FROM JUDGE TO DEAN AND BACK AGAIN
Reflections on Transitions

By David F. Levi

I left the federal bench in 2007 to become dean of the Duke Law School. I left the dean position in 2018 and now direct the Bolch Judicial Institute at Duke Law School. I am also president of the American Law Institute (ALI). In many ways, it seems I have come full circle, although not exactly. I will explain.

All Article III judges remember where they were when the president, the attorney general, or some government official called to tell them that they would be nominated by the president to judicial office. There must be some analogous event in the life of state court judges. In my case, I have no recollection because I missed the call, although I was expecting it. In the summer of 1990, the phones—clunky old landlines—were down in the federal building in Sacramento, California, where I was then U.S. attorney. The White House operator happily settled for a call to my home. President George H. W. Bush and my surprised spouse had a delightful, lengthy chat. At least she remembers where she was.

Fast forward to 2006. By then, I was happily ensconced in my role as the chief U.S. district judge for the Eastern District of California. I had been a member and then chair of the Advisory Committee on Civil Rules and had more recently become the chair of the Standing Committee of the U.S. Judicial Conference on the Rules.
of Practice and Procedure. I had a full
docket of cases in one of the busiest dis-
tricts in the country. Because I was chief
and also chair of a Judicial Conference
Committee, I had four law clerks. I admired
my fellow judges and had strong personal
and professional relationships with each of
them. In short, I was a judicial veteran and,
to the extent one can in such a challeng-
ing job, I had caught my stride.

This time, I did not expect the call, and
I do remember where I was sitting at my
desk in the U.S. courthouse. Out of the
blue, I received a telephone call—judges
did not receive much email in those days—
from Professor Jim Cox of Duke Law
School. I assumed the call was about a pos-
sible law clerk or something connected to
his work on securities regulation. Instead,
he asked a question carefully crafted and
that demonstrated his lawyering skills:
“Would you reject out of hand the idea of
becoming the next dean of Duke Law
School?” “Well,” I said, “I wouldn’t reject it
‘out of hand.’” “Good,” he said, “then you
should come here next week to meet the
search committee.” There was no turning
back on this particular slippery slope.

Leaving the bench is not an easy deci-
sion for any judge in light of the strong
emotional and professional investment a
judge makes to the position. But the
mechanics of leaving are particularly dif-
ficult for Article III federal judges because
of the pension system, which requires that
the judge stay in the position until age 65.
In my case, I left in my mid-50s, well before
age 65 when the lifetime salary vests. Thus,
after 17 years on the bench, I left with
nothing—no 401(k), no retirement
account, no right of return. The financial
planning that goes into such a decision is
intense and uncertain. But particularly as
one gets closer and closer to age 65, it would
be a brave soul who would leave the bench
prior to vesting.

For most federal judges, who will wait
until age 65, the decision to stay or leave
has two interrelated components. First, is
the judge ready to leave the honor, duty,
and privilege of being a judge? And second,
can the judge’s understandable desire to try
two new things be done “from the judgship,”
as a senior judge, instead of “after the
judgship”? Does one retire or does one
“take senior”?

Retirement means leaving the judiciary.
There will be no chambers, no staff, no IT
support. On the other hand, there are no
restrictions on what a judge may do. The
Codes of Conduct, including the financial
disclosure rules, no longer apply. There is
freedom in this, but it means leaving the
bench. There is no turning back. One is
no longer “the judge” except as a matter of
courtesy. After I left the bench, I some-
times would hear from other judges who
were thinking of leaving. I would ask them
this question: “How important is it to your
sense of self that you are a judge?” Another
way to reword the question is to break it
into two: “Do you view being a judge as a
calling? And do you see being a judge as
your only calling?”

There is no right answer, and one could
easily be unsure. But there is no “leave of
absence” for a judge to try on a new life and
return if it was a mistake to leave. The deci-
sion is irrevocable. Perhaps this is part of
the attraction of “going senior,” which per-
mits the judge to cut his or her caseload and
still retain chambers, staff, and law
clerks. The rules on outside income are also
relaxed, and many senior judges teach and
become members of law faculties. Their
continuing service as judges is invaluable
to busy districts and circuits.

I went the “cold turkey” route, and it
worked for me. I was not looking to get out
of the judiciary and happily would have
served to this day. But I did have the sense
that while judging was very much a calling
for me, I was okay with the idea that I
would no longer “be” a judge and that there
were other callings that beckoned. To put
this another way, I believed that by going
to a law school, particularly a great law
school, I could still make an important
contribution to the legal system as I had
tried to do as a judge. I saw and experienced
continuity and, in some important sense,
becoming a dean was exactly what I had
been trained to do by being a judge for
some 17 years.

I became dean at Duke Law on July 1,
2007. I served two five-year terms and
agreed to stay on for an additional year so
that a new president could select my suc-
cessor. I was dean during the scary financial
crisis of 2008–2009, and the subsequent
disruption to endowments and legal
employment. I was dean during a huge five-
year fundraising campaign—“Duke
Forward”—that began just as the dust was
beginning to settle from the financial cri-
sis. A dean is a problem solver and an
enabler of others—students, faculty, staff,
and alumni. The typical day is packed with
emergencies, fundraising, hiring, encour-
aging, overseeing budgets, writing talks and
articles, organizing and attending events,
preparing for meetings and classes, select-
ing new initiatives, helping individual
students, helping individual faculty, and
engaging with the intellectual and educa-
tional mission of the school and the
university. But more than anything, a
dean—to paraphrase my own father, who
was an iconic law dean, provost, and presi-
dent at the University of Chicago—must

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What are those values? I would describe them as including open-minded, rigorous, and respectful inquiry into the truth or accuracy of whatever proposition is under scrutiny and into the improvement of the law and the legal system. Others might describe the values differently, and perhaps the emphasis changes depending on the challenges of the particular time. In my concept, a law school is not a monoculture where we all must agree, settling into comfortable consensus, but a place of constant friction and debate. Nor should an academic be a politician in academic garb. Open-minded inquiry may certainly have political or public policy applications and implications, but, in my view, political partisanship should not drive law scholarship, and to the extent that underlying political commitments may inevitably or implicitly affect scholarship and teaching, then it is important that there be a diversity of such political commitments among faculty members. This kind of diversity is difficult to achieve and preserve.

Judges are trained and suited to do well in such an environment and to embrace and further these very same values. They have lived in a system of dispute resolution based on the premise that civil adversaries can help the judge get to the truth—or at least the best decision in the circumstances. Judges are skilled—and it is a skill—at keeping an open mind. This is why I would sometimes answer the question of “what did I learn as a judge?” by saying, “not to judge.” It is important not to reach conclusions prematurely or make judgments quickly but to let the process unfold. Not surprisingly for someone so involved in rulemaking, one of my personal “rules,” first as judge, then as dean, and now as ALI president, has been to “trust the process.” If the process is fair, nine times out of ten, the ultimate decision will be a good one no matter who the decision-maker—the judge, the jury, the dean, or the faculty.

Judges also have colleagues who are often quite different from themselves in background, experience, political affiliation, race, gender, age, and outlook. This is increasingly the case. And judges like it. They enjoy the interaction and the disagreements. They bridle at the charge, sometimes hurled by academics, sometimes by others, that judges are just “politicians in black robes.” They know that they are not and should not be in the business of deciding cases based on their political affiliation or personal policy preferences. On a district court, judges do not normally sit together to decide cases; however, they have many opportunities to exchange ideas about the law and frequently consult one another. Where cases raise similar issues, they may exchange opinions in draft. On multimember panels, the judges welcome a good disagreement—they enjoy a good dissent and a good reply to such a dissent. They try not to take disagreements personally, and they work hard to keep this from happening through the civility of their interactions. The stakes are often high in these cases, involving important issues and significant consequences for parties. Judges who bring this experience of the rough and tumble to a law faculty, many of whom have not experienced this kind of disagreement and challenge from colleagues, can make a significant contribution to upholding the values of respectful, open-minded, and civil debate and disagreement that I have identified.

Judges also have had the experience of mentoring new lawyers. Those judges who continue to hire one- and two-year law clerks right out of law school do immeasurable good for the legal profession. And they gain a deep understanding of how law students are trained and how ready they are for law practice. They see this over time. They are both skilled law teachers themselves in this role and also one of the important audiences and consumers of the law schools’ product. Again, a judge on a law faculty can make a significant contribution to discussions about legal education and what law students need to know and what skills they need to acquire in order to do well in the law.

Judges are also skilled at radiating the values of an institution, the judiciary. Anyone watching a judge run a fair courtroom
or preside over a complex jury trial or conduct a searching oral argument in a hard case senses the deep values of the judiciary and its commitment to justice, to observing the dignity of the participants, and to fair-minded decision-making.

In short, the transition of a judge to a law school is a natural one. I experienced it that way. Many others have taken this path, whether “from the judgeship” or “after the judgeship.”

Now that I am no longer dean, I spend much of my time directing the Bolch Judicial Institute and serving as president of the American Law Institute. Again, I emphasize the themes of continuity and the reliance on skills developed and learned on the bench. At the Bolch Institute, we support the judiciary through educational programs for judges and through scholarship and other programs directed to the study and protection of judicial independence and the rule of law more generally. We offer an LLM in judicial studies for judges who have a desire to reconnect with the academic study of the judiciary and deepening their own knowledge of the judicial craft and role.

At the American Law Institute, a volunteer membership organization of judges, practicing lawyers, and academics, known for the various Restatements of the Law and also Model Codes, the work is intended to assist the judiciary and the legal system generally by synthesizing complex areas of the law, particularly the common law of the states. Judges have relied heavily on the work of the ALI over the almost 100 years of its existence. Some of the work seems very similar to the kind of careful drafting that occurs in the rule-making process in the federal courts. For me, a former rules committee member and chair of many years, it is a very familiar process of inquiry and refinement, with attention to black letter rules and more open-ended commentary. But it is even more similar in fully endorsing the values of civil debate and searching, unfettered discussion that characterize the best of the academy and the courtroom. The ALI prides itself, justly in my view, on the transparency and openness of its process.

All members have an opportunity to speak and to comment. All members are required to leave their clients at the door and engage in the process of restating the law accurately and precisely, identifying possible choices, trends, and divisions in the case law, so that courts and others can make decisions that best serve the American people and that are consistent with the law of their respective jurisdictions. Many judges are involved in this process. When they stand to speak, like other members, they identify themselves only by last name and home state. They are not recognized as “judge.” But that is not necessary. Their wonderful experience, training, and judicial skill set are more than evident. We all know when it is a judge who is speaking by the clear, fair, and measured way in which they make their points.

In a time of division and confusion, judges have so much to contribute to the law schools and to other law organizations, like the ALI, whether they leave the bench or find new ways to serve “from” the bench. Indeed, once they leave the bench, ex-judges may be in a somewhat better position than they were on the bench, because of their new freedom, to serve and protect—to advocate for—the judiciary. Transitions are never easy, but, for judges, in this time, there is such a pressing need for their skills and character, and so many opportunities for service, that the transition need not put them at a distance from their former life. It can be a homecoming.