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Colleen McMahon

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The Monastic Life of a Federal District Judge

Colleen McMahon¹

THE LIFE OF A DISTRICT JUDGE

This symposium has focused on the work of appellate judges, and in particular one appellate judge, Harry Blackmun, who sat on the nation's highest court. One of the theses posited by the symposium presenters is that judges who sit on collegial courts – courts where judges sit on panels and reach decisions as a group of three, or seven, or nine – are influenced by the process of having to forge consensus with their brethren (and sistren, as I call the women who have joined those courts).²

I am a trial judge, and that means I sit on a “non-collegial” court. I do not mean that I sit on an unfriendly court – some of my dearest friends are judges of the Southern District of New York – but rather, that I sit on a court in which cases are decided individually, rather than collegially.

This lack of “collegial” decision-making is without question the best part of being a district judge. District judges make their own decisions, informed by their own view of the facts and their own reading of the law. We “*nisi prius*” judges, to use the old Latin term, are of course constrained by the holdings of appellate courts. But to do our job, we do not have to reach a consensus with anyone about what those decisions mean – except perhaps with our law clerks, who are wonderful, but young and, I have to admit, more than a little bit in awe of their bosses. Trial-level judges are absolutely and completely unconstrained by outside opinions. And in the federal system, trial-level judges, like all Article III judges, have life tenure, which means we do not have to worry about losing our position if a decision offends some powerful person. Finally, district judges rarely create a paper trail of memos and drafts and thereby escape the sort of scholarly scrutiny that haunts those on higher courts.

Life is very different on an appellate court, a collegial court. I have had the honor and the pleasure of sitting by designation on the Second Circuit on two occasions. As much as I enjoyed the experience (and I did enjoy it), I was happy to get back to my own court, where I could make up my mind without having to exchange drafts and converse via memorandum with two other judges – and where I did not have to lobby for someone's vote so my point of view could prevail.

But the very absence of collegiality in the decision-making process – the lack of any debate, any need to reach consensus or satisfy the concerns of

1. District Judge, United States District Court, Southern District of New York.

2. See Suzanna Sherry, *Politics and Judgment*, 70 MO. L. REV. 973 (2005).

others and any mandatory interaction with one's colleagues – means that life on a district court lacks some elements of the other kind of collegiality as well. It is for that reason that I refer to my life as “monastic.”

Monks live solitary lives in community. So do district judges. All the judges in a single district constitute “a court,” but that is something of a misnomer. Unlike our colleagues on courts of appeals, district court judges operate entirely independently. Even on the friendliest of courts, and even in districts like mine, where almost all the judges come to the same place every day, every judge spends most of his time in a private enclave – the judge's chambers. Within that private enclave there is only an adoring personal staff of four for company. It is a very quiet life. People do not drop in except by appointment, and then only to talk about their cases – not about the weather, sports, or family, and especially not about the great issues of the day. Personal relationships, at least with lawyers, are discouraged, lest they get in the way of objective decision-making. Political discourse with almost anyone is strictly forbidden. District judges reflect on the intellectual issues that confront us in solitude and pronounce on them formally; then we step back and let the public record do the talking. And of course, trial judges, like all life-tenured judges, are a people “set apart.” We are too often lionized rather than humanized – a phenomenon best illustrated by the fact that no one ever calls any judge by his given name.

In fact, there is no one on earth more monk-like than a federal district judge. As a result, there is no one on earth who more surely needs to have some understanding of core monastic virtues in order to do the job well.

THE VIRTUE OF SELF-AWARENESS

In her Wake Forest Law Review piece, and again during her presentation for this symposium, Professor Susanna Sherry argued that judges of character should aspire to two virtues: humility and courage.³ While I cannot quarrel with that proposition, I would suggest that it is even more important for judges to exhibit the virtue of self-awareness. And it is more important for a district court judge to exhibit this virtue than it is for a Justice of the United States Supreme Court.

By self-awareness, I mean two things. The first is knowledge about who one is as a person, what one values and does not value and what motivates one's decisional processes. The second is the ability to be completely honest with oneself about such matters. When the term “self-awareness” is defined in that way, it becomes clear why no single character trait could be of greater

3. Suzanna Sherry, *Judicial Review: Blessing or Curse? Or Both? A Symposium in Commemoration of the Bicentennial of Marbury v. Madison*, 38 WAKE FOREST L. REV. 793, 797-98 (2003); Suzanna Sherry, *Politics and Judgment*, 70 MO. L. REV. 973, 982 (2005).

importance to any jurist. It is out of self-awareness that virtues like those mentioned by Professor Sherry spring. It is simply impossible to be humble, or courageous, or display any of the other traits that must be shown by judges if one is self-deluded. That is one reason why Justice Blackmun's papers are so riveting: He possessed an understanding of who he was and what motivated him to act that ought not be, but I suspect is, rare in a powerful public man.

Interior contemplation directed toward the acquisition of that sort of self-awareness and a corresponding inability to delude oneself about one's own actions is integral to monastic life. So, the virtue I nominate as cardinal to a judge is a monastic virtue.

Now why do I think that self-awareness is of greater importance to a mere peon like myself, who sits on a trial level, than it is to a lordly Justice of the highest court in the land? A district court judge touches and determines the course of so very many lives. In just two or three years on the bench, a single trial level judge will serve as the final decision-maker in far, far more cases than any United States Supreme Court Justice will ever see, no matter how long she sits on the Court. A district court judge disposes of, in some way or other, every one of the hundreds of cases that are filed in his court each year. For the vast majority of cases, that disposition represents the end of the process. Not every case that is filed – not even every case that is disposed of by a decision or verdict, rather than by a settlement or plea – is appealed to an intermediate appellate court, let alone to the Supreme Court. And even when a case is appealed, not every issue that aggrieves the appellant receives the same level of scrutiny that a district court judge must, perforce, give to the issues on his docket. In fact, most of what a district judge decides is never reexamined on appeal, and what is reexamined will be looked at under an extraordinarily deferential standard. Many of a district judge's decisions are reviewed for abuse of discretion or for clear error – standards that virtually presume the trial judge acted correctly. Appellate judges rarely interfere with evidentiary decisions, docket control matters, or jury instructions, except in the most extraordinary circumstances. Even review of a decision *de novo* is contoured by the district judge's opinion, in which the issues have been shaped and framed for future discussion.

So, there is a compelling argument to be made that district court judges are the most powerful judges in the land. And when power can be experienced without personal consequence – as when it is exercised in order to adjudicate the rights and responsibilities of others – it would be dangerous if there were no brake on its use.

The reason that district court judges have a particularly acute need for self-awareness is because they are the only check on their own behavior or misbehavior. It is precisely because district judges do not need to persuade anyone to vote with them in order to reach a decision and do not have to concern themselves with institutional issues across various courts that they need to keep a finger on their own pulse at all times.

Who is going to keep a trial level judge intellectually honest, or make that judge question her own motives, if not the judge herself? Some bright young person a month or a year out of law school? I hardly think so. I only hire clerks who have a lot of moxie, but it is hard enough convincing them that they should speak up if they think I am misinterpreting some case they have called to my attention. It would be very difficult for most law clerks to question a judge's thought processes or motives.

Can colleagues on the court serve as a check on each other? My colleagues are much too busy managing their own dockets to have a care for mine. They will consult with me when asked to do so, but I have to initiate the exchange and be careful about intruding on their time, which is in precious short supply. District judges pay little or no attention to the ongoing work of their colleagues. Unless a pending case is in the headlines, we have no way of knowing what other judges might be working on. So there is no way that we could serve as a check on one another, even if we were so inclined – and in a court of independent equals, we are rarely, if ever, so inclined.

Can friends or former colleagues act to monitor judicial behavior? Court matters are public matters, so one might think it all right to discuss them with outsiders. Yet somehow it does not seem appropriate to involve outsiders in the decision-making process, as the debate over the extra-judicial conversations of Felix Frankfurter should make clear.⁴

No, we district judges have to save ourselves from our own worst instincts – the instinct to be proud, to be arrogant, to be hasty, to be careless, to be unduly harsh, to be unduly lenient, and yes, to be absolutely certain that we are right. We have to be honest with ourselves about the forces that will, if we are not vigilant, impinge on our ability to make decisions for right reasons: ambition, a desire to be liked, a need to be respected, and above all, a desire to impose some agenda on society. More than that, we have to be willing to bring ourselves up short when we catch ourselves factoring inappropriate considerations into our decision-making, be they preconceived notions, prejudices, public opinion, or whatever happens to be flying around in the political winds. Every judge is prone to be influenced by such forces, life tenure notwithstanding. We lie to ourselves if we refuse to admit it. And today, when judges are under attack by politicians and the press for our real or imagined “activism,” the temptation is perhaps harder to resist than ever before.

I do not mean to suggest that judges should ignore their values when making decisions. Just as society ought not want ignoramuses as sitting jurors, it ought not want judges who have no values. Trial judges, like jurors, are to decide cases on the law and the facts. But as part of standard jury instructions, we tell jurors to evaluate the evidence in light of their experience

4. Akhil Reed Amar, *The Bill of Rights and the Fourteenth Amendment*, 101 *YALE L.J.* 1193, 1194-95 (1992).

and common sense. There is no reason to expect judges to act any differently when they approach a case.

What judges must do is recognize when we are being influenced by these various forces, and think explicitly about whether it is appropriate to be so influenced. Trial level judges need to do this for themselves. In 99% of cases, no one will ever know whether a judge was influenced by anything other than what he publicly expressed, either in an opinion or at the time of pronouncing sentence. But the judge will know. So it is important – especially for judges like me, who do not engage in dialogue with colleagues in the process of deciding a case – to know ourselves down to the root of ourselves and to be completely honest with ourselves about why we are doing what we are doing. Because there will inevitably be times when we must conclude that the law compels us to do things that we would not do if we made the rules rather than interpreted and enforced them.

Before I went on the bench, no one told me that it would be necessary to engage in a continuous “examination of conscience,” to borrow a term from my religious tradition. I had to learn that for myself. And self-awareness is not easily achieved – if only because, as any monk can tell you, one has to make space in one’s life for it to happen. I happen to have been invited by a publisher to reflect on the intersection between what I do for a living and what I believe as a Christian. I accepted that invitation, and eventually wrote a little book of meditations from the perspective of a judge. Writing the book was a useful exercise. It taught me something about myself, and about the forces within and outside of me that might tend to play into my judicial decisions. Rereading the book, which I do from time to time, is even more useful; it reminds me of things I need to think about, and guard against, as I do my job.

If self-awareness is so important to judicial integrity, it ought to be high on the list of things we look for in judicial candidates – equal to analyses of their prior scholarship and their speeches and decisions and politics – or even, as Professors Wrightsman and LaMort suggest,⁵ on the correlates of success on the Supreme Court: fathers’ occupations, quality of legal education, even their ethnic background. But all those other factors can be researched. It is virtually impossible to know, at the moment of nomination, whether a candidate for a judgeship is interested in, or capable of, the kind of self-awareness integral to being a good judge.

Fortunately, I believe that most people who become judges learn relatively quickly that they need to monitor themselves and their motives. A lot of people suspect, as Thomas Jefferson suspected long ago, that most judges are “activists” who want nothing more than to impose their personal social agendas on society. And some judges – at both ends of the liberal-conservative spectrum – are “activists” in that sense. However, I know quite a

5. Lawrence S. Wrightsman & Justin R. La Mort, *Why Do Supreme Court Justices Succeed or Fail? Harry Blackmun as an Example*, 70 MO. L. REV. 1261 (2005).

few judges, and almost without exception, they are not trying to impose their personal preferences or vindicate some private agenda in their rulings. It may be surprising to learn – it would certainly surprise some in political life or in the press – that the judges I am talking about, the ones who manage to decide cases without regard to politics or personal beliefs, are both Democrats and Republicans. They are liberals, moderates and conservatives. They fall into every race and creed and sexual orientation of which I am aware. Some are wealthy and some are of modest means. Some have extensive experience in private practice and some have spent a lifetime in the public sector. Some have represented primarily plaintiffs; some have been prosecutors; and some have represented primarily defendants. Some are deeply religious; some are utterly secular. Some have an extensive history of political activity; others have little or none.

But almost without exception, something happened to them when they took their oath of office. There is something about the nature of a judge's job, the weight of it, the responsibility it imposes – something symbolized by that black robe, the vestment that hides our individuality behind our office – that changes most of the people who take it on. Judges quickly realize that being a judge is not about one's self, that it is bigger and more important than any individual. So we shed our old advocate skins and grow into the job, by centering ourselves on an abstract ideal of justice, and we bring that ideal to bear on whatever situation confronts us.

In short, we judges learn and practice the monastic discipline of self-knowledge. Would that society gave us the credit we deserve for doing so.