endeavor. Since many cases are a crisis in the life of a client and the lawyer is intersecting at that critical moment, the sensitive attorney becomes involved and deeply cares about the outcome of the case. Few satisfactions in life equal what a lawyer feels on contributing to the well-being of a client—either by avert-

ing a threatened harm or gaining just and deserving compensation. Whatever the ultimate result, if the lawyer has made a determined and honest effort, the client is appreciative.

Judges are deprived of that kind of contact and feedback. Their relationship with litigants is ephemeral and must be uninvolved. They must steel themselves to reject any feelings of warmth or hostility toward the parties. They are expected to apply the law impersonally and not let emotional vibrations affect their rational judgments. Social values can play a part in decisions, but individual personalities cannot.

In every case judges are denied a sense of victory. Their satisfaction is derived from reaching sound decisions, and they neither expect nor are given any expression of appreciation.

Detachment gives judges a sterile atmosphere

The judicial duty then is to be detached, objective, and rational. The judicial experience lacks the color, the tone, the vibrancy, and the richness of emotional involvement with people. This results in a sterility and an antiseptic aspect to the working life of judges.

Lawyers work in permanent offices with partners, associates, secretaries, and other assistants. While not always close friends, the office mates are usually congenial and often convivial.

The judge's job is lonely. Everything conspires to isolate judges—not only emotionally but physically and socially. Like quarantined children with the measles who look out the window at friends playing, judges are often a bit wistful.

Although the status of the office may seem attractive, judges soon learn they are imprisoned by it. People keep their distance as a result of their conception of the high position. Of course, judges have contact with people almost all day. But court clerks are deferential and jurors and litigants remote. The lawyers with whom judges deal in their chambers in an effort to settle cases or discuss aspects of a trial are constrained in their congeniality. It is the judge who most often holds lawyers captive after the business at hand is completed, regaling them with war stories of past cases to the point that the uncomfortable lawyers fret to get free and are bored at having heard the tales before.

In Connecticut and many other states, a judge's feeling of isolation is enhanced by a practice of geographical rotation. The purpose is to avoid permanently inflicting on any one community the sentencing pattern, legal judgment, and foibles of a single judge. The price the traveling judge pays is always to be on the move. ("Have gavel, will travel.") A judge's contact with the personnel in each new court is superficial; generally, he has no friends in the area.

A judge frequently goes to lunch by himself. He cannot go with the prosecutor or with the lawyers, lest he give the appearance of partiality. If he is sitting in a county seat or a large city courthouse with a number of other judges, he may lunch with them. But they are not teammates, like the partners in a law firm; they are not chosen friends but accidental colleagues. At the end of a long day in court, the judge leaves the courthouse with his laden briefcase, alone. He has nobody to say good night to.

The sense of isolation also derives from having to give up many former activities. Politics, which one may have loved, must be dropped. Membership on community or social service organization boards becomes unfeasible because most of their meetings are held at times that conflict with the judge's rigid court schedule.

In living this life, a judge's spouse is treasured as the one to whom the judge relates the experiences of the day, the amusing incidents and unexpected twists of a trial, and the difficult dilemmas of sentencing and decision making.

On weekends, friends are important. Judges yearn to socialize, to engage in both light and serious conversation, to be in the company of people they care deeply about. It fulfills their need for fellowship and fortifies them to face the monastic week ahead.

The positive aspects of the judicial experience derive from the challenging tasks judges are called on to do and the significance of doing them well:

- Conducting trials with scrupulous adherence to all the procedural safeguards, express and inherent, in the concept of due process, and, in addition, generating in the courtroom an aroma, a feeling, an atmosphere that justice is being sought.

- Sentencing the convicted so as to achieve the balance between, on the one hand, the interest of society to protect itself by punishing wrongdoers and de-

terrering others from committing crimes and, on the other, the concern for the defendant as an individual, entitled to singular consideration and to have his claims placed on the scales and conscientiously weighed.

- Shaping the common law so as to retain the wisdom of the past and to fulfill the pressing demands of the present, always keeping the rules of law in harmony with enlightened common sense.

- Resolving fundamental social problems that arise in the form of constitutional issues and require resolution in order to keep government properly functioning.

These responsibilities are important, and when they are well performed, judges justifiably sense they are making a contribution to society.

Being a judge is more consuming than being a lawyer or a doctor and about equal to being a clergyman. After they ascend the bench, judges never mentally shed their robes. The office becomes a way of life. As a result, it cannot help having an effect on them. Self-examining judges can observe the changes with almost mesmerized chagrin.

The impact of the office varies with each judge. The experience is special and gives rise to the risk of known occupational maladies. Immunization from these afflictions is achieved only by rigorous self-awareness.

The one judicial malady for which there is no known cure is becoming ponderous. Judges learn it is essential to pause for reflection and let their mental computers click through pertinent considerations before deciding. They acquire the habit of thinking before speaking and thinking a lot before coming to conclusions.

During a trial everything judges say is on the record and can be the basis of an appeal. A verbatim transcript is a humbling document. To see in cold print how one talks—the incoherence, fractured syntax, split injunctives, uncompleted sentences—is enough to make one blush. The result is that judges, both on and off the bench, start to space out their words and to speak more s-l-o-w-l-y.

Sitting on the bench for a trial is like being strapped in an astronaut's chair. The sedentary confinement itself contributes to slowing judges down. The necessity to be serious in court affects their sense of humor. As a consequence, judges acquire a heavy quality to their personalities ranging from the

solemn to the sonorous. On the scale of the most lively personalities to the least, legislators are first, lawyers second, and judges (all of whom were lawyers and some legislators) a distant third. If the truth were known, judges, as a group, are a leaden lot and the job must make us so.

The necessity to be emotionally uninvolved and detached also takes its toll on judges. A practice of emotional denial diminishes emotional responsiveness. What starts out as a professional discipline ends up as a personality trait. The occupational habit of keeping people at a distance and raising an invisible wall of self-protection causes unnatural stiffness and loss of spontaneity.

On the other hand, the experience of observing from the bench the variety of peoples' woes and tribulations leads to deeper understanding and fuller sympathy. As a result, judges can develop an enriched sense of humanity and a greater quality of humaneness.

Who am I to judge? Where do I get the wisdom?

The power judges have is great. Although decisions are subject to appeal, few cases in fact are appealed. Particularly in sentencing, where judicial discretion is wide, judges are rarely challenged. The exercise of power develops in judges an air of authority. When they start to believe that their concept of justice is absolutely right, they may succumb to the dangerous judicial malady of arrogance.

But the same experience can induce a sense of profound humility. They may constantly ask themselves: Who am I to judge? Where do I get the wisdom? Although they recognize the office fixes the responsibility, they may undertake it with an awareness of their own fallibility. If they do, they are following the example of Learned Hand, who kept under the glass top of his desk the words of Lord Oliver Cromwell uttered to the stubborn Scots before the Battle of Dunbar: "I beseech ye, in the bowels of Christ, think ye that ye may be mistaken."

Role playing is a necessary ingredient of the office. When judges start living their roles offstage, it can induce the malady of pomposity. The first sign is when they allow others to call them judge in informal social gatherings and get a secret satisfaction from it. The affliction is well along when they start

referring to themselves as judge. It reaches the acute stage when they begin thinking of themselves as an institution and substituting status for self.

The office, of course, cannot help judges escape the fundamental realities of life—marriage, relationships with children and friends, and a sense of self-worth. On the other hand, attaining the office may be the realization of a lifetime goal that enables them to feel inner contentment and achieve self-fulfillment.

The stresses of the position and the exercise of its powers accentuate deficiencies and strengths. A stupid person may become arbitrary as a judge, a weak one vacillating, and an insecure one tyrannical. By the same token, the judicial experience may enable an intelligent person to become wiser, a strong one more sensitive.

A good person does not necessarily make a good judge because the job requires more than virtue; but a good judge—especially a good trial judge—is usually a good person because the office requires, in addition to temperament and intelligence, compassion and concern.

The day-by-day life of judges is not altogether enjoyable. Lawyers, like blondes, have more fun. The biggest price judges pay is detachment. They may not lose their love for people, but in their working life, they do not live that love; they implement it. The satisfactions of the office are more internal than external, more cerebral than emotional, more teleological than immediate. But when judges gave up being lawyers, they made the conscious choice that they wanted more meaning in their lives. They chose to measure the remainder of their years not by the profitability of a practice but by the worthiness of public service. As judges they have the opportunity to devote all their time and talents to the high mission of trying to administer justice.

Judges, in seeking justice, are like artists—striving for beauty. Artists do not paint beauty; they paint a picture and hope to achieve beauty. Judges do not determine justice; they try and decide cases and hope to achieve justice. The ultimate satisfaction of the judicial experience lies in the constant aspiration. ▲

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