

INTRODUCTION - JUDGES AND OTHER PRISONERS - IN DEFENSE OF JUDGES REVISITED

By Evan S. Gutman CPA, JD

In the first part of this book published in 2002, I wrote a short essay titled, "IN DEFENSE OF JUDGES." I consider it to be one of the most important chapters of the book. The essence of the essay is that most people don't realize how truly difficult it is to be a good Judge. They don't realize how much a Judge sacrifices in terms of personal lifestyle to fulfill their duties properly. Most of this book consists of sharp criticism replete with invective vituperation of the process of Judicial decision-making. I do not hesitate in the least to emphasize the cognitive infirmities of Judges coupled with their mental irrationalities as evidenced by the decisions they often make. But, it is equally important to recognize the difficulties that Judges face, along with the personal self-sacrifice required of their position.

Since the overwhelming portion of this book chastises the hypocrisy and multiple double-standards of the Judiciary, it seems to me the best way to sufficiently recognize the dedication of good Judges is give top billing to the section that revisits my defense of them. For this reason, my update to the section in the earlier publication titled "In Defense of Judges" constitutes this Introduction.

If you're a Judge you can freely listen to a CD of the country music group The Dixie Chicks sing "There's Your Trouble," just for the fun of it. But, you know what? You can't listen to that song in a wild country bar on a late Saturday night at two in the morning, while drinking scotch and beer and shooting pool all night. If any appellate Justice, or even most trial court Judges were to do so, it would probably be headline news in their local newspaper the next day and their career would be over. There is absolutely nothing illegal about getting rip-roaring drunk at a bar until two in the morning (so long as you don't drive). Nevertheless, Judges simply can't do it. I'm not even aware of an ethical rule of conduct expressly prohibiting it, but they all know it's an unwritten rule. Violating it would lead to enormous adverse publicity and the Judge's career would probably be done. Maybe, at best, a Judge could get away with it for a night or two. Certainly, not on a regular basis though.

The point is that when you're a Judge you give up freedoms most people take for granted. Your Judicial career does not simply affect your personal life, but rather becomes your personal life. The most liberal Judges are expected to lead a conservative personal lifestyle. They're allowed to express liberal views

in Judicial opinions, but they can not personally exercise the freedoms they win for others in those opinions.

It's really not much different than being a prisoner of your position with relatively lenient terms of confinement. At least, so far as the comforts of life go. Kind of what is commonly called a "Country Club Prison." You get to live in a nice house, drive a nice car, eat good food, attend the proper social gatherings and read books. But that's pretty much it. In so far as all the so-called rights and activities and freedoms that the average citizen can enjoy without concern, that's pretty much out of the question.

It is my belief the foregoing to a certain extent, contributes to development of an internal bitterness within certain Judges. The reason is as follows. Most Judges adopt this type of lifestyle early in their career when they begin working for a law firm or the government right out of law school. If you figure a person is age 25 when they graduate from law school, and have an early ambition to be a Judge, they tend to adopt the expected personal conservative lifestyle early on. This applies regardless how liberal there own political views may be. They know the big-whigs at the large law firm will look unfavorably upon them if they start hearing the new associate regularly goes to wild parties or bars until late hours of the morning. That's not what they want. They want the new associate to get married, have kids, and to need a lot of money to support his family. That way they've got a lock on him or her, and the associate will be dedicated to a life revolving around billable hours instead of fun.

Imagine that same ambitious associate attains their goal and becomes a Judge by age 35. Twenty years later, they're a well-respected Judge, perhaps even an appellate Justice. Now, they're 55 years old. They're hearing a case and it becomes relevant that one of the litigants regularly goes to country bars and gets drunk all night. Could be a divorce case, a personal injury suit involving a bar-fight, or maybe even a DUI. The bottom line is that the Judge who is going to decide the case doesn't have the slightest clue what it's like to go out for a wild night at a bar with a group of friends. Cause, they've been building their Judicial career for 30 years and as a result have largely been removed from the people in society whose conduct they judge.

Removal from exposure to the conduct of the average person in society occurs to at least two categories of people. Judges and prisoners. In many respects, they're one and the same. Both unavoidably lose contact with the practicalities of the real world. As a result, they develop their perspective solely from exposure to the other prisoners in the world they live in. It is unavoidable that will tend to give rise to a somewhat warped perspective. No doubt we should have sympathy for the unfortunate plight of each. But, assuming the convicted criminal in a prison is actually guilty of the act for

which they were convicted, one point is generally certain. Both the convicted criminal and the Judge voluntarily engaged in the conduct that gave rise to their imprisonment. One became a prisoner by violating the law. The other became a prisoner by their desire to interpret the law.

I believe many Judges reflect back on their life and wonder, what would it be like to do what the litigant in front of me did. I'm not talking only about bad things litigants do or laws they may have broken. I'm also not even talking about criminal cases necessarily. The Judge who has dedicated his life to the law since graduating from law school, and perhaps even beginning earlier than that in college or even high school, probably can not help but wonder what they missed out on in life by entering the prison they created for themselves.

They might ask themselves the following questions. What's it like to really get drunk? Is it all bad, or is there any good that comes out of it? How bad does it really feel to puke your guts out over the toilet the next morning? What types of friends would I have made? How does it feel to stumble down a street with friends while your totally drunk? What's it like to forthrightly tell an attorney he's a lying jackass? What's its like to go to a hard rock concert? What type of people go to concerts like that? How does it feel to beg for money so you have food to eat? What sense of internal satisfaction do you gain by telling a boss at work to jackoff without any concern about how it will impact your future career? What does the inside of a strip bar really look like? What's it like to get a lap dance? How does it feel to have debt collectors up your butt all the time? What's it like to take the last money you have and put it on the pass line at the craps table in a casino? How does it feel to dance on top of a table? What's it like to really go through a nasty divorce? Am I staying married to my spouse just to protect my judicial career? Or how do you feel when you write a book or essay laying it on the line about how stupid and unfair so many lawyers and Judges are, without holding anything back?

For the most part, it is my genuine belief that most, but not, all of the above listed experiences should be squarely rejected as a lifestyle. That said, I also assert if a person engages in any of the above experiences a few times it does tend to give you a better frame of reference. It allows you to intelligently choose the proper way to live, having experienced the other options. It also provides you with a better frame of reference to judge others. This is particularly the case if you engage in such conduct during early adulthood, although subsequent engagement is by no means foreclosed in its entirety.

The value of engaging in certain experiences, even those commonly accepted as immoral or unfortunate, is with respect to the basis of comparison such provides. For example, you can't fully appreciate the ability to buy any kind of food you like in the supermarket, if you've never been in the unfortunate

position (certainly not immoral) of lacking money to buy food. You don't fully appreciate a good job, if you've never lost a job. You don't fully appreciate the value of good credit, unless at some point, you've had bad credit. Many people (not all) don't fully appreciate the value of a good marriage, until they've had a bad marriage. Anyone who has ever recovered from any type of significant health ailment will readily attest to the fact that others don't appreciate their good health enough. One would be hard-pressed to find a cancer survivor who wouldn't tell a smoker they'd quit smoking immediately if they knew what cancer felt like. And of course, you don't fully appreciate the value of waking up early in the morning feeling great, until you've had a few puking hangovers.

The fact is that when you're not a Judge you can engage in any of the previously listed activities and no one in society could care less, so long as no laws are broken. But, you can't engage in most of these activities if you're a Judge. This causes some Judges to be bitter about what they missed in life. By age 55, when they face a litigant who's been doing what they could not do for thirty years, there's probably a tendency for some Judges to think, "well, since I can't do it, I don't want anyone else to be able to do it." In contrast, there are also Judges who adopt a thought process of, "it's not fair that I can't do it, but I can at least make sure other people are allowed to do it." If you're a litigant the success of your case may hinge on which of these two Judges decides your case.

Judicial decision-making is a product of the positive and negative individual life experiences of Judges. Yet, their limited life experiences attributable to their period of confinement as Judges impairs their cognitive ability to judge. It's the same as how life experiences affect anyone.

So as I now embark upon renewed examination of the cognitive disabilities, irrationalities and mental infirmities of many Judges, it is important to remember in their Defense that to a large extent these deficiencies are simply a product of their imprisonment on the bench. Prison affects everyone differently. Some positively and some negatively. And there are many different types of prisons in life. While criticism of the Judiciary is quite well-warranted, we must at the same time have sympathy for these Judges, because they are in fact prisoners of the bench.

So, if you really want to appreciate and have fun listening to the Dixie Chicks, while drinking a scotch and a beer at a country bar until two in the morning shooting pool, you better do it before you become an appellate judge. Do it when nobody could care less about you doing it. Do it when you still have the freedom to do it and are not bound by the terms of confinement of a Judicial prison. Cause if you become a Judge, you become a prisoner. And all prisoners lose a certain degree of freedom.

There's Your Trouble.