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THE JOURNAL OF APPELLATE PRACTICE AND PROCESS

ESSAYS

THE POWER OF A MENTOR

Marshall L. Davidson III*

Most appellate judges, like most appellate lawyers and probably most people in general, do not readily think of themselves as having much influence on how others in the profession think, act, and otherwise manage their personal and professional lives. But the reality is much different.

Consider, for example, Chief Justice Frank F. Drowota, III, who probably had at least as much influence on the shape of Tennessee law as any of the more than 100 Justices who have served on the Tennessee Supreme Court.¹ One of the longest serving and most beloved justices in Tennessee history,² he was my mentor for nearly thirty years until he passed away in 2018.

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1. See, e.g., Barbara Holtzen et al., *Justices*, TENN. S. CT. HIST. SOC'Y (2014), <https://www.tschsociety.org/justices.html> (providing capsule biographies of Tennessee Supreme Court Justices).

2. See, e.g., *Remembering Former Chief Justice Frank Drowota*, TENN. ST. CTS. (Aug. 16, 2018), <https://www.tncourts.gov/news/2018/04/16/remembering-former-chief-justice-frank-drowota> (describing Justice Drowota as “the second longest-serving justice in state history” and referring to his “kind and generous character,” which made him “a friend to colleagues and Court staff alike”) [hereinafter *Remembering Drowota*].

I. THE MAKING OF A SUPREME COURT JUSTICE

Judges, like everyone else, are shaped largely by their life experiences. So it was with Justice Drowota. He grew up in the Nashville church where his father served as the pastor and, despite what they say about preachers' kids, Justice Drowota maintained that he rarely misbehaved as a boy.

However, there was an occasion when his father took him outside to spank him with a switch. Pastor Drowota said to his son, "This will hurt me more than it does you." Young Frank replied, "Dad, I really don't want this to hurt you, so let's just call it even." To his surprise, his father agreed, and so began the emergence of Justice Drowota's talent as a skilled negotiator and mediator.

Fast forward to 1970 and Justice Drowota was practicing law in Nashville when he was appointed to the Chancery Court of Davidson County which, as it turned out, was the site of his most embarrassing moment as a judge. It happened during a trial when he leaned back in his chair as he normally did, but this time the chair flipped backward, catapulting him onto the floor and sending his feet flying toward the ceiling. Justice Drowota described the incident as "every judge's worst nightmare." But he also described it as a lesson in humility.

After spending four years in the trenches of a busy trial court,³ Justice Drowota was appointed to the Tennessee Court of Appeals where he served until his election in 1980 to the Tennessee Supreme Court at the age of just forty-two. He earned the respect and confidence of his new colleagues and they selected him to serve as Chief Justice—not once, but twice. He served twenty-five years on the Tennessee Supreme Court, the second-longest term in state history.⁴ Not bad for someone who, while serving as a young naval officer, had to find a quiet place aboard an aircraft carrier in the Mediterranean Sea to take the Law School Admissions Test.⁵

3. Holten et al., *supra* note 1 (referring to Chief Justice Drowota's service on the Chancery Court of Davidson County from 1970 to 1974).

4. *Id.* (indicating that Chief Justice Drowota joined the Tennessee Supreme Court in August of 1980, and that he served as Chief Justice from 1989 to September 1990 and again from August 2002 through his retirement from the Court on September 2, 2005).

5. *Remembering Drowota*, *supra* note 2.

II. CONTRIBUTIONS TO THE LAW AND LEGAL SYSTEM

During his more than thirty years as an appellate judge, Justice Drowota participated in over four thousand decisions.⁶ He wrote at least a thousand majority opinions⁷ and, in all, roughly 20,000 cases seeking review by the Tennessee Supreme Court passed over his desk.⁸ There is no area of Tennessee law

6. *Id.* (noting that he “participated in more than 4,500 decisions”).

7. *Id.* (noting that he “authored at least 1,000 majority opinions and more than 100 dissenting and concurring opinions”).

8. *See, e.g.*, TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: STATISTICS FISCAL YEAR 2004–2005 at 9 (showing 905 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: FISCAL YEAR 2003–2004 at 37 (showing 930 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: FISCAL YEAR 2002–2003 at 33 (showing 939 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: FISCAL YEAR 2001–2002 at 41 (showing 917 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: FISCAL YEAR 2000–2001 at 39 (showing 893 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: STATISTICS FISCAL YEAR 1999–2000 at 9 (showing 989 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: FISCAL YEAR 1998–99 at 26 (showing 984 applications for permission to appeal);); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: FISCAL YEAR 1997–98 at 26 (showing 1134 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: FISCAL YEAR 1996–97 at 26 (showing 954 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: FISCAL YEAR 1995–96 at 10 (showing 859 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY: FISCAL YEAR 1994–1995 at 8 (showing 903 applications for permission to appeal); TENNESSEE STATE COURTS, ANNUAL REPORT OF THE TENNESSEE JUDICIARY 1992–1993 at 11 (showing 782 applications for permission to appeal); TENNESSEE JUDICIAL COUNCIL, ANNUAL REPORT 1991–92 at 17 (showing 834 applications for permission to appeal); TENNESSEE JUDICIAL COUNCIL, ANNUAL REPORT 1990–91 at 11 (showing 775 applications for permission to appeal); TENNESSEE JUDICIAL COUNCIL, ANNUAL REPORT 1989–90 at 11 (showing 731 applications for permission to appeal); TENNESSEE JUDICIAL COUNCIL, 1988–89 ANNUAL REPORT 13 (showing 820 applications for permission to appeal); SUPREME COURT OF TENNESSEE, 1987 ANNUAL REPORT 13 (showing 758 applications for permission to appeal); SUPREME COURT OF TENNESSEE, 1986 ANNUAL REPORT 11 (showing 765 applications for permission to appeal); SUPREME COURT OF TENNESSEE, 1984 ANNUAL REPORT 11 (showing 842 applications for permission to appeal); SUPREME COURT OF TENNESSEE, 1983 ANNUAL REPORT 10 (showing 769 applications for permission to appeal); TENNESSEE STATE SUPREME COURT, 1982 ANNUAL REPORT at 10 (showing 767 applications for permission to appeal); TENNESSEE STATE SUPREME COURT, 1981 ANNUAL REPORT 11 (showing 761 applications for permission to appeal); TENNESSEE STATE SUPREME COURT, 1980 ANNUAL REPORT 11 (showing 602 applications for permission to appeal). An average annual total of around 900 applications for permission to appeal yields around 22,000 over twenty-five years.

that is not marked with his thumbprint. Although the earthly career of this just and able judge may be over, the anchor points that he drove deep into Tennessee law will guide lawyers, juries, and judges for generations.

III. THE MAN BEHIND THE ROBE

When Justice Drowota was sworn in as a new judge, his father's advice came from Micah—"act justly, love mercy, and walk humbly with your God."⁹ This came to describe not just how Justice Drowota approached his role as a judge, but how he lived his life. He treated everyone fairly and respectfully. He was thoughtful, he was considerate, and he was genuinely interested in the lives of those around him—something that was obvious to me from the outset of my time at the Tennessee Supreme Court as a new, impressionable lawyer.

On my first day on the job as Justice Drowota's law clerk, he had me in his office explaining his expectations and the administrative matters one expects to hear about on the first day at any new job. At the end of that lengthy discussion, he said "I want you to remember one more thing. Around here, we work hard and we play hard." He then explained the importance of a lawyer striving to live a balanced life, "for when we neglect the people and the causes that keep us anchored, we tend to drift, personally and professionally, in ways that often are not good." That advice made a huge impression on me as a new lawyer and, more importantly, as a new husband and father in my twenties.

When I turned thirty, Justice Drowota said to me, "Cherish the time with your children, for they will grow quickly." He was so right.

When I turned forty, he said "Be sure to enjoy the little things in life, for one day you will realize those are the big things in life." So very true.

Then, when I turned fifty and he swore me in as a judge, he gave me the same advice that he received at his own swearing-in decades before: "Act justly, love mercy, and walk humbly with your God."

9. *Micah* 6:8 (New Int'l) ("And what does the LORD require of you? To act justly and to love mercy and to walk humbly with your God").

Of all the lessons that I was privileged to learn while working at Tennessee’s high court for more than twenty years, I am most grateful for wise insights such as these that have less to do with the law, but everything to do with life.

IV. THE END OF A LIFE AND THE BEGINNING OF A LEGACY

In late 2017, Justice Drowota was diagnosed with ALS. He shared the news with me during one of our regular lunches—lunches we had shared for decades. I was stunned at the realization that this good man who had been a friend and mentor for most of my adult life had a terminal illness, and an awful one at that.

Justice Drowota’s condition deteriorated rapidly and, about a month before he died, I received an email from him. The subject line read “Special Request.” I knew what it probably said and dreaded opening it. I was right to be wary. In that message, Justice Drowota told me that his time was short, and he asked whether I would speak at his funeral. I told him that I would be incredibly honored to do so. I then closed my office door and tried to absorb how the person who had influenced my life in so many ways, and for so long, had just said goodbye.

In one of the last emails I got from Justice Drowota, he wrote, “I’ve had such a great life.” I wrote him back saying “you have indeed lived a great life and, in so doing, have had a profound influence on many, many people, for you taught us how to be excellent lawyers, judges, husbands, fathers, friends, and citizens.” Through words that I knew could never capture everything that he meant to me, I thanked him for his mentorship, his friendship, his example, and his counsel.

V. CONCLUSION

For decades, Justice Drowota unselfishly shared with me—and others—his keen insights about our legal system, which he loved. He cautioned me to remember always that behind every case name and docket number there are real people with real problems. He taught me how to be a judge and how to manage a court system, and that integrity, honor, and dignity really do matter. And I learned from him, particularly at the end of his

life, that while there are lots of things in our lives over which we have little control, our influence on those around us is not one of those things.

As I reflect upon this man's life, I see one lesson that is crystal clear to me: every one of us, regardless of role or title, is influencing other people, both at work and away from it. We would do well to never underestimate the extent, depth, and power of that influence.

