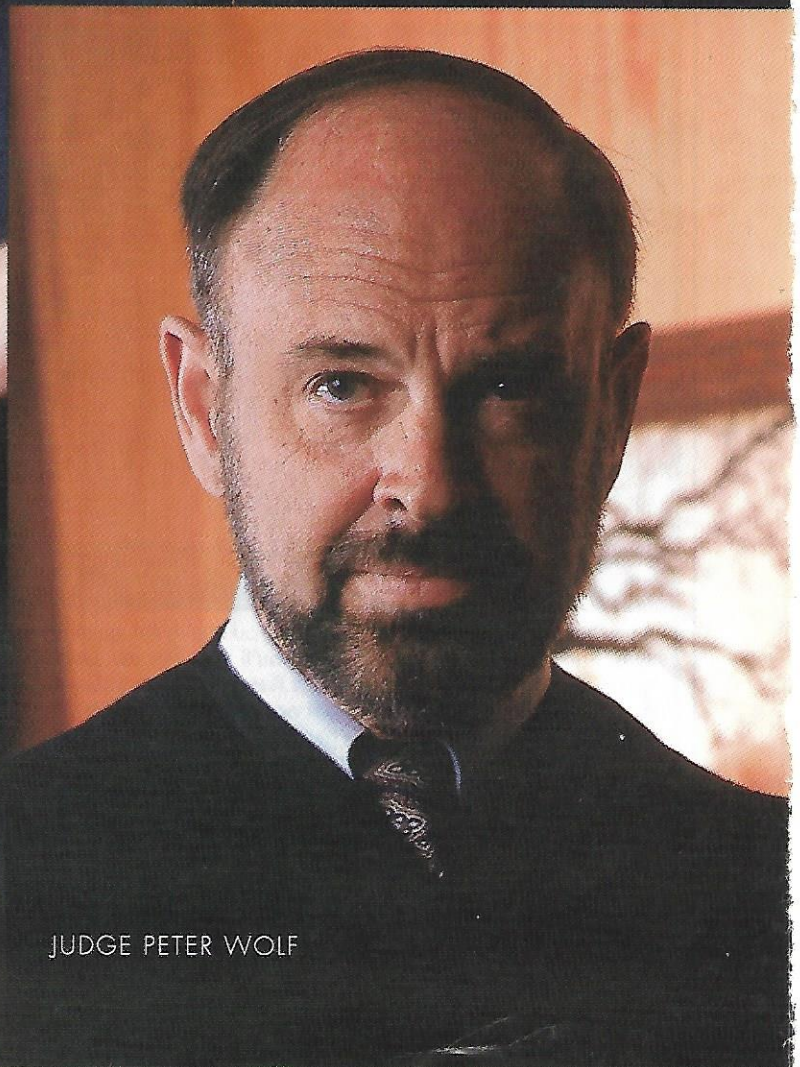
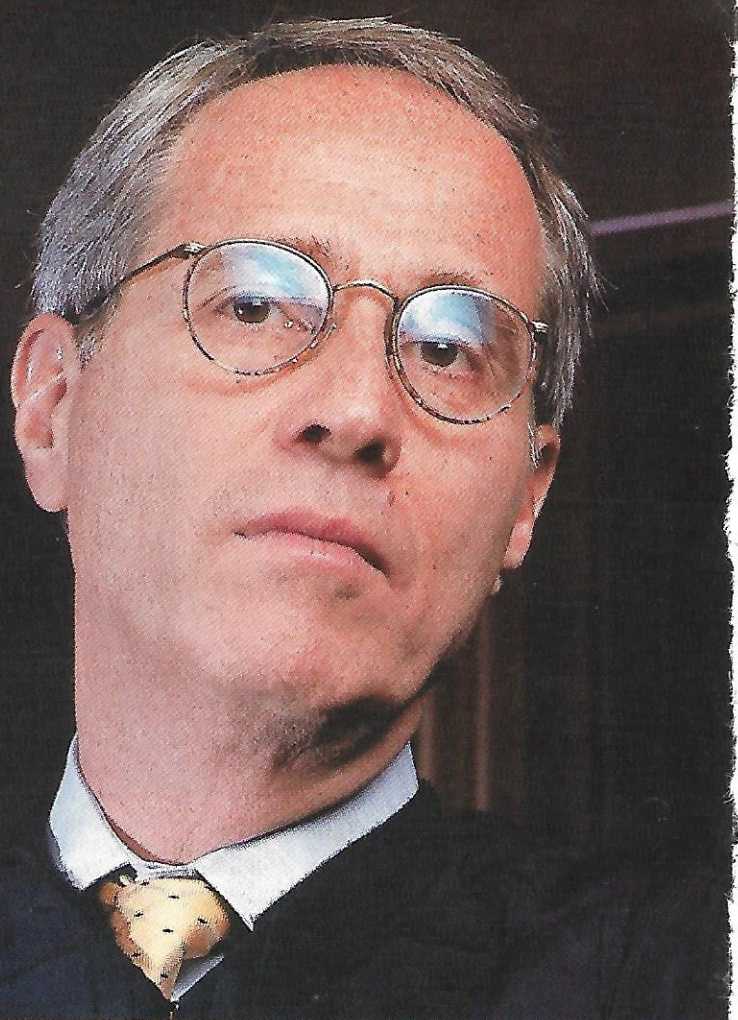


In the Cloister

What life is like
on the inside
for six judges
of the local and
federal courts.

By Charles S. Clark

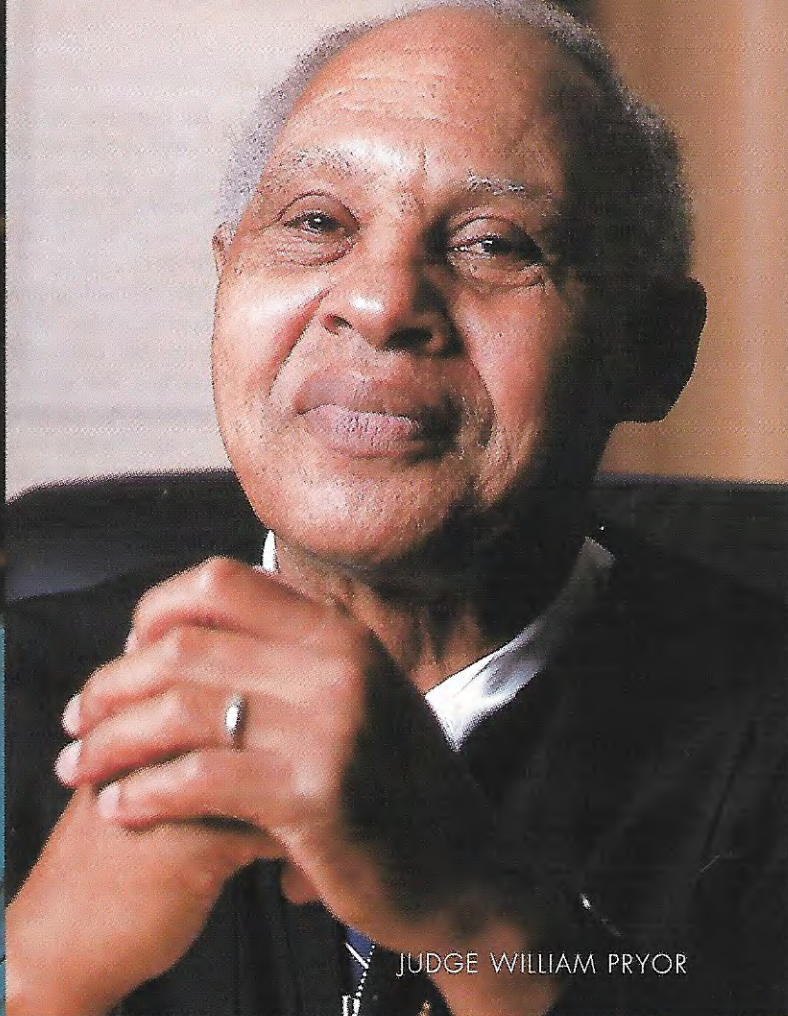


JUDGE PAUL FRIEDMAN

JUDGE PETER WOLF



JUDGE NOEL KRAMER



JUDGE WILLIAM PRYOR



JUDGE JAMES ROBERTSON



JUDGE REGGIE WALTON

We are quiet here, but it is the quiet of a storm center," Justice Oliver Wendell Holmes observed of the Supreme Court. The sentiment, no doubt, strikes a chord in those who preside from the bench. In the performance of their duties, judges regularly find themselves at the center of volatile disputes that carry important consequences for the litigants in front of them, as well as for society at large.

Despite the calm professional temperament judges project, the reality is that they are almost always engaged in some sort of high-stress activity. While on the bench, they must concentrate for long periods of time and make quick decisions on matters involving complex issues. And they are aware that the decisions they make have an important impact on the lives of others.

Given the emotionally taxing nature of their work, it is hardly surprising that the number of judges who seek confidential clinical help to deal with stress has been on the rise since the mid-1980s. The American Bar Association (ABA) has sponsored a mentoring program to help judges navigate high-profile trials, and judicial education programs often offer judges advice on how to avoid the burnout and isolation that can come as a consequence of life on the bench.

A frequent speaker at judicial gatherings is Washington-based clinical psychologist Isaiah Zimmerman, who has made a specialty of working with judges on stress-related issues. When lawyers become judges, they become "much more wary of how they talk and who they socialize with and under what circumstances," Zimmerman told the *ABA Journal*. "The nature of the work makes a person turn inward more."

James Robertson of the U.S. District Court for the District of Columbia agrees that "turning inward" is an occupational hazard. "There is a sense of not quite being a player in the secular world," he says.

As a judge, he is reluctant, for example, to discuss political issues publicly, to get involved in certain types of investments, or to comment to reporters on matters that might come before him in court. "You're in the cloister," Robertson says. "There is a sense of isolation."

Burnout is also a serious problem. No matter how hard a judge works, crowded dockets and protracted litigation guarantee that the pressure to work ever longer hours will never disappear.

Prior to taking senior status, D.C. Superior Court Judge Peter H. Wolf recalled

his transition from private practice to the bench as follows: "First, I began to give up sleep, then newspaper reading, then evening. I'd stay at work until 8 or 9 p.m." Next he began taking work home in his briefcase. Then, "I gave up exercise, and gave up reading the slip opinions of appellate decisions. When you're a new judge, you read them religiously to understand the law. But after a few years, you have a better sense of what the appeals court has to say." Finally, he gave up going to church so he could work on Sunday mornings.

There is no denying the fact that our legal system places extraordinary demands on our judges. In order to learn how judges view their roles, and how they are coping under the weight of the pressures placed upon them, *The Washington Lawyer* sought out six judges from the local and federal courts and asked them to reflect on life "in the cloister." In addition to Robertson and Wolf, the group includes Paul L. Friedman of the U.S. District Court for the District of Columbia; Noel A. Kramer and Reggie B. Walton of the D.C. Superior Court; and William C. Pryor of the D.C. Court of Appeals.

Complex Litigation

Paul Friedman is quick to point out that judges are not alone in having to manage job-related stress. He is mindful of the fact that the lawyers who argue their cases before him also bear heavy burdens, and he believes that over the past quarter century the legal profession has become more stressful for everyone involved. For practicing lawyers, he says, "the stress has gotten greater, even for partners" who have supposedly achieved a level of security. But the contemporary marketplace has eroded the old bastions of professional stability.

"For a lawyer in a law firm," Friedman notes, "it's all about billable hours, client development, and client retention. A lawyer used to be able to make a decent living without worrying about where the next client was coming from. That's not true anymore. Partners face huge business pressures, as do associates, who typically graduate from law school with large amounts of debt and the need to pay off student loans."

Even so, Friedman readily concedes that the pressures brought to bear on judges are unique.

Over the past two or three decades litigation has become increasingly complex and long trials have become commonplace. Today district court judges routinely preside over multidefendant drug conspiracy trials and cases with long, complicated administrative records involving federal statutes such as the Endangered Species Act and the Clean Air Act.

Presiding over a long trial is stressful, says Friedman. "If the trial goes on for weeks each day from 9:30 to 12:30 and 1:45 to 5, you have to pay attention all the time. The lawyers object, and when they do, you have to decide, 'Is it hearsay? Is it relevant? Was the proper foundation laid?' If a lawyer objects and the judge was not paying attention, it would be embarrassing. Yet it's hard to pay attention *all* the time. It's hard to make decisions on the fly and always be right. Ruling from the bench is much more stressful than working on an intellectual question in your office, where you



"Some lawyers simply don't know how to be concise, so we have to strike the right balance between giving them the

opportunity to talk and cutting them off."

—Noel A. Kramer

can get up occasionally, take a break, and talk to your clerks. When you're in trial, you can't get a cup of coffee. You've got to stay focused."

In addition to maintaining concentration, a judge needs to resist the temptation to exert undue influence on the proceedings. A judge needs to remain "passive, like a referee," says Friedman. "The lawyers ask the questions, and you don't say anything unless there is an ob-



"If you're a trial judge for a long time and never get reversed, it may be because you're being too robotic and

not trying hard enough to be fair."

—William C. Pryor

jection. Many of my friends who are litigators say they could never be a judge because they're used to being at center stage. It's hard to remain passive and even-tempered every minute of every day."

But, Friedman adds, it's imperative that judges summon the stamina and fortitude necessary to maintain a professional judicial temperament no matter how long, tedious, and complex a trial may be. "Judges take cues from the judge," he says. "If I get frustrated with a lawyer who is repeating questions, wasting time, or doesn't know what he or she is doing, and I let that frustration show, the jury may conclude that I don't like that lawyer's case or client. It may be prejudicial. That is why the standard instruction to the jury says, 'You are the fact finder. Don't draw inferences from what I've said or done.'"

Rambo Lawyering

In addition to presiding over long, complicated trials, Reggie Walton is of the opinion that litigation "has become more aggressive," and that traditional concepts of civility have weakened in recent years. "Lawyers and clients have adopted the attitude that winning is the bottom line," Walton explains. "We now see a Rambo-like lawyering style where lawyers will try anything and everything in order to win."

Judges deplore the resort to "scorched earth" tactics, and they caution that lawyers who rely on such tactics rarely gain by doing so. Yet they can all cite a multi-

tude of examples of negative behavior. Some of the most common tactics that judges deplore include ad hominem attacks on opposing counsel, excessive litigation of satellite issues, the misrepresentation of facts and authorities, and a wide range of discovery abuses.

Peter Wolf has even encountered lawyers who purposely attempt to appear incompetent so that a guilty verdict will be overturned on appeal. "It's agonizing when a criminal defendant has an incompetent defense attorney, because you know the case will have to be tried all over again," Wolf says. "But there's very little you can do from the bench. You have to reign yourself in."

Even so, there are times when a judge needs to intercede to prevent discovery abuses and to keep a trial moving at a reasonable pace. "Some lawyers simply don't know how to be concise," says Noel Kramer, "so we have to strike the right balance between giving them the

"Good lawyers understand how judges function," says Paul Friedman, and that includes paying heed to the time pressures that burden the criminal justice system. "A good lawyer knows that I'm working on a lot of cases simultaneously, and the less I have to read, the more efficient I can be. They shouldn't regurgitate things over and over. If a lawyer files a brief that merely reiterates a past brief as if the two filings are two separate events, that is not a tactic that is going to win favor."

Friedman's advice to lawyers about to go to trial is simple: be prepared, be concise, be polite, and understand that the judge is the only person in charge of the courtroom. A lawyer who adheres to that simple formula, he says, "will have no problem."

Sentencing

The most emotionally draining responsibility that criminal court judges routinely face is sentencing.

"Sentencing is a time when we have wide discretion," says Judge Kramer. "I feel pressure to think a sentencing decision through and get all the information, because it's an awesome responsibility. In highly publicized cases there is additional stress, because you need to make sure your decision is based on the court record rather than by playing to the public. On the other hand, you also know the way you handle a sentencing decision can affect the community's impression of whether the judicial system works."

Judge Friedman agrees that sentencing is the "toughest thing" he is called upon to do. It is usually not taxing "intellectually," he says, "but emotionally," because "even if the defendant has done a horrible thing,

he still has a mother, wife, or girlfriend."

In making his sentencing decisions, Friedman explains, "I will take whatever time is needed, often preparing at home where I'm not distracted and a jury is not being kept waiting."

As preparation Friedman may read dozens of letters written about the defendant, study the sentencing guidelines, review research from clerks, talk to the defendant's probation officer, consider the



"It's hard to make decisions on the fly and always be right. Ruling from the bench is much more stressful than working on an in-

tellectual question in your office. . . .

You've got to stay focused."

—Paul L. Friedman

opportunity to talk and cutting them off."

Judge Wolf agrees. "It's frustrating," he says, "when lawyers take hours to make a record. Then, when I rule and move on, they sometimes sneer, as if I'm trying to hurt them or their client."

Nevertheless, with crowded dockets, waiting juries, and heavy caseloads, there are times when a judge needs to exert a reasonable degree of control over attorney conduct.

defendant's prior record, and attempt to determine whether the defendant is well suited to drug treatment, anger counseling, vocational counseling, or time in a halfway house.

"I usually decide in advance," Friedman explains, "but after hearing the family and the defendant in court, I'm sometimes persuaded to change a sentence."

As tough as these decisions are, Friedman notes that he has occasionally received Christmas cards from inmates telling him that they view the sentence handed down as fair.

"The longer you're a judge, the worse sentencing gets," says Peter Wolf.

The reason is simple: all criminal court judges who have sat on the bench for any length of time can recall sentencing decisions they came to regret.

"All of us have given light sentences to a defendant and then later found out that person committed a horrible crime while on probation or supervised release," says Wolf. "It's sad. It's difficult to deal with, and it makes it tougher every time a defendant comes before you. You can't help but be informed by such an experience."

"Still, I don't pine away about an unfortunate decision. I know that I made the best decision based on the facts and the law as I understood them at the time. A judge can't predict future human behavior. That's impossible. We shouldn't blame ourselves for failing to see into the future."

Judge Kramer winces at the memory of a defendant in a murder case who was acquitted by the jury "for reasons that I could understand, but I still had a sense that he had committed the crime." Within a month, that defendant shot and killed a 65-year-old man who had bumped into his car. Although aware she is not personally responsible for the perpetrator's actions, Kramer says, "As a judge, you are part of the system, and you can't sit back and not feel some sense of responsibility."

Judge Walton's most wrenching experience involved a highly publicized carjacking and murder of a mother that took place in Savage, Maryland, in 1992. One of the perpetrators, who was high on PCP at the time of the murder, had been in Walton's courtroom earlier on a previous drug charge. He was not detained without bond because the prosecutor didn't request detention.

"The government had the option of requesting detention," Walton explains, "but by law the court did not. So I had no

alternative but to release him."

After the highly publicized murder—in which the victim was dragged to her death while struggling to rescue her baby from inside the car that was being hijacked—Walton was made a scapegoat. In the resulting rash of bad publicity, Walton's legal options were never accurately explained.

"All the public knew," he says, "was that a judge had let a dangerous criminal go free. I received threats and mean-spirited phone calls from people saying things like, 'I hope next time it's your mother.'"

Eventually, Walton broke from his usual practice of not granting interviews and explained his position to a television reporter.

Child Abuse and Neglect

From the bench, says Peter Wolf, judges "become inured to rough language and the horror of crimes—to seeing the mentally ill, the injured, juvenile delinquents, and people who don't pay bills." But no matter how infuriating the conduct of those brought before him, Wolf cautions, "The bench is not the place to vent a personal crusade."

Still the temptation exists, and Wolf notes that child abuse and neglect cases are among the most difficult to manage emotionally. Responsibility for the decision to assign a child to foster care or let the parents maintain custody follows a judge into the future, as children in these cases remain under judicial supervision. "Only rarely is there good news, such as when you hear that a child has gone on to college," Wolf adds.

Noel Kramer agrees that the heartbreak of deciding the fate of children being raised in violent, neglectful, or severely dysfunctional homes is tough. She notes that the passions unleashed in such cases are often intense, and adds that "it's not simply the trial but the aftermath that can be stomach-churning." If some sort of counseling or substance abuse program is initially prescribed, allowing the parents to maintain custody, and the parents still fail to get their lives together, then a judge needs to intercede to protect the

children. That is a situation that necessitates difficult decisions that can shatter entire families.

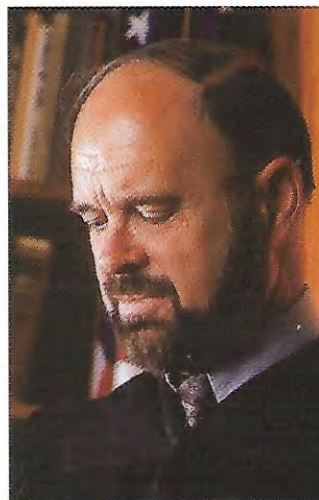
"You're trying to solve problems that may be insoluble," Kramer observes. "There is no other area where a judge feels so powerless."

No matter how wrenching such decisions may be, judges cannot let their emotions deter them from the need to maintain judicial temperament.

"As caring human beings, we are emotionally affected when we hear about children being molested and killed," says Walton. "But you must maintain decorum and composure, even though the case has an internal impact on you. You must mete out the appropriate sentences to the perpetrators and make the appropriate decisions for the children."

Fear of Reversal

Surprisingly, the fear of having a decision reversed on appeal does not weigh as

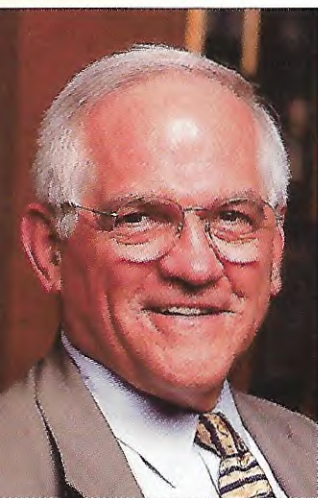


"I don't pine away about an unfortunate decision. I know that I made the best decision based on the facts and the law as I understood them at the time."

—Peter H. Wolf

heavily on a trial court judge as one might expect. "You can't live in fear of it because you're overwhelmed by the press of current work," says Walton.

"One of the wonderful things about our legal system," says Wolf, "is that I know the appeals court is looking over my shoulder." He admits he dislikes being reversed, but does not fear it. "You don't like being hung out in print, shown to have missed it, shown not to know the law or to have exercised discretion



"Our job is to decide; it's the appellate court's job to be right. A district judge who fiddles

and can't make up his or her mind is doing a disservice."

—James Robertson

improvidently."

James Robertson, paraphrasing former judge and FBI director William Webster, explains, "Our job is to decide; it's the appellate court's job to be right. A district judge who fiddles and can't make up his or her mind is doing a disservice."

If there is a reversal, Robertson concedes that a trial judge may be "upset or angry." But a judge should never put too much emphasis on a single case or a single appellate court decision.

"The real worry," says Robertson, "should be an accumulation of reversals that demonstrate that you are something less than trusted and respected. You want to do the best job you can, and if you are reversed, you want to be sure it's not because you were lazy."

William Pryor, a senior judge on the D.C. Court of Appeals, says, "If you're a trial judge for a long time and never get reversed, it may be because you're being too robotic and not trying hard enough to be fair." In principle, he adds, "there's no pride to be taken in never being reversed, because if a case is tough, you aren't going to know how the appeals court is going to handle it, anyway."

The Appellate Process

Supreme Court histories are full of anecdotes about the "pressure cooker" atmosphere and the rough interpersonal maneuverings that take place inside the high court. "You'll find it's like nine firms,

sometimes practicing law against one another," Justice John Marshall Harlan once said.

Judge Pryor, who, before joining the D.C. Court of Appeals, spent half of his career as a trial judge, says that the appeals court is the less stressful of the two. "A trial judge works as a one-person operator, orchestrating the jury, the witnesses, and the lawyers, trying to get them all at the same place at the same time. An appellate judge is not bound by such time frames. During oral argument each lawyer usually gets 30 minutes. After that you can study the briefs, reflect, walk around and think about the case."

As for the stress inherent in shared decision making, Pryor notes that in the three-judge panels that are typical, "It's all right to disagree as long as you stay professional and civil. If a grudge is carried over and bad feelings emanate over a difference of opinion,

great deal of personal tension between the justices in *Bush v. Gore*. "Judges are accustomed to maintaining their discipline," he says. "The intensity of the media attention doesn't alter that. The truth is, people in small claims court are just as intense as the litigants were in that election case."

No matter how high the stakes, or how much media attention is focused upon a particular case, Pryor says that judges expect to disagree with one another. Differences of opinion are an inherent part of the appellate process and need to be accepted as such.

"We don't let any tough decisions interfere with our ability to get along in the next case," he explains. "Once a decision is handed down, we're mindful that there's still going to be a lot we're going to have to go through together on the next case and the case after that."

Even though trial court judges do not engage in shared decision making, the attitude they carry toward their colleagues is much the same. "I know of no enmity from one judge toward another," says Wolf. "We tend to realize it when a colleague has a rough decision, and if we're tempted to disagree, we remind ourselves that we don't know all the facts."

"Judges need to be careful about what we discuss," notes Friedman. "I can't tell my friends about a decision I'm considering, even though I might like to."

The one place where trial court judges do find comfort, camaraderie, and confidentiality is in the judges dining room at the courthouse, where the culture is to help colleagues. Here judges can

talk candidly about their cases with fellow judges who might have insights to share or who might have experienced similar problems in the past.

"It's a nice way to relieve pressure," says Friedman, "and there's a sign in the dining room that reads: 'No words spoken here shall ever be repeated.'"

Washington writer Charles S. Clark last wrote about jury selection in the January issue.



"Lawyers and clients have adopted the attitude that winning is the bottom line. We now see a Rambo-like lawyering style

where lawyers will try anything and everything in order to win."

—Reggie B. Walton

then we've lost sight of what we're doing. It would be a shame if five or 10 years' worth of collegiality degenerated into bad feelings. Rather, we maintain an attitude where we say to one another, 'We had a tough decision. We got through it.'"

Disclaiming any inside information about interpersonal relations on the U.S. Supreme Court, Pryor nonetheless says he is skeptical about recent news reports that suggested that there was a