

Dealing with authority

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I imagine that, for most of you, two uninvited police officers standing on the front steps of your home might not be your idea of a promising way to begin the day. I also suppose that some people might not take it as a good sign if one of the officers was to ask whether your house is occupied by a person whose name, coincidentally, happens to be the very same name used by a certain member of your family. And probably not too many people would find it especially encouraging if, in response to your question whether the police had arrived to discuss "the school incident," the officers were to exchange perplexed glances with one other, before turning back to you and responding, after a rather police-like pause, that, no, they had come to your home to discuss an unrelated and completely non-curricular matter.

This imaginary and entirely hypothetical scenario might provoke a somewhat negative reaction, if not outright heart palpitations, were it to unfold on your front step stoop. But it wouldn't even get the dogs to bark at my house. The closest equivalent I can think of is Solzhenitsyn's account of an inmate's typical day in a Soviet labor camp in Siberia, "One Day in the Life of Ivan Denisovitch." Well, move over Ivan, because this would be just another day in mine.

Dealing with authority may bother some people, but, for me, it's just a fact of life that comes with having a child who, before he even knew how to spell the word "jail," would nearly jump out of his car seat with unrepressed excitement whenever he saw such Baltimore landmarks as "Supermax", "Central Booking", and, let's not forget the family favorite, the "Maryland Penitentiary." With this kind of child prodigy, dealing with authority is almost like an involuntary bodily function that you don't even think about. You just do it.

My original plan at this point in today's article was to segue to a discussion on how to deal with a different kind of authority, such as statutes and cases, when writing an appellate brief. But that discussion will have to wait until next month, due to something that occurred after I began writing today's column that has triggered yet another one of those no-impulse-control episodes that I seem to be experiencing with increasing frequency.

The general subject of this article, as indicated by its title, remains the same, but the authority that is the focus of today's column is a House Joint Resolution drafted by Delegate Donald H. Dwyer Jr., which seeks the impeachment of Baltimore City Circuit Court Judge M. Brooke Murdock for writing the decision that strikes down the validity of a Maryland law that prohibits same-sex marriage.

According to Dwyer's resolution, which he actually mailed to the judge along with a letter stating that "you are entitled to defend yourself against the charges now before you," Judge Murdock's act of writing this decision requires her removal for "misbehavior in office, wilful neglect of duty, and incompetency."

Dwyer's principal thrust is that the judge has engaged in "a serious abuse of power" in violation of the separation of powers provision of the Maryland Constitution. How, the inquiring mind might ask? By intruding on the legislature's authority and misusing "her position as a judge to promote her personal political beliefs" and "to promote a bias in favor of homosexual marriage in this State." And on top of that, she has displayed "a stunning lack of judicial competency." For these reasons,

Dwyer's resolution declares, "the public good requires that Judge Murdock no longer hold and retain her judicial office."

Don't you hate it when people beat around the bush? Why doesn't he just come out and tell us how he really feels?

Maybe it's just me, but there seems to be at least a little irony in Dwyer's statement that Judge Murdock should be removed from office because she has "become a threat to free government in this State" by doing her job, which is to decide cases.

I could be mistaken, but I would think that, for some people, the real threat to constitutional boundary lines arises when legislators send judges menacing letters based on the outcome of cases. Dwyer may be right that the judge got it wrong, but I thought — and again, maybe it's just me — that appellate courts are supposed to correct trial court errors, not legislators.

I'm probably the only member of the Maryland bar who never took a political science class in his life, so what do I know, but if Dwyer's view of our constitutional structure of government is correct, then why send Judge Murdock a letter after she decides the case? Why not save her and everyone else the trouble and write her a letter before the opinion comes out, and tell her in advance that when she decides the case it's either the "right" way or the highway, or at least back to private practice? Come to think of it, why even bother with judges at all?

As appealing as that idea may be to some, this is not how the General Assembly has chosen to deal with Dwyer's call for Judge Murdock's impeachment. Dwyer himself foreshadowed in his letter to the judge the fate that awaited his impeachment effort, stating that, despite her right to defend herself against his charges, "the current intent of the House Speaker is to prevent your defense unless the Judiciary Committee decides, by majority vote, that your defense should be heard."

Although a vote was scheduled for yesterday on Dwyer's proposed resolution, it had not taken place as of the time this article was written. But the words "constitutionally yours" that appear immediately above his signature in his letter to the judge suggest that the Maryland legislature's initial response to his impeachment proposal — "Don't call us, Don, we'll call you" — did not get the message through about how government works in this country.

Maybe Dwyer needs more than a rebuke from his legislative colleagues. Maybe he needs to spend a day in a Siberian labor camp with Ivan for some perspective. If he needs a lift to the airport, I think I may know two very nice police officers who will gladly give him a ride.

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