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Chief Judge Howard T. Markey\*

## A Judicial Need for the 80's: Schooling in Judicial Ethics

"The place of justice is a hallowed place . . ."

Francis Bacon<sup>1</sup>

"Dissatisfaction with the administration of justice is as old as law."

Roscoe Pound<sup>2</sup>

Here is a proposal at once modest and radical: new judges should be required to take a brief course in judicial ethics before going on the bench. There is a need for that requirement. It is justified by the good it would do for judges, for the judiciary, and for the resolution of many conceptual conflicts in the ethical imperatives confronting judges.

### NEED

One learns the art of judging in the United States only through on-the-job training. In a number of other countries, persons are trained specifically for judicial careers, and move from lower to higher courts during those careers. Even in Great Britain, from which we inherited so much of our legal system, judges are selected from barristers who have spent their professional lives in court, and have demonstrated a potential for soon becoming "good judges." In the United States, we

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1. Francis Bacon knew whereof he spoke. The quotation is from BACON, *Essay: Of Judicature*, in THE ESSAYS OF LORD BACON, INCLUDING HIS MORAL AND HISTORICAL WORKS 99 (1888), written after his impeachment as Lord Chancellor (for bribery). The quotation, along with others from *Deuteronomy*, *Magna Carta*, and *Lincoln*, adorned the Canons of Judicial Ethics adopted by the ABA in 1924. The present Canons are devoid of what their drafters viewed as "pious platitudes," but that circumstance cannot diminish the fundamental importance of Bacon's statement.
2. As made clear in Pound's famed speech, *The Causes of Popular Dissatisfaction with the Administration of Justice* (Aug. 29, 1906), 29 A.B.A. REPORTS 395 (1906) (quoting from CAMPBELL, *LIVES OF THE CHIEF JUSTICES* 119 (3 Ed. 1899)), which opens with the quoted sentence, that dissatisfaction may be immutable should encourage efforts to ameliorate it. Given in 1906, while Pound was Dean of the University of Nebraska Law School, the speech that began so succinctly remains in good part remarkably applicable today.

have occasionally placed on the bench persons who had virtually never set foot in a courtroom, and we have a generally accepted view that it takes an average of five years to become a "good judge."

Definitions of "good judge" will differ, as will definitions of "good surgeon." Unlike the medical profession, however, the American judiciary has no residency, intern, or board certification requirements that must be satisfied before a person may "operate" on litigants from the bench. "Learn by doing" is good advice, and is applicable at some stage to all skills, but it is a dangerous notion when all the learning is by doing and the "doing" while learning can affect the lives and property of other people.

As part of our system, we tend to treat judges as fungible. A new judge spending his or her first day on the bench may be assigned to try a highly complex case, though the new judge has had absolutely no contact with the procedural rules and substantive law involved in the case. If it be suggested, however, that the case should be assigned to a judge who has tried fifty such cases (because that judge might dispose of the case at twice the speed and half the cost), the new judge will object—legitimately under our on-the-job training system—that he or she will never learn, or will learn more slowly, if tough cases always go to more experienced judges. Because "we have always done it this way," it can also be reasonably objected, that to suddenly begin the assignment of cases on the basis of experience would appear to make "second class judges" of the newly-robed.<sup>3</sup>

Our system of self-made judges may have been tolerable in the more leisurely, less litigious days of yore, when the judge corps were smaller and more stable. And it cannot be said that pre-training of judges in other countries has always resulted in judicial systems in all respects superior to our own. On the contrary, it can be truly said that a remarkably fine job of administering justice in the United States has been accomplished in spite of our on-the-job training system. We gain much from the constant infusion of fresh perspectives into the judiciary, particularly those of the practicing bar, but that gain would be enhanced by some specific pre-training in the art of judging.

The need for some formal training has not, of course, been totally ignored in the United States. Confronted by a massive growth in annual case filings measured in the millions in state and federal trial and appellate courts, and a judge corps increased to over 29,000 federal, state, and local judges, the system has created two outstanding institutions for sitting judges: The National Judicial College in Reno, Nevada (for state judges), and the Federal Judicial Center in

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3. A resolution urging care in assignment of complex cases to new judges was adopted by the Judicial Conference of the United States (JCUS) in 1971. 1971 JCUS Report 71-74. The resolution was re-circulated to all federal judges in November, 1984. Data reflecting the extent of adherence is not available.

Washington, D.C. (for federal judges). Both institutions have done and are doing yeoman, pioneering, outstandingly valuable work, but no judge is required to attend either. Because they are limited to volunteer attendees among sitting judges, these institutions appear an inadequate response to today's litigious milieu. We may not much longer be able to afford the five years of on-the-job self-training that may have been acceptable in the past.

What may be needed in the 1980s and beyond is a required period of training in the art of judging to be completed *before* the new judge first mounts the bench and begins to practice that art. The suggestion would not be universally welcomed and is not without its problems, but, if I am correct that the American judiciary confronts a new world, consideration of bold new steps may be in order.

That the mere suggestion of a period of required pre-training would not be without its problems is an understatement. Some will argue that any such mandatory requirement would constitute an in-road on judicial independence. The nature and extent of training to be imparted would doubtless prove controversial, particularly as those factors may control the length of the training period. The judicial system would have to accept an effective continuation of the vacancy the new judge will be filling. Grading and examinations would be purposeless and self-defeating. Courses would have to be designed to accommodate previous training and experience of some new judges. Scheduling would present some problems.<sup>4</sup> Funding the new judge's travel and maintenance expenses, and the expenses of trips home if training periods were of some length, would be a factor. Doubtless other problems, presently unforeseen, would arise.

Special problems, anticipated and non-anticipated, would arise if it were suggested that a pre-training course be designed to give new judges a general familiarity with much of the "technique" of the art of judging, e.g., the Rules of Evidence, the Civil and Appellate Rules, discovery problems, jurisdiction, opinion writing, statutes relating to the office, and perhaps, some areas of substantive law. Many if not most of those problems would not arise, however, if the suggestion was limited to the subject of this article, namely the need for pre-training in judicial ethics.

Not that there would be an absence of problems. An expected reaction of some new federal judges might well be, "I have been investigated by the ABA and the FBI, nominated by the President of the United States, and confirmed by the United States Senate. Why should I have to be told about ethics?" Similar wording might be

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4. Judges are appointed and elected at different times, but with hundreds of new judges coming "on board" each year, it should be possible to design a series of courses flexible enough to accommodate all, with only a minimal delay awaiting training.

adopted by new state judges. One answer might lie in the essential differences in the ethical environment the new judge is leaving and the one he or she is about to enter.

The pre-training course in judicial ethics suggested here for consideration would necessarily include a study of the Code of Conduct, but the Code is a set of minimum standards, truisms, lofty and unchallengeable principles, guides and reminders. Education is needed to apply the Code to the facts confronting the judge. No code could encompass all the myriad ethics-intensive circumstances a judge may face. Nor is there room in this short article to survey the vastly varied types of judicial misconduct reported in the "Judicial Discipline and Disability Digest."<sup>5</sup> In reading those reports, however, one is struck with the thought that many of the reported ethical infractions might not have been committed if the judge had from the beginning a thorough exposure to the Code and its ethical ramifications.

The purpose of the course suggested here is not merely to acquaint new judges with restrictions on their activity. A properly designed course would also reassure them about what they *can* do, so that our communities will not lose the benefit of their contributions in areas in which those contributions are fully permissible and healthy.

Though recently re-instituted in some law schools, courses on ethics have for years been simply absent from law school curricula. Hence even the most thorough course on the "technique" employed in the art of judging would alone be insufficient. Giving the best of tools to a person whose sense and knowledge of ethics may have been dulled or dormant or insufficiently honed for twenty or thirty years cannot contribute very much to the pursuit of excellence within the judiciary. Indeed, if it were determined before-hand, as well it might be, that a full pre-training course in "technique" would forever be out of the question, much would remain to justify an intensive exposure of each new judge to judicial ethics. That subject is so fundamental, so pervasive in the life of the new judge, so important to the judiciary, as to warrant a short (say, one week) course before the new judge mounts the bench.<sup>6</sup>

#### JUSTIFICATION—THE JUDGE

The first justification lies in the nature of the subject matter and

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5. Published by the Center For Judicial Conduct Organizations established by the American Judicature Society, 25 East Washington, Suite 1600, Chicago, Illinois 60602.
  6. I refer to the "new" judge as part of the "train before pain" concept. I do not suggest that no experienced judge could benefit from an intensive course in judicial ethics. The judicial system would obviously benefit if an ethics course, proven successful and beneficial to new judges, were made available as well to experienced judges who desired to attend.

its importance to each new judge. Judicial ethics affects every aspect of the pursuit of excellence by every judge. Ethics cannot be separated from the art of judging. It is its very soul. No one respects the unethical. And respect is the lifeblood of the judge-qua-judge. Abject servility to the person of the judge is anathema. Respect for the judicial office and for the judge as judge is critical.<sup>7</sup>

No judge, we can be thankful, has an army. Public confidence is the true long range source of a judge's actual power to protect the people's liberty. In a sense, a judge's power depends on the consent of the governed, insofar as the public's confidence continues to cement its continued voluntary adherence to law. That public confidence in turn rests on respect. Yet respect doesn't come with the territory, or with the title "Judge," or with "Your Honor," or with the robe, or with the bench. Those are but symbols—important symbols—but symbols only. They are loaned to the judge while he or she holds the office they symbolize. They are not substitutes for respect, for respect cannot be merely donned, or ordered, or bought, or assumed. Nor can it for long be simply granted. It must be, and can only be, earned—and only the ethical can earn respect.

If, as some expert commentators maintain, all of us, including judges, are living in a time of confused values, what some have called an ethical crisis, then circumstances would argue for development of new means to help new judges avoid the pitfalls and the potholes over which some judges before them have tripped.

There should be no illusion that ethics viewed as a matter of conscience, or as Albert Sweitzer's "concern for others," can be "taught." What can be taught is a facility for recognizing the ethical content of contemplated conduct, and an ability to recognize often subtle, obscured conflicts of interest. What can be done is to expose new judges to the ethics-intensive situations likely to confront them, and to the competing considerations involved in meeting and handling those situations. What could be done would be to enable new judges to evaluate more easily, when charges of conflict of interest are made, the unreasonable charge from the reasonable, and reacting to remove any apparent basis for the latter. What can be taught is the ease with which appearances of partiality may arise from situations in which the public may, rightly or wrongly, perceive a disqualifying economic interest, or class or race prejudice, or carelessness of the concerns of citizens, or the notion that the court exists for the judge and not for the litigants.

There are ways to earn respect. There are also ways, most often inadvertent, to lose or diminish respect. Judges supplied at the outset

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7. "[E]thical considerations can no more be excluded from the administration of justice, which is the end and purpose of all civil laws, than one can exclude the vital air from his room and live." J. DILLON, *LAW AND JURISPRUDENCE OF ENGLAND AND AMERICA*, 17 (1894).

with an ethical alarm system, capable of alerting them to both sets of ways, would be ahead of the game. A course in judicial ethics could from day one make easier the path of the new judge, whether local, state, or federal,<sup>8</sup> in earning respect for himself or herself and for the judicial office he or she is about to assume.

### JUSTIFICATION—THE JUDICIARY

The second justification lies in the happy effect on the body judicial that can result from an increase in the knowledge of judges about judicial ethics—and in the unhappy effect that can result from lack of that knowledge. A strong, universal sense of ethics among judges is a quid-pro-quo for the creation of a favorable public image of the judiciary. It is not enough, in the public eye, that there be a high standard of ethics exhibited by most judges in the judiciary—there must be an excellence of ethics exhibited by all judges.

No institution, judicial or otherwise, has ethics—only people do. And our ethics march always at our elbow. People who are judges cannot take refuge in the knowledge that they do well “on the job.” A judge may work hard, may know the law, and may write well, but if that judge’s ethics were those of Ghengis Kahn, that judge could not be seen as one engaged in the pursuit of excellence, and that judge could not contribute to a high general public image of the judiciary. No doubt Ghengis, and Al Capone, and Adolph Hitler worked hard, and knew their business, and as far as I know, wrote well enough. I doubt, however, that the American people would be willing to have their cases, their lives, and their property judged by any group that included those worthies.

And therein lies a key. The public doesn’t see, or see very much of, what a judge-qua-judge, does every day. Even the work of trial judges, who are in the front lines, is seen by less than all the people, and they see only the in-court work of the judge. Even then, as busy judges may tend to forget, the judicial process is mysterious, secretive, confusing, and illogical to the litigants it exists to serve. Judges today are just too pressed to enjoy the gift described by Burns—“to see ourselves as others see us.” On the other hand, the people do see a judge’s every apparent or real ethical infraction, and if they don’t, the media will show it to them.

That the body judicial is affected by the ethical standards exhibited by each individual judge is reflected in the frequent complaint of some judges about the media’s practice of blatantly exposing every little

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8. There can be no real distinction in the respect-earning imperative for local, state, and federal judges. To those who count, in giving or withholding respect, the litigant seeking justice and the public, the source of the judge’s compensation, and whether the judge is elected or appointed, are irrelevant factors.

ethical peccadillo any judge commits. That phenomenon, however, is not all bad. A judge's unethical conduct is exposed because it is unusual, and none of us would want to be part of a judiciary in which unethical conduct is so commonplace as to be no longer newsworthy. It is true that the smallest apparent anthill of judicial misconduct becomes a mountain to be climbed by other judges in earning respect for the judiciary as a whole. Yet the people have a right to expect more of those who judge them, and to expect that an ethical departure of any judge should not be just unusual—it should be never.

Compliance with a high standard of judicial ethics is the primary element in the pursuit of a judiciary seen by the public as worthy of its confidence. To meet that standard, every judge must always remember that ethics and the appearance of ethics, like justice and the appearance of justice, are inseparable. The requirement is for a constant, pervading realization that each judge must not only be ethical, but must appear to be ethical, not only on the bench, but off, not only as a judge, but as a person. For it is not the judges' perception that counts, nor even the judges' own sense of logic, in building and maintaining the image of the judiciary; it is the reasonable perception of the people that counts—and that is all that counts.

Some years ago, Dean McKay said “[t]he ethical expectations of the public have risen even more rapidly than have the perceptions of the judges of what is now expected of them.”<sup>9</sup> Perception of what is expected may have since grown on the part of many sitting judges but the focus here is on new judges. To them the commentary to Canon 2, that judges must expect to be “the subject of constant public scrutiny,” may come as somewhat of a shock.<sup>10</sup> Supplying those new judges with before-the-bench training in judicial ethics cannot only increase the judges' perception of what is expected but can help insure over time the ability of the judiciary, not only to survive, but to welcome happily that public scrutiny. Indeed, a judiciary armored with a strong reputation for ethical conduct can withstand attacks from any quarter.

It would be nice if the media were to tell the people frequently of the high level of ethics maintained daily by the vast majority of judges. That is not going to happen. Yet the game is still worth the candle. Only by maintaining that level, and by constant effort to raise it even higher, can we continue to constitute a corps of judges in which we can each be proud to play our part.

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9. McKay, *The Judiciary and Nonjudicial Activities*, 35 LAW AND CONTEMPORARY PROBLEMS 9 (1970).

10. The ancient root of the commentary is reflected in the 18th century lectures of Justice James Wilson, “[a] judge is the blessing or he is the curse of society. His powers are important: his character and conduct can never be objects of indifference.” 2 THE WORKS OF JAMES WILSON 158 (1896).

## JUSTIFICATION—RESEARCH AND DEVELOPMENT

A third justification lies in the need for further development of the subject matter. A common and welcome by-product of every effort to teach is a growth and development of the subject matter taught. The preparation of a really good and sorely-needed textbook might be one such by-product. Teachers' lesson preparations and questions raised by new judges would be likely to lead to embellishment and refinement, and possibly to revision, of presently accepted concepts in the field of judicial ethics.

There is much room for research and development in the field. Judicial ethics cannot be viewed as a mechanical or mathematical set of plain and easily applied rules. Apart from some basic, long-accepted ethical norms and the Code, together setting out a few basic "no-no's," it is simply too "human" a subject to permit reliance on a supposedly all-encompassing set of "rules" learnable by rote. In the vast array of actions a judge might take, there are too many nuances, too many variables, and too many factual combinations to warrant the view that the Code of Conduct for judges supplies a complete "handle" on all that is encompassed by the phrase "judicial ethics."

Dichotomies dot the landscape. Judicial Independence v. Judicial Accountability. Isolation v. Involvement In Society. A Presumption of Impartiality v. A Presumption of Partiality. Appearance v. Reality. The development and conduct of a course in judicial ethics could over time result in some resolution, and surely in some fine-tuning, of some of those apparently conflicting concepts or "issues."

As I have elsewhere said,<sup>11</sup> it would be comforting, but unrealistic, to suppose that ethical conduct of judges is a subject without issues. Ethical principles, like all true principles, may themselves be immutable and unchallengeable. It is in their application to specific conduct that discomfiting issues are present and training is needed. The need for value trade-offs, many unforeseen when codes and statutes were adopted, arises when the judge must match an ethical principle with contemplated conduct.

It would be nice to think that promulgation of codes and statutes, and expected, rigid adherence thereto by all judges all the time, would solve the problem. It would be easy, in responding to a judge's "Can I ethically do this?," to merely read a code or statute and readily say yes or no. In a pluralistic, changing, complex society, with numerous competing interests and values, that easy course is rarely open. There are too many delicate dichotomies.<sup>12</sup> Thus, the continuing conduct of a preliminary school in judicial ethics, and its accompanying encourage-

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11. Markey, *The Delicate Dichotomies of Judicial Ethics*, 101 F.R.D. 373, 374-75 (1984).

12. *Id.*

ment of research and development, might lead to better answers to many questions.

#### INDEPENDENCE V. ACCOUNTABILITY

That a judge must be independent in making judicial decisions is, or should be, an imperative. That a judge must be accountable in making administrative decisions—indeed in all conduct other than the actual making of judicial decisions—is equally an imperative if respect is to be earned. A shortened version of that view, easily said but often difficult to apply, is that a judge must be independent in thinking and accountable for conduct.

Only the ethical can be truly independent, yet independence has a price. That price takes the form of limitations on a judge's freedom of action. One question is, how can independence-enhancing conduct be encouraged without unduly curbing independence? Does "independence" mean absolute non-accountability, except perhaps to God and history? If non-elected judges are "accountable," for what and to whom are they accountable? Does "accountable" mean or only mean politically accountable? Does "accountable" mean "removable?" What are the sanctions? How do we preserve independence of decisionmaking against inroads by accountability for conduct?

#### ISOLATION V. INVOLVEMENT

The thrust of many of the Canons, advisory opinions, and court opinions dealing with judicial ethics, is toward more and more isolation of the judge and the judge's family from community affairs. Paradoxically, judges are in their judging being involved more and more in the management of society. If total isolation of judges from all societal contact off the bench would guarantee a totally ethical judiciary, what would be the cost? Should judges interpret and apply the law to a society of total strangers? Can judges learn enough about their society by watching TV and reading newspapers?<sup>13</sup>

The Canons say a judge's permissible outside activities should not interfere with "judicial duties." In deciding the question, should a judge take into account the total workload of the court, or only the workload of the judge's chambers?

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13. "In the eighteenth century, it was complained that the bench was occupied by 'legal monks, utterly ignorant of human nature and of the affairs of men.'" Roscoe Pound, *The Causes of Popular Dissatisfaction With the Administration of Justice* (Aug. 29, 1906), 29 A.B.A. REPORTS 395-96 (1906) (quoting from CAMPBELL, *LIVES OF THE CHIEF JUSTICES* 119 (3 Ed. 1899)).

## PRESUMPTIONS—IMPARTIALITY V. PARTIALITY

There is today no public presumption that judges are impartial.<sup>14</sup> The question now is, are we in danger of going too far in the direction of a public presumption of partiality? Is there a risk of attracting less than the best to the bench, if they are then to be continuously confronted with an expressed expectation that they will act unethically? What might be the effect of such an expectation on judges' lives, on their self-image? Was the prohibition of blind trusts for judges adequately considered? Should that question be revisited in the light of over a decade's experience?

## APPEARANCE V. REALITY

Perhaps ninety percent of the problems that arise in relation to judicial ethics arise from appearances, not from reality. Actual corruption is rare. Ethically questionable appearances are the main problem. The conduct may itself be completely ethical, but the factors that make it so are known only to the judge, and not to the bar or to the public, who see only an untoward facade or unethical appearance. In any contest between appearance and reality, appearance must win; yet, it is not always easy for a judge to recognize the difference. Harried, harassed, and hurried, a judge may tend to see only the real, unaware that the apparent may be quite different. One by-product of schooling in judicial ethics might be methods of insuring that judicial conduct actually ethical is so properly clothed as also to appear in its true ethical colors.

## THE MONITORS

I don't mean to suggest for a moment that pre-schooling in judicial ethics is needed because interest in judicial ethics is lacking in the judiciary and associated institutions. Quite the contrary. Interest in judicial ethics has become a growth industry.

In 1974, the judicial conference of the United States adopted the Code of Conduct for Federal Judges and reformed its Advisory Committee on the Code. In 1981, Congress passed the Judicial Councils Reform and Judicial Conduct and Disability Act, creating a mechanism for receipt and investigation of complaints about behavior of federal judges. All fifty states and the District of Columbia have created permanent bodies to receive and investigate complaints about behavior of state judges. As above indicated, the American Judicature Soci-

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14. Whether there ever was such a presumption is problematical. What may in the past have been perceived as such a presumption of public faith may have been mere apathy, or the absence of TV and investigative reporting, or minimal contact with the courts compared with that of today's litigious society.

ety created "The Center for Judicial Conduct Organizations," which conducts conferences and workshops and publishes the "Judicial Conduct Reporter," the "Judicial Discipline and Disability Digest" and other publications. Numerous articles on the subject have been written.

Whence all this ferment? All this effort to monitor judicial conduct? The ABA Code of Judicial Conduct was originally promulgated in 1924. Yet the vast growth of public interest in the ethical conduct of judges has occurred in the last twelve years. Why? There may be a variety of reasons. We are all familiar with news accounts of ethical infractions by officials, including a few judges, over the past decade. It may be that ferment is directly proportional to the vastly expanded role of judges in the lives of our people. Whatever the reason, some sixty-four bodies are engaged today in monitoring, investigating, reporting, and acting on complaints in regard to judicial conduct.

The monitoring ferment is all to the good. There has to date been no reported instance, of which I am aware, in which any of it has abridged judicial independence or otherwise harmed the judiciary. But what devolves today upon bodies interested in judicial ethics, and upon the leaders of the judiciary, is the need to create systems and mechanisms designed to emphasize the positive in facilitating the daily earning of respect by all judges. The bodies devoted to investigating and acting on complaints of judicial misconduct must continue in operation. Those operations are necessary, but they are necessarily negative and after-the-fact, and their deterrent effect is difficult to measure.

New judges are especially subject to numerous importunings of well-meaning but uninformed friends and organizations. Busy learning a new art, new judges are at risk of inadvertent and improvident conduct undertaken without time for adequate, or any, thought of the ethical implications of that conduct. It is of little help to them to have the undivided attention of a monitoring body only *after* they have stubbed a toe. Might it not be much more helpful, if the publications of the Center for Judicial Conduct Organizations and other materials were presented in a course for new judges before they presided in their first case? In essence, the suggestion for pre-schooling in judicial ethics is based on the aged maxim that an ounce of prevention is worth (in this case, more than) a pound of cure.

#### THE PATHFINDERS

If the judiciary were to adopt a requirement for pre-schooling in judicial ethics, it would not be alone. Industry is already there.<sup>15</sup>

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15. Much of what appears in this section can be found in *What Price Ethics? The Morality of the Eighties*, NEW YORK, July 14, 1986, 28-34.

The corporate world is waking up to the importance of ethics to its continued survival. When the Harvard Business School opened a course on ethics in 1980, it drew 25 students. In 1986 it drew 160. The business community has the benefit of two magazines devoted entirely to ethics, "The Journal of Business Ethics" and "The Business and Professional Ethics Journal." Some 240 corporations have adopted codes of ethics and established ethics committees.

Most importantly for our purposes here, some 106 corporations, having learned from experience that codes and committees are not enough, have set up training programs to help employees deal with ethical questions. Organizers of a pre-school in judicial ethics for new judges would profit from a visit to some of these corporate schools, as well as to the course in progress at Harvard Business School. They would find a number of innovative methods in use, among them the use of video dramas. They would find students unable to detect the presence of any ethical question (though one is clearly there) in the situation they are watching. In one recent experiment, less than 10 percent of the students were able to identify the ethical dilemmas presented in a series of video vignettes.

Chief Justice Earl Warren, having said that "the Law floats on a Sea of Ethics," expressed a hope that there would one day be a vigorous, active profession under the title "Ethics Consultant." Whatever may be the culmination of that hope, there are now ethics consultants employed in the corporate world.

The corporate and judicial worlds are certainly different in numerous ways, including specific ethical norms. And corporate training in ethics is not yet in all cases required before employment begins. Yet the judiciary, if it elected to institute pre-training in judicial ethics, could not only learn from the schools underway in the corporate world, but could lead that world to look at the values that may be present in pre-employment ethics training.

### CONCLUSION

A new judge in the United States must virtually train himself or herself to practice every aspect of the art of judging, including its most important aspect—judicial ethics. What formalized training a new judge may receive is limited, voluntary on the judge's part, received only after the judge is and has been on the job, and has at most a minimal ethics content.

Confronting a constantly growing caseload, a greatly increased population of judges, and hundreds of new judges donning the robe each year, the state and federal judiciaries are at the same time under a constant and growing public scrutiny. Maintenance of the highest standards of judicial ethics is thus more critical than ever to the judiciary's continued legitimacy and public acceptance. It is suggested that

one step—new and untried, bold and probably problematic be taken: the institution of a required one-week course in judicial ethics, to be attended by each new judge before beginning to practice the art of judging. Neither a cure-all nor a panacea, such a course could nonetheless aid the new judge to recognize and to sail safely by the shoals of ethical entrapment he or she will surely and promptly meet.

I remember hearing, as a boy, the expression “As Sober as a Judge.”<sup>16</sup> Whether pre-schooling in judicial ethics is instituted, or some other means is adopted to facilitate the efforts of judges to earn respect, I look forward to that happy day when the popular expression will be a new and widely recognized truism: “As Ethical as a Judge.”

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16. “I am sober as a judge.” HENRY FIELDING, *DON QUIXOTE IN ENGLAND* 14 (Act III, scene IV 1734). “Lewis all the while, either by the Strength of his Brain or Flinching his Glass, kept himself sober as a Judge.” JOHN ARBUTHNOT, *LAW IS A BOTTOMLESS PIT* 23 (London, 1712).