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The Making of a Good Judge

The Making of a Good Judge

Sherman G. Finesilver†

Chief Judge (Retired), United States District Court for the District of Colorado

Bristling with youthful exhilaration, I first appeared in court in 1952, representing the City and County of Denver as it sought eminent domain of property for Interstate 25, then known as the Valley Highway.

I had been sworn in as an assistant city attorney just the Friday before. Now I was amid hordes of attorneys seeking court dates and arguing motions. As I geared up to pursue immediate possession so Denver's highway project could proceed, I felt like a football player again, waiting for kick-off.

So when my case was called, I approached the lectern and proudly announced: "Sherman G. Finesilver for Petitioner, City and

County of Denver, Your Honor." But as I began to argue, I stepped toward the clerk's desk to consult a statute book.

"Finesilver!" the judge loudly admonished me. "You are not in moot court now! You have forgotten your courtroom manners. You should ask for leave of court to approach the clerk's desk."

Stunned and humiliated, I just knew the other attorneys were snickering to see a neophyte disparaged by the judge. I apologized, stepped back to the lectern, and relied on my notes instead.

I prevailed. Denver won immediate possession. But I was mortified to think I had fumbled

the ball on this, my first court outing.

Chagrined, I confided in the senior attorney, who simply grinned and extended his hand to congratulate me. Then I called my father, questioning whether I could be an attorney after such an unprofessional first effort. Dad bolstered my spirits, reminding me that this had been a valuable learning experience.

Indeed, during 39 years as a state and federal judge, two lessons have lingered from that day:

1. Mind your courtroom manners, and *always* ask permission to approach the bench.
2. As a judge, *never*

Each Term the U.S. Supreme Court grants plenary review, with oral arguments, in about 100 cases—this from the more than 7,000 petitions filed with the Court. Oral argument is one hour—30 minutes per side.

United States Supreme Court Website, The Justices' Caseload, at <http://www.supremecourtus.gov/about/justicescaseload.pdf> (last visited Apr. 20, 2003).

embarrass anyone. Judges need speak only softly to make their voices heard.

Only three times during my decades on the bench did I hold an attorney in contempt, and each time was for egregious actions. A judge who must call attention to an important matter on argument, case citation, or presentation can do so humanely and gently. If one person must control their emotions and exude dignity, it is the judge.

When appointed a United States District Judge on October 22, 1971, I vowed to devote unstinting attention to running a fair and orderly court and pursuing the public interest. But I also wanted to always remember the vulnerability of those appearing before me:

[A] judge's words have a great potential for encouragement, but also potential to demoralize and shatter the human spirit. . . . [M]ay I always have the heart to know and the gentleness to understand human frailties.

The full text was posted on the bench to ever remind me to conduct myself professionally, judiciously, and honorably, without self-importance.

When faced with the awesome responsibility of nominating or appointing a judge, officials often ask career judges what criteria to consider. I have suggested that any applicant should be:

1. Unbiased toward all facets of society, without regard to community status, economics, background, or ethnicity;

2. Distinguished and respected in the legal community;

3. Fully versed in and passionate about the law;

4. Known for unblemished integrity;

5. Creative;

6. Experienced with trial court and familiar with the rules of evidence, procedure, fair trial advocacy, and judicial responsibility; and

7. Recognized for judicial temperament, which is impartial, patient, courteous, decisive, fair, even-tempered, humble, well-prepared and conscious that any judge is merely a trustee, and appreciative of mediation, arbitration and other methods to resolve disputes without court trials.

But a federal judge, who is appointed for life, needs other qualities as well. Such a candidate must be an excellent case manager, as federal judges constantly juggle increased caseloads with limited support staff. Without clearly set procedures, backlogs develop. Antsy litigants begin to distrust the system and question the competency of counsel and judge

alike. And while some cases merit priority status, the public has little patience when judges leave other cases languishing on the docket.

Yet few cases cannot be heard within 12 months after filing if a judge handles the workload expeditiously. Citizens are justifiably concerned when judges delay rulings and take cases under advisement for unreasonable periods of time. Thus any judicial applicant should demonstrate the ability to manage caseloads and control dockets.

By contrast, strict constructionists of the Constitution should *not* be favored for selection, despite the zealous insistence of some political leaders. All facets of American life are undergoing developments that cry out for sound legal reasoning. Many aspects of law have no legal precedent. Judges must be thoughtful and reflective, not ideologues with preconceived notions of judicial interpretation. In the law as in life, one size never fits all.

United States Circuit Judge Learned Hand (1872–1961), a master who served 57 years as a federal judge, deftly summarized the essence of a good judge:

[A] judge is in a contradictory position On the one hand he must not enforce whatever he thinks best; he must leave that to the common will expressed by the government. On the other,

*he must try as best he can to put into concrete form what that will is, not by slavishly following the words, but by trying honestly to say what was the underlying purpose expressed. Nobody does this exactly right; great judges do it better than the rest of us.*¹

The incongruous, conflicting nature of judicial responsibilities requires a rare blend of knowledge, perspective, and personality. As

our leaders seek prospects to serve on any court bench, may they, too, learn to spurn political considerations and other biases. In ferreting out the finest and most knowledgeable nominees, may they ever remember that good judges are critical for fair treatment in our democracy—and for upholding the integrity and credibility of our judicial system.

Endnotes

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¹ LEARNED HAND, THE SPIRIT OF LIBERTY 109 (3d ed. 1960).

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