INTRODUCTION

The judge enters the courtroom, the gavel comes down, and the battle begins. The rough-and-tumble world known as litigation is, and always has been, a fiercely adversarial one. Within the bounds of honesty and professional ethics, a litigator is expected to battle away *mano-a-mano* for the best interests of his client, and in return he anticipates that the litigator on the other side will do exactly the same.

As it turns out, this adversarial process is a grand way to resolve disputes. Properly done, it has a measure of style and grace, ensuring that the fates of the parties are duly considered since each has an advocate passionately arguing for its interests. One reason the system works so well is because it gives the litigants an opportunity to fully air their points of contention.

Conscientious preparation of the case, rigorous cross-examination, and thorough methods of discovery allow the lawyers to clarify the facts, expose deception, and, hopefully, reach the truth in the end. Sometimes slow and inefficient, the adversarial system is still superior to any other method of resolving complex disputes.

Positioned squarely between the forces of competing litigators is, of course, the judge. The judge by necessity has significant discretionary influence over the parties; the effectiveness of the litigators' appeals to the bench thus has considerable consequences for their clients. Most judges say they look forward to presiding

over a trial, no matter how laborious that task may ultimately be. They are no doubt pleased if a settlement can be reached in the meantime, but their job is not to force consensus on unwilling parties.

This is, after all, a contentious proceeding. The quest for cooperation is not a call for abandonment of the attorneys' roles as advocates. There will of course be occasions when the lawyers are cantankerous and even obstreperous. Judges recognize that all of this is a natural part of the process, and that lawyers must remain partisans if the adversarial system is to work.

Nothing in private practice, report those individuals who assume the duties of the judiciary, prepared them for the magnitude of the task they face on the bench. Judges will invariably tell you that their work is at times not only daunting, but overwhelming. Many wake up in the middle of the night, wrestling with thoughts of their cases.

Judges spend so much of their time in the courtroom, whether in trial, status conferences, or other hearings, that they worry how they will have time to attend to the steady stream of motions flowing in. In short, they often feel besieged. Yet in spite of their workload, most judges say they thoroughly enjoy their work.

Like a lot of lawyers, I had been practicing for years before I came upon that most amazing of revelations—you know, the one that judges are human beings too. Reminding oneself of that fact, and the realization that judges suffer from the usual failings of us all, will aid you immensely in your dealings with the bench. You will also become more empathetic toward the judicial plight, and in the process, you will no doubt grow more respectful of the important function judges serve in society.

The book before you is an attempt to distill the advice of judges to practitioners appearing in their courtrooms. After all, judges have seen just about everything, and frankly, they know what works. There are many gems of practical wisdom emanating from the bench, and I have attempted to collect some of them here in the hope that you will find them beneficial in your practice.