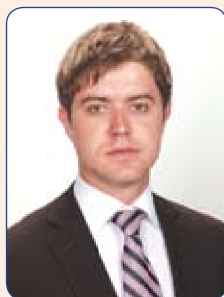
THE JUDGE'S ROLE IN A DEMOCRACY



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SUMMARY

The judge's job is to achieve a delicate balance between the needs of the public and the rights of the individual. The duty of the judge is to protect the individual from abusive state action and to contribute to the meaning of citizenship and civic entitlement. While the central role of the judge in upholding the rule of law is simply stated, the methods by which this is achieved in our increasingly complex societies are changing and developing. To perform this task, the judiciary must remain independent of influence from other branches. This article seeks to analyze the judge's role in detail at the trial level.

Keywords: *judges, common-law system, human rights, trial system, defendant's credibility, Federal Rule of Evidence.*

ROLUL JUDECĂTORULUI ÎNTR-O SOCIETATE DEMOCRATICĂ

SUMAR

Sarcina judecătorului este de a realiza o balanță delicată între necesitățile publicului și drepturile individului. Obligația judecătorului este de a proteja individul de acțiunea abuzivă a statului și de a contribui la semnificația *cetățeniei* și a *dreptului civic*. În timp ce rolul central al judecătorului în susținerea statului de drept este declarat, metodele prin care această acțiune este realizată în societățile noastre complexe se schimbă și se dezvoltă mereu. Pentru a îndeplini această sarcină, sistemul judiciar trebuie să rămână independent de influența celorlalte ramuri.

Acest articol își propune să analizeze, mai detaliat, rolul judecătorului în procesul de judecată într-o societate democratică.

Cuvinte-cheie: *judecători, sistem de drept comun, drepturile omului, sistem de judecată, credibilitatea pârâtului, reguli federale de evidență.*

Judge in democracy

Our age is the age of democracy[1], but it is helpful to reexamine the nature of modern democracy. Democracy cannot be based only on the rule of people through their representatives; the protection of human rights – the rights of every individual and every minority group – cannot be left only in the hands of the legislature and the executive, which, by their nature, reflect majority opinion. Consequently, the question of the role of the judicial branch in a democracy arises;[2] - given how important it is that the judiciary stand fast and unafraid in the guardianship of the rule of the law against mob or majority, popular clamor - or public opinion.[3] In a democratic society there are no worthy alternatives to justice under law. The role of the judge must change according to the requirements of time and new reality, according to society's present values. Montesquieu's theory that the judge is „no more… than the mouth that produces the words of the law,[4]" has been discredited.[5] The common-law system is not the same today as it was fifty years ago, and judges are responsible for these changes.[6] These changes involve creation of law and the interpretation of legal texts. The meaning of law is changing, and the role of the judge is changing.[7]

Judges are aware of the tension between the need to protect the state and the rights of the individual.[8] The main role of the judge in a democracy is to protect the constitution and democracy itself.[9] A legal system with a formal constitution imposes this task on judges, but judges also play this role in legal systems with no formal constitution.[10] Judges of the modern age are charged with watching over basic values and protecting them against those who challenge them.[11] Judicial protection of substantive democracy in general and of human rights in particular is characteristic of most developing democracies.[12] Substantive democracy means fundamental principles, independence of judiciary and human rights, which judge should protect. Protection of substantive democracy became very important task after Second World War, when formal democracy was protected, but human rights were not. Substantive democracy has its own internal morality based on the dignity and equality of all human rights. The judge's job is to achieve a delicate balance between the needs of the public and the rights of the individual.[13]

1 Richard H. Pildes, „The Supreme Court 2003 Term – Foreword: The Constitutionalization of Democratic Politics. 118 Harv. L.Rev. 28,29 (2004).
2 Aharon Barak. Judge in Democracy. 347.
3 Glenn R. Winters Handbook for Judges. 13.
4 Montesquieu, The spirit of the laws 209 (1750).
5 Aharon Barak. Judge in Democracy. 347.
6 Aharon Barak. Judge in Democracy. 347.
7 Aharon Barak. Judge in Democracy. 347.
8 Aharon Barak. Judge in Democracy. 347.
9 The role of the courts in society (Shimon Shetreet ed., 1988).
10 Aharon Barak. Judge in Democracy. 347.
11 H.C. 5364/94 Velner v. Chairman, 49(1) P.D. 758, 808.
12 Aharon Barak. Judge in Democracy. 347.
13 The role of the judge in a democracy. 88 Judicature 199 2004-2005.

While the central role of the judge in upholding the rule of law, is simply stated and immutable through generations, the methods by which this is achieved in our increasingly complex and educated societies are changing and developing, now more than ever before. The judiciary are now facing and creating the means to tackle a wide range of new challenges both within the courtroom and without.[14] Judges are guardians of democracy and also key actors in the life of a modern democratic polity. The judiciary has made great strides in recent years towards coming to grips with the changes that have taken place in society. They are required to adjudicate on a much wider range of social issues than ever before, judges are equipped to understand and deal with new issues in an informed and principled way. Unless they do so they will soon lose the respect of the people without which their task of upholding the rule of law would be impossible. Its characteristic sensitivity to fundamental values and fundamental perspectives guarantees appropriate protection for the constitution and its values.

The trial judge's role

The North American trial system is based on a division of labor, with all the participants – judge, lawyers and jury – carrying out their roles. The judge determines the admissibility of evidence, the lawyers present the evidence, and the jury determines what the facts are.[15] The Federal Rule of Evidence represents a broad and virtually limitless grant of power to trial judge to control the admission of evidence.[16] No single rule describes that power, - it runs throughout the Rules.[17] Whether the judge rules on admissibility issues from scholarly insight, disciplined reflex, or some notion of fairness, he will be firmly supported be the sum total of the Rules and by appellate disinclination to search for evidentiary errors.[18]

Sources of judicial power

The sources of judicial power are principally contained in three of the Federal rules of evidence: 102, 611, 614.[19] FRE 102 encourages the judge to construe the Rules to favor admissibility, while still exercising a firm hand over the proceedings.

No longer do judges sit as silent referees, garbed in black, waiting for the contestants to cry „foul". Modern judges "manage" the trial, especially where the issues are complex and the trial lengthy.[20]

FRE 611(a) is aptly titled: „Control by court". It says that the court "shall," not „may", „exercise reasonable control over the mode and order of interrogation witnesses and presenting evidence". The discretion granted by FRE 611 (a) is broad. Judges can allow witnesses to testify out of turn. They can limit the number of expert witnesses a party will present and the time those witnesses will take on the stand, even on cross-examination.

Another broad grant of power to the trial judge – the power to call and question witnesses – is contained in FRE 614, which states: „Interrogation by courts. The court may interrogate witnesses, whether called by itself or by a party." Trial judge in United States is not a passive instrument of the parties, but has an independent duty to investigate the truth and, in so doing, may put questions in whatever form he pleases to the witness to elicit the truth more fully. As a consequence, judges exercise much control over juries in matter of facts as well as law.[21] Courts start following this rule that allows a trial judge to express his or her opinion regarding the evidence and its weight.[22] The judge may control the order of the introduction of evidence. Additionally, he or she is empowered to summarize and to comment on the evidence so long as the jury is clearly instructed that it is the final arbiter of the facts. The judge may control, to some extent, the behavior and examination of witnesses, and may, if necessary to clarify or elicit further testimony, himself or herself examine a witness.[23]

FRE 614 does not limit the kind of witness the judge may call or question. The judge might call a witness that no party wants to call, for fear of taint by association or because of uncertainty about what the witness will say. Or the judge might feel the parties are depriving the jury of useful information by refraining from calling a witness.

Some case authority suggests that there are circumstances under which a court has an affirmative duty to interrogate witnesses.[24] The language of Rule 614(b) leaves the decision to interrogate within the discretion of the court.[25] Similarly, while a court that exercises its power to call a witness under subdivision (a) frequently also will exercise its power to interrogate that same witness under subdivision (b), the court is under no obligation to do so.[26] The only restraint on the judge is that the questioning must be conducted in an impartial manner. The judge should not show hostility to either side, nor should he send a message to the jury that he does not believe a party or key witness. Absent a showing of partiality, the judge is free to take an active role in the calling and questioning of witnesses. However, the judge abandons neutrality when he proves an essential, but omitted, element of a civil or criminal case.

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[14] The Role of the Judge in a Democracy, 18 Commw. L. Bull. 1256, 1256 (1992).

[15] Trial Evidence / Thomas A. Mauet and Warren D. Wolfson. – 4th ed.

[16] Trial Evidence / Thomas A. Mauet and Warren D. Wolfson. – 4th ed.

[17] Trial Evidence / Thomas A. Mauet and Warren D. Wolfson. – 4th ed.

[18] Trial Evidence / Thomas A. Mauet and Warren D. Wolfson. – 4th ed.

[19] Trial Evidence / Thomas A. Mauet and Warren D. Wolfson. – 4th ed.

[20] Trial Evidence / Thomas A. Mauet and Warren D. Wolfson. – 4th ed.

[21] Trial Evidence / Thomas A. Mauet and Warren D. Wolfson. – 4th ed. 383;

[22] *Children's Store v. Cody Enters.,* 154 Vt. 634, 580 A.2d 1206, 1208-9 (1990).

[23] Federal Jury Practice And Instructions Current through the 2011 Pocket Part, 1 Fed. Jury Prac. & Instr. § 5:1 (6th ed.)

[24] See, e.g., *Harris v. Steelweld Equipment Co., Inc.*, C.A.8th, 1989, 869 F.2d 396, 402; U.S. v. Tilton, C.A.6th, 1983, 714 F.2d 642, 644;

[25] *Deary v. City of Gloucester*, C.A.1st, 1993, 9 F.3d 191, 195.

[26] *U.S. v. Agajanian*, C.A.2d, 1988, 852 F.2d 56, 58.

A more traditional concept of the judge's role is described by Judge Marvin E. Frankel of the court: "the neutral, impartial, calm, no contentious umpire standing between the adversary parties, seeing that they observe the rules of the adversary game."[27] The trial judge should never assume role of the advocate, since such a course, especially given the judge's stature in the eyes of the jury, can very easily prejudice the rights of the parties, particularly rights of criminal defendants. Federal trial judge may call and question witness not called by either party?[28] The Chief Justice in *Quercia* case said that a trial judge may not assume the role of the witness, add or distort the evidence, or comment in a one-sided manner or, by a hostile remark, diminish an accused's privilege to testify in his own behalf. Quercia v. United States, 289 U.S. 466, 469 (1933). Moreover, experienced trial judges have championed the view that the North American adversarial system makes little room for trial judges' questioning of witnesses. The trial judge should remain aloof emotionally from the trial, keeping only a finger on its pulse to ensure its healthy progress.[29]

Another commentator has observed that sporadic intrusions into the flow of the trial by the presiding judge risk furnishing more confusion than guidance to the jury because the trial judge looks down at the case from the mountaintop of ignorance: "His intrusions will in too many cases result from partial or skewed insights. He may expose the secrets one side chooses to keep while never becoming aware of the other's. He runs a good chance of pursuing inspirations that better informed counsel have considered, explored, and abandoned after fuller study."[30] The rationale undergirding the notion that a trial judge should not become overly active in questioning witnesses is that it guards against bias on the court's part.[31]

However, under a more expansive view of the trial judge's proper functions, while the judge is, not to become a third party in a general search for the truth, his overall ignorance (in a pure, case specific sense) and lack of preparation do not prevent him from not only having direct control over how counsel conduct the litigation,[32] but also taking a more active role. If counsel has made a fundamental mistake – should the judge ignore it and not question the witness? Will it be a fair trial? These are difficult questions, needing much attention to fine distinctions and careful analysis of the overall case.

The judge is charged with a positive duty to see that each party receives a fair trial, that justice is done, and, in so far as counsel fails, to assure that evidence is lucidly portrayed to the jury.[33] The trial judge may actively participate and give its own impressions of evidence or question witnesses, as an aid to jury, so long as it does not step across the line and become an advocate for one side.

This more expansive view stems from the fact that some courts and commentators have never embraced the so-called sporting theory of the common law. This extreme theory viewed litigation as a game of skill and placed the trial judge in the position of an umpire, there simply to see that the rules of the game were obeyed. They have rejected such a limited role because a trial judge's duty to see the law correctly administered cannot be properly discharged if the judge remains inert.[34]

Thus, it was said nearly one hundred years ago that a federal judge may express his or her opinion on the facts of a case so long as the judge makes it clear to the jury that they are the sole judge of those facts; but the judge should not become an advocate and argue the case for either side.[35] Because a federal trial judge is not a passive spectator or moderator, he or she retains the undoubted right to express his or her opinion of the facts to the jury.[36] But, if the court argues the case, it must argue it for both sides-the defendant's as well as the government's.[37]

"The trial does not unfold like a play with actors following a script; there is no scenario and can be none. The trial judge must meet situations as they arise and to do this must have broad power to cope with the complexities and contingencies inherent in the adversary process."[38] It is a judge's obligation to assure that everyone receives fair trial. And according to this obligation judge can be active party in a trial and arguing, but only if it is impartial. Trial court "should exercise self-restraint and preserve an atmosphere of impartiality and detachment."[39] And such court exceeds its duty when it becomes an advocate and asks improper questions.[40]

While, a substantial portion of federal trial practice and procedure is governed by statute, rules of procedure, or local rules of court, nevertheless matters not thereby governed are committed to the informed discretion of the trial judge.[41] This broad power, defined and delimited only by the constitutional and practical demands of a fair trial, extends even to the regulation the length, and in some cases the content and order of arguments to the jury.[42]

This does not mean that the judge can assume a role of the advocate and takes role over the prosecution, that

27 The trial Judge's role. 9 Brief 15 1979-1980.

28 *United States v. Gunter.* 631 F.2d 583 (1980).

29 Bernard Botein, Trial Judge 125 (1952).

30 Marvin E. Frankel, The Search For Truth: An Umpireal View, 123 U.Pa.L.Rev. 1031, 1042 (1975).

31 See Stephen A. Saltzburg, The Unnecessarily Expanding Role of the American Trial Judge, 64 Va.L.Rev. 1, 16-21 (1978).

32 The trial Judge's role. 9 Brief 15 1979-1980.

33 1 Fed. Jury Prac. & Instr. § 5:1 (6th ed).

34 See *United States v. Marzano*, 149 F.2d 923, 925 (2d Cir.1945) (L. Hand, J.).

35 See *Oppenheim v. United States*, 241 F. 625, 629 (1917).

36 *United States v Filani.* 74 F.3d 378 (1996).

37 See *Johnson v. United States*, 270 F. 168, 169 (2d Cir.1920).

38 *Geders v. United States*, 425 U.S. 80, 86, 96 S.Ct. 1330, 1334, 47 L.Ed.2d 592 (1976).

39 *Pariser v. City of New York*, 146 F.2d 431, 433 (2d Cir.1945).

40 See *Martucci v. Brooklyn Children's Aid Soc.*, 140 F.2d 732, 734 (2d Cir.1944).

41 Federal Jury Practice And Instructions Current through the 2011 Pocket Part, 1 Fed. Jury Prac. & Instr. § 5:1 (6th ed.)

42 *Herring v. New York*, 422 U.S. 853, 95 S.Ct. 2550, 45 L.Ed.2d 593 (1975).

would exceed boundaries of his power. The questioning of witnesses provides an instructive example of the range, but also the limits, of the trial judge's role. The power granted by Rule 614(b) is not unlimited. Whenever a trial court interrogates a witness it incurs two risks of prejudice. The first is that the court will lose or appear to lose its impartiality since witness interrogation tends to obscure the boundary between judge and advocate. This is of particular concern in a jury trial where the jury may be influenced by judicial favor or reproach directed at a party, its counsel, or its witnesses. Where the court takes over the role of the prosecutor and displays bias, reversal is required.[43] The point should never be reached where it appears to the jury that the judge believes the accused is guilty; this impression, once conveyed, deprives the defendant of the fair trial to which he is entitled.[44] The judge must at all times appear to remain unbiased in his questioning and should never reach the point that it appears clear he believes one side or the other; it is better for the judge to err on the side of abstention from intervention than active participation. Cross-examination of a witness by the trial judge is potentially more impeaching than such an examination conducted by an adversary attorney. The judge, by his office, carries an imprimatur of impartiality and credibility in the eyes of the jury. In fact, a judge's apparent disbelief of a witness is potentially fatal to the witness's credibility. And the credibility of a testifying defendant is often of crucial importance in a criminal trial. In a close case, the judge's intervention may more readily impact the defendant's right to a fair trial.[45]

The second risk is that the court will undermine rather than promote accurate fact-finding by wresting from counsel control over a witness's testimony. This risk is made significant by the fact that the court is usually less familiar with the evidence in a case than is counsel. As a consequence, an impatient court's premature efforts to simplify and clarify testimony may confuse counsel's efforts to develop a necessarily complex line of questioning.[46]

Appellate courts also have identified several considerations pertinent to weighing the risk that interrogation by the trial court, and related comments from the bench, will reveal actual or apparent judicial bias.[47] Central to this question is what facts the judge's questions and comments assert or seem to take for granted.[48] Even if no facts are overtly suggested, asking questions that develop just one party's case can destroy the semblance of judicial neutrality.[49] The same undesirable effect can be produced by judicial questions or comments that reveal hostility toward a party.[50] As a consequence, a trial court must be particularly careful to maintain the appearance of impartiality when questioning a witness who is also a party. In fact, the mere tone of a judge's voice and other aspects of his demeanor can suggest partiality.[51]

Sources of judicial procedure

Evidence plays a pivotal role in judicial proceeding; trial judge must have fair and principled guidance in admitting evidence with varying degrees of validity. Judge has the discretion in managing his own court; he requires both sides to let each other know in advance the identities of their witnesses and the content of their testimonies, other evidence, so that both can prepare their own examination. The trial judge can also impose the limit on the evidence and control counsel's behavior on examination of witnesses to prevent abuse of the law. On the other hand, the judge's power is not limitless. A judge cannot use his own biases to evaluate evidence and regulate admissibility. A trial judge may not keep evidence from the jury just because he gives the evidence little weight.

FRE 103, 104, and 105 lay out the evidentiary territories that belong to the lawyers and the jury, on one side, and the judge on the other. The goals of these three rules: trial efficiency, the admission of relevant and reliable evidence, considered rulings by the judge, rational decisions by the trier of facts, and a trial uncluttered by lengthy interruptions and admonitions to jurors to disregard that which they have heard or seen.

FRE 104 draws the line between the functions of the judge and the jury. The judge admits or not; the jury weighs. At times, the line is blurred. FRE 104 is a means of ensuring that the jury receives relevant and reliable evidence that does not run counter to some established public or legal policy. The aim is to avoid the difficult situation where a judge is required to instruct jurors to disregard words they heard or things they saw.

FRE 104(a) applies when the admissibility of evidence depends on a preliminary factual finding by the trial judge. When deciding the issue, the judge is not bound by the rules of evidence, except those with respect to privileges. For example, a judge might be asked to make a preliminary ruling that a statement of an alleged co-conspirator is admissible against a defendant because it was made during the course of and in furtherance of a conspiracy. The judge, considers all the circumstances, including the co-conspirators' words, to determine whether the statement is admissible under FRE 801(d)(2)(E). The judge may "consider any evidence whatsoever, bound only by the rules of privilege."[52]

A judge might be asked to determine whether proposed expert testimony satisfies FRE 401, 402, 403, and 702. When searching for scientific reliability, the judge

43 *United States v. Guertler*, 147 F.2d 796, 797 (2d Cir.).
44 *United States v. Nazzaro*, 472 F.2d 302, 303 (2d Cir.1973).
45 *United States v. Godwin*, 272 F.3d 659, 678 (4th Cir.2001).
46 Federal Practice & Procedure Current through the 2010 Update, 29 Fed. Prac. & Proc. Evid. § 6235 (1st ed.)
47 *U.S. v. Hickman*, C.A.6th, 1979, 592 F.2d 931, 933.
48 *U.S. v. Mazzilli*, C.A.2d, 1988, 848 F.2d 384, 388
49 *U.S. v. Van Dyke*, C.A.8th, 1994, 14 F.3d 415, 423.
50 *U.S. v. Candelaria-Gonzalez*, C.A.5th, 1977, 547 F.2d 291, 295–297
51 Federal Practice & Procedure Current through the 2010 Update, 29 Fed. Prac. & Proc. Evid. § 6235 (1st ed.)
52 *Bourjaily v. United States*, 483 U.S. 171, 178 (1987).

may consider affidavits, learned writings, published and unpublished studies, and any other testimony or documents that will be helpful to the determination of admissibility. This "gatekeeper" function of a federal judge received new emphasis with the Supreme Court decision in the *Daubert* case.[53] The trial judge should hesitate to inject his own biases of novel scientific theories into the proceeding, as judges are not scientific authorities and should not have final word on the reliability of the scientific evidence. The trial judge cannot keep evidence from the jury just because he gives the evidence little weight. He cannot decide scientific theory is believable and which is not. It is upon the jury to choose which theory to believe, and it is up to the parties to emphasize the theory they think is most believable.

FRE 104(b) applies only to conditional relevancy issues. Under FRE 104(b), the judge considers and determines only if there is offered evidence sufficient to support a finding that the conditional facts exist. Under FRE 104(b), the evidence offered to prove the conditional fact must meet all the evidentiary rules. An example of how FRE 104(b) operates at trial is found in *Huddleston* case.[54] There, the defendant was on trial for possessing and selling stolen videotapes. The issue was whether he knew the tapes were stolen. To prove knowledge, the prosecution offered evidence that the defendant had sold stolen television sets. The Court held the issue was to be decided under FRE 104(b). The judge does not weigh credibility or find that the prosecution actually proved the conditional fact. That is the jury's function.

Under FRE 103 appellate reluctance to find abuse of discretion in evidentiary rulings places the contest directly on the trial court floor. Whether a "substantial right" is affected by an error will depend on the facts and circumstances of the case. Reviewing courts, using the cold record, will make a visceral determination whether it was highly probable the error had an impact on the outcome of the case. If the court decided it did not, the error will be deemed harmless. The Supreme Court posed the question as follows in the Kotteakos case: Can we say with fair assurance that the judgment was not substantially swayed by the error? If we cannot, we must conclude that a substantial right was affected.[55]

FRE 105 relies on the presumption that jurors can follow an instructions to consider evidence for one purpose, but not for another, or to consider it as to one party, but not another. It is rare trial that does not contain some kind of limiting instruction. For example, in some hearsay issues jurors are told to consider the out-of-court speaker's words not for their truth, but as an explanation for why the listener knew or did something after hearing the words. Statements of a party are allowed against that party, but jurors are told not to consider them against a co-party. Prior convictions admitted under FRE 609 are limited to the issue of the defendant's credibility.

The judge instructs the jury about the relevant laws that should guide its deliberations. (In some jurisdictions, the court may instruct the jury at any time after the close of evidence. This sometimes occurs before closing arguments.) The judge reads the instructions to the jury. This is commonly referred to as the judge's charge to the jury. The judge will point out that his or her instructions contain the interpretation of the relevant laws that govern the case, and that jurors are required to adhere to these laws in making their decision, regardless of what the jurors believe the law is or ought to be. In short, the jurors determine the facts and reach a verdict, within the guidelines of the law as determined by the judge.

The form of instruction which the judge is required to give may promote or may impede jury understanding depending upon the kind of case being tried, the oral communication skills of the judge, and the length of time the judge feels obligated to take in giving the final charge.[56] The evidentiary summary makes the actual wording of the final charge uniquely a one-man job, fit only for a person actually neutral in the case. The trial judge gives some basic guidance on the areas of law that have to be covered in the charge. For example, complains with a rule would alert a trial judge in a criminal case to the need to charge on a lesser included offense. The trial judge need to be neutral in the case and cannot use his own biases to evaluate evidence in his evidentiary summary. In the federal courts, particularly egregious errors in the charge can be considered on appeal as plain error.[57] Ordinary errors in instructions would not be reversible error unless objected to prior to the time that the jury began its deliberations. In the federal practice comment on the evidence is prohibited. The fear that comments by the trial judge might have undue influence on the jury well founded. The no comment rule preserves the important mage of the judge as neutral figure and leaves the determination of factual issues entirely to the jury.[58] The trial judge evidentiary summary should be limited and neutral.

Closing observations

Beginning with the premise that the adversary system and the right to a jury trial are recognized as fundamental parts of the American trial system, we attempted to outline permissible and impermissible techniques of judicial intervention in trials. The trend seems to be to let the judge become more active, to let the judge search for truth, to let the judge do what he believes must be done in order to provide a "fair trial" for the litigants. The position is that the trial judge can act in many ways to assist the litigants in trying their cases fully and fairly, but that the trial judge who attempts to usurp control from the parties compromises the integrity of the bench and often threatens the independence of the jury.

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53 *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

54 *Huddleston v. United States*, 485 U.S. 681 (1988).

55 *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)

56 Broun, Kenneth S. 52 N.C. L. Rev. 719 (1973-1974)

57 *Choy v. Bouchelle*, 436 F.2d 319 (3d Cir. 1970): Celanese Corp. v. Vandalia Warehouse Corp., 424 F.2d 1176 (7th Cir. 1970).

58 Lukowsky, The Constitutional Right of Litigant to Have the State Trial Judge Comment Upon the Evidence, 55 Ky. L.J. 121 (1966).