

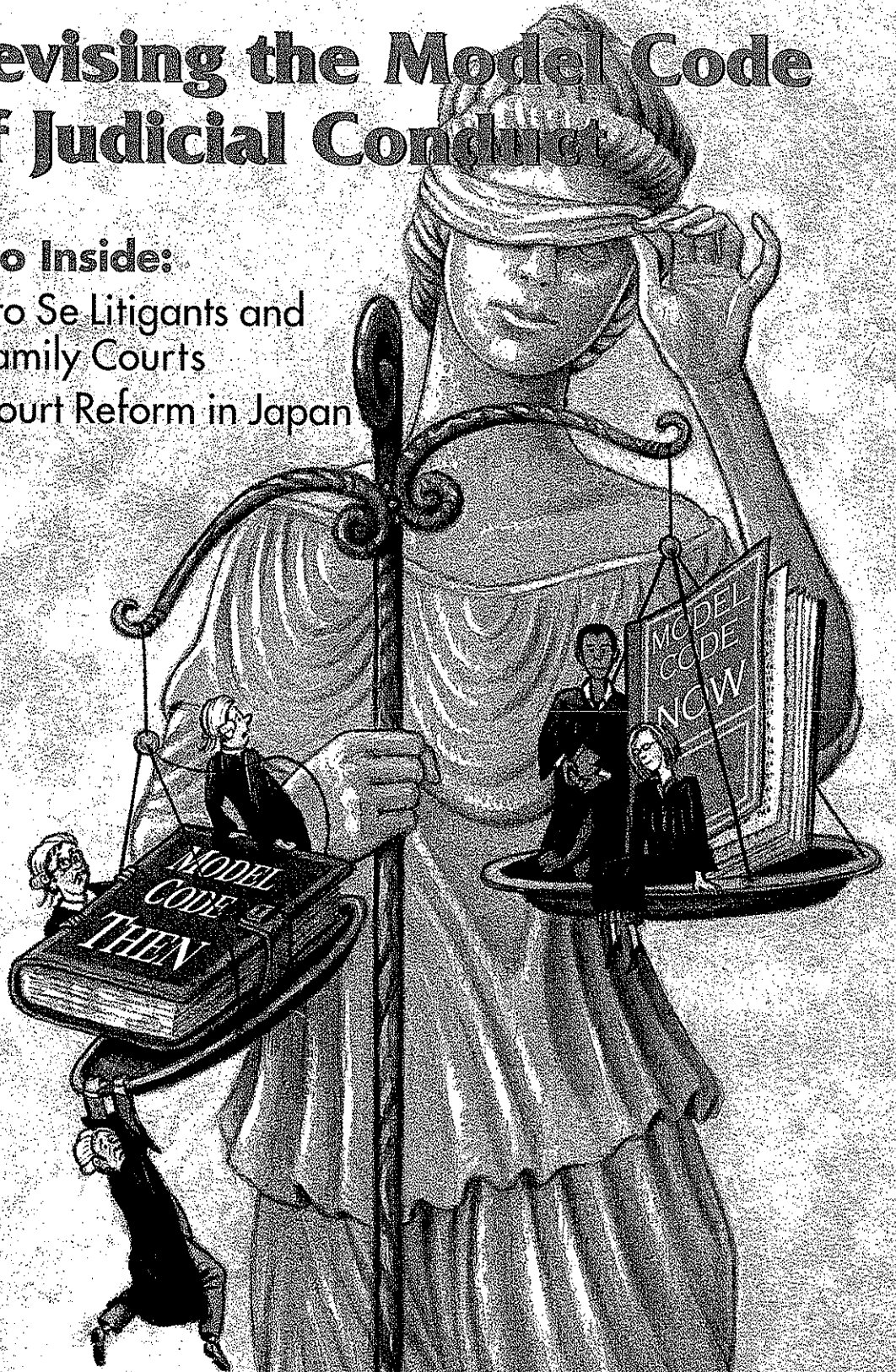
# THE JUDGES' JOURNAL

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## Revising the Model Code of Judicial Conduct

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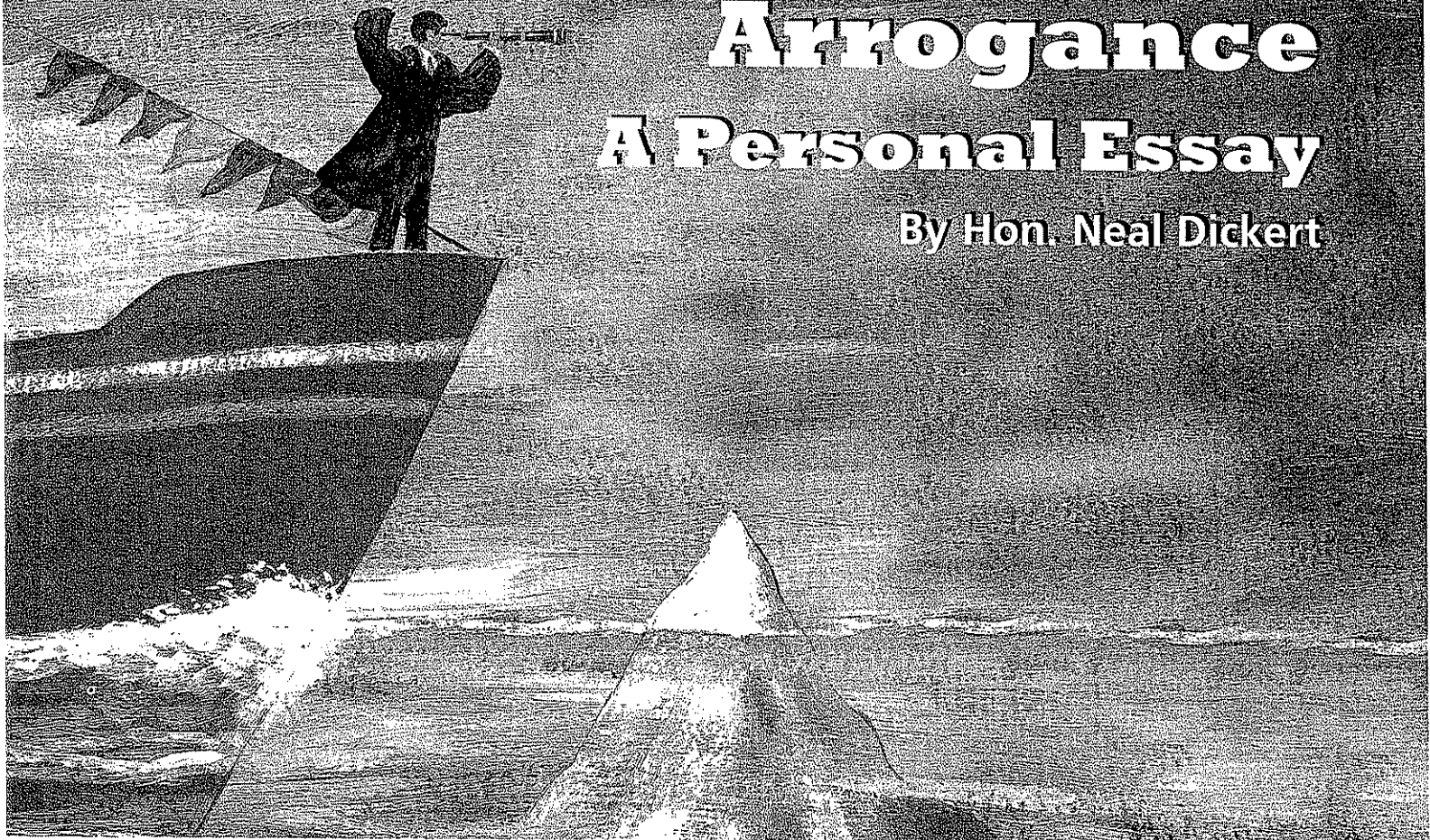
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# Avoiding Judicial Arrogance

## A Personal Essay

By Hon. Neal Dickert



**B**efore I became a judge, I practiced law for twenty-two years in Augusta, Georgia. Augusta is a community of 200,000 people, with approximately 350 practicing lawyers. Although I frequently litigated against lawyers from other cities, most of the attorneys I faced were from Augusta. I knew most of them, and most of them knew me. I saw them at civic functions, at social occasions, at church. Many were friends. Many of them I respected greatly. Others I did not. A significant number, I am sure, had no use for me.

Because of my practice experience, I came to the bench with some preconceived ideas about how these peers would relate to me, one of their former adversaries, once I became a judge. I assumed that they would respond to me as a judge as they did when I was a lawyer. I was naïve. It was interesting to see attorneys who would never return my telephone calls when I was practicing begin to

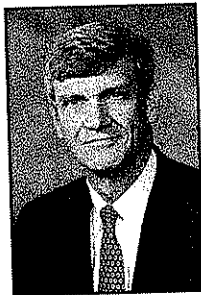
respond immediately to calls from my office. These lawyers even had their assistants insist that they be interrupted from meetings with clients, telephone conferences, and even depositions to answer my calls. I was amazed.

When I was a lawyer, very little advantage was gained by identifying myself as such to someone I did not know. It probably was a disadvantage. That changed once I took the bench. I remember having a problem with our state insurance plan over a precertification issue on a medical test. When I called and identified myself as Judge Dickert, my problem suddenly went away. I try to resist the temptation to refer to myself as a judge when making telephone calls. Believe me, my wife has never been tempted to call me "Judge" or "Your Honor." The day she tells me, "Your honor, please take out the garbage," is the day I know she is ready for a committal hearing.

Another change that occurs in the transition to the bench is the lack of feedback—at least the lack of reliable feedback—that one receives as a judge. As a lawyer, I felt that I was constantly receiving feedback from clients, partners, other lawyers, and judges. Whenever I filed a brief, I would surely receive some comment from someone immediately. True, judges occasionally are reversed by appellate courts, and we also receive letters from angry litigants and experience criticism from the press. Hopefully, the appellate court reactions to our decisions are helpful and are, in some way, a reflection of our job performance. Letters from angry litigants and criticism or praise from the press are rarely good indications of our success or failure as judges. Feedback from lawyers occurs but is not reliable. Except for a few close friends and colleagues, most lawyers are not going to tell us what kind of job we are

doing. Those attorneys who think we are lousy are not about to risk offending us by telling us that we are doing a bad job. Others will flatter us excessively. Many of them are the same lawyers who would not return our telephone calls when we practiced yet now "pop to" attention whenever we call. As much as I want to believe them, I know that I cannot afford to take their compliments seriously. Others who may sincerely think we are wonderful—if any such person truly exists—will probably not risk flattering us for fear that we will perceive them as attempting to ingratiate themselves to us.

Except for responding to the electorate every four years (or whatever term your state requires) and the state judicial qualification commission (or whatever your disciplinary body is called), we are essentially not accountable to anyone. We receive a paycheck whether we show up at the office or not. We do not have to make a payroll. If we have to go to a funeral, have a bad cold or headache, or just become tired, we can postpone what we have scheduled. If we forget about a hearing or show up late, we rarely suffer any direct consequences. The truth is that unless we have a strong work ethic and are motivated by a desire for public service, very few built-in pressures can make us do a good job.



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This lack of accountability and feedback, when coupled with the kind of contagious power that arises simply by virtue of using our title, sets all of us up for a case of judicial arrogance. Most of us enjoy the power and freedom that come with this job. The problem is not so much that we enjoy it but that we become accustomed to the special treatment and begin to expect it. I recently called one of the lawyers in my old firm and a new receptionist answered the phone. When I identified myself as Neal Dickert, she asked me to spell my name. I fought the tendency to think, "Don't you know who I am?" Then I thought back to the occasional judge I used to encounter in practice who was rude, insensitive, and insolent. I hope and pray that I am not taking on those characteristics.

As judges, we have to fight this tendency daily. We become spoiled by the respect and deference we receive and the power we have. The longer we do this job, the harder it becomes to overcome this tendency. We all have to realize that we cannot do this job forever. I started relatively late, at the age of fifty. Many judges began judging in their forties, or even thirties, and will spend much more time on the bench than they ever did, or will, as practitioners. After a number of years, it also becomes easy to think of a case as "just another divorce" or a routine sentencing or discovery motion. To us, these matters seem routine. To the litigants, however, the decisions we make are frequently among the most important events in their lives.

I recently had an opportunity to mentor a child in the confirmation process at my church. At our first meet-

ing, I learned that I had signed his adoption papers. He had appeared in front of me in chambers with his adoptive parents and grandparents. What was a rather uneventful and routine procedure for me was a major event in his life. Perhaps it is helpful for us to imagine what it is like to stand at the foot of a bench looking up to a person with the power, with the stroke of a pen, to send us to jail for many years, or to award a substantial monetary judgment, or to break apart our family and separate our children. Perhaps it is also helpful to think about that lawyer who may have spent most of the evening researching the law and preparing witnesses for an appearance before us while we enjoyed a leisurely dinner at home with our families.

I also continue to be impressed at how people appreciate receiving a call or a kind word from a judge. Court clerks, law enforcement officials, and other court-related personnel are amazingly responsive when we learn their first names. It is so easy in our job to forget how significantly we touch people in very real ways every day. The day we forget this is the day we need to call it quits.

When I practiced law, I lost patience with some judges. I felt at times that I was the victim of judicial arrogance. Seven years ago, when I became a judge, I pledged that I would never be rude, insolent, or insensitive. I hope I have lived up to this pledge. Since then, I think I have a better understanding of how this inappropriate conduct occurs. We all have to continually remember the time before we became judges and realize that we are no better and no worse than we were before we assumed our current role. We are simply temporary occupants of positions that existed before we arrived and will continue to exist long after we have passed on.

