

For Judge David Alan Ezra

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That we enthusiastically dedicate this Symposium to Judge David Alan Ezra is entirely *mete* and just.¹ After all, Judge Ezra has been a stalwart member of our law faculty for twenty-eight years, and he has been inducing students to ponder the wonderful intricacies of Federal Courts since 1994. Judge Ezra is also known far and wide as an outstanding Federal District Court Judge, a reputation he began to amass when he took the bench in 1988. Recently, he stepped down as Chief Judge of the District Court of Hawai'i after serving seven noteworthy years in that capacity.

All those accomplishments as well as many more make it fitting that we honor Judge Ezra. But what makes this accolade particularly appropriate is that it provides an excuse to celebrate his clear and abiding commitment, in both classroom and courtroom, to seeking out the essence of legal questions.

In his dedication to modeling how to think like a first-rate lawyer and act like an exemplary judge, Judge Ezra often swims vigorously against a rising tide. The roar of the crowd—live and in person, or in response to “reality” as conveyed through various media—increasingly dominates crucial decisions. Snap judgments, based largely on appearances, prevail not only in popular culture, but also throughout the political realm. Simplistic and often false dichotomies tend to appear to be the only available alternatives.

Yet legal analysis at its best will always be anchored in the complex process of finding facts and rendering careful, detached judgments. Law is not and should not be based on momentary popular referenda. Indeed, even our juries are carefully selected and instructed to function in deliberate ways. Jurors may represent the community, but they have to decide which version of alleged facts rings true and then they must wrestle collaboratively to reach difficult judgments. We continue to believe that legal quandaries ought not to be resolved with thumbs (either up or down), gut reactions, or even the quick impressions of focus groups and the like.

In fact, it is one of the glories of our legal system that judges generally must explain their decisions. A first-rate judge strives to make even a losing party understand why the judge decided as he did. Thus the role of a judge at his

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¹ Even if it seemed apropos of the Takings focus for this Symposium, however, the decision to honor Judge Ezra implicates neither *metes* and bounds nor *meat* and potatoes. To our great delight and substantial benefit, Judge Ezra chose to be a teacher and a judge. His multiple perspectives and his daily work thus do not really fit either concept: neither the bounded qualities implied in “*metes* and bounds” nor the practical, predictable sustenance within “*meat* and potatoes.”

or her best strikingly overlaps the role of an excellent law teacher. Both the judge and the professor must probe beneath the surface. And even if the judge or teacher knows considerably more than others in the room, he must make sure that they feel they have had an opportunity to participate and to get their day in court and/or their chance to learn.

Both in class and in court, Judge Ezra stands out for his open-minded willingness to consider nuances rather than anecdotes, to be open to evidence rather than to fall back on predispositions. Even more unusual is his strong dedication to explaining the law and legal processes to a myriad of audiences. He does this with great success in the classroom, but he also does it in the courtroom. In our hectic era, unfortunately, this approach has become increasingly unusual.

In his essence, Judge Ezra cares deeply about the people entangled in the law, and about the multiple ways that law is inextricably intertwined with many of our most complex problems and our greatest hopes. And he will take the time to explain to students, court watchers, the press—whomever he gets to listen.

For all the importance of judges in our society, and the increasingly controversial aspects of what they do and how they do it, we still lack either a precise or a deep understanding of what makes a good or a great judge. Indeed, we live in a time when politicians delight in pejoratively labeling judges as “activists,” no matter what those judges do or, often, do not do. But the quest to define or identify good or great judges is important. It requires careful attention to real life examples as well as much thought. It also ought to account for the fact that “[l]egal principles, evolved to assist the orderly resolution of disputes arising across the full range of human activities, reflect the untidiness of life” and “will not remain static.”² Yet there are indeed some basic principles for exemplary judging.

The prophet Isaiah’s description of the judicial role, for instance, merits further thought. Isaiah said:

He shall not judge by what his eyes behold,
Nor decide by what his ears perceive.
Thus he shall judge the poor with equity
And decide with justice for the lowly of the land.³

At first glance (or first hearing), this description of the ideal functioning of a judge may seem counterintuitive, and starkly so at that. Yet Isaiah’s

² Jon O. Newman, *Between Legal Realism and Neutral Principles: The Legitimacy of Institutional Values*, 72 CAL. L. REV. 200, 208 (1984). Admittedly I am partial to Judge Newman’s views: I clerked for him over thirty years ago and he remains my model federal judge.

³ *Isaiah* 11:3-4.

suggestion that good judging must delve deeply, probing far beyond surface appearances, advances an admirable ideal. If we are to be blessed with judges who judge with righteousness and who decide with equity, we might hope they seek to follow Isaiah.

We also might well hope that they discover a model of wisdom and wit, openness and deep questioning: it is to be found in the teaching/judging done so admirably by our friend, colleague, teacher, mentor, and judge—David Alan Ezra. We are greatly in his debt.

