



Judicial Profile

by Patricia Zimmer

Hon. Michael R. Merz U.S. Magistrate Judge, Southern District of Ohio

When you walk into Magistrate Judge Michael Merz's chambers in Dayton, Ohio, you will most likely notice two things. The first is the incredible number of books that he has managed to fit into the space (more about books later). The second is his small collection of family photos. He picked up one of the photos and explained, "This is a picture from my father's baptism taken in August or September 1910, and there are four generations represented in this photo." Both the book collection and the photographs are reflections of things that are near and dear to Judge Merz's heart. There is also the life-size cardboard cutout of Dr. Sheldon Cooper, a character in the television show "The Big Bang Theory." The cutout is a reflection of the Judge's well-recognized sense of humor (and that of his staff).

Michael R. Merz was born on March 29, 1945, in Dayton, Ohio, the first of three sons born to Robert and Hazel Merz. Judge Merz is proud of the fact that he is "a fifth generation Daytonian" who was born and raised within the Dayton city limits. Judge Merz's father was a bookkeeper for a local Dayton construction company, and his mother was a homemaker. No one in the judge's family was a lawyer, so his decision to study law was not based on anything he learned at home. Rather, his decision came when he was in the ninth grade based on his success as a member of a debate team.

Judge Merz refers to himself as a "cradle Catholic," attending Corpus Christi grade school and Chaminade High School, both in Dayton. When Judge Merz attended Chaminade, it was an all-boys school and, chuckling, Judge Merz will tell you that when he started Chaminade, "tuition was 50 dollars a year." Anyone who pays tuition for a private high school in this day and age can appreciate that chuckle. In the ninth grade, at the urging of his English teacher,



Brother John Bakle, S.M., Judge Merz became involved with the Chaminade debate team and learned he was a natural. In his junior year, Judge Merz and his partner were eliminated in the quarter final round of the national competition of the National Catholic Forensic League. Realizing that he "could make a living at this," the defeat did not quell his decision to study law.

After graduating from Chaminade in 1963, Judge Merz

Patricia Zimmer was a career law clerk to Judge Merz for more than 25 years, and retired from the district court in June 2013. She is a former president of the Dayton Chapter of the FBA.



headed to Harvard College, where he studied American government. As an undergraduate at Harvard, he thrived on answering intellectual inquiries such as, “How do rules affect the way we govern ourselves?” “What is the legislative process?” and “What is the judicial process?” While an undergraduate, he was active in the Harvard Young Republican Club, which Thomas Dewey once called “the West Point of Republican politics.” In keeping with his Catholic faith, Judge Merz was also an active member of the Harvard Catholic Student Center. The highlight of his involvement with the Catholic Student Association came in 1964, when Father Joseph Collins, the Catholic Chaplain, introduced Judge Merz to Margot LeBreton (Radcliffe ’68), who would become his wife. They have been married for more than 40 years.

In the spring of 1967, Harvard awarded Judge Merz his A.B. in Government *cum laude* and, that fall, he became a Harvard Law School 1-L. Judge Merz acknowledges that he was in law school “right in the middle of the ‘criminal law revolution.’” He learned from the greats, Charles Fried, Albert Sacks, Louis Loss, Phillip Areeda, James Vorenberg, and Paul Bator. He describes it as a time when the U.S. Supreme Court was frequently deciding cases in which the Court was constitutionalizing criminal procedure. Judge Merz noted, as a practical matter for a law student, this meant that casebooks became outdated quickly. In spite of the rapidly changing landscape in criminal law and the challenges it presented to students and law professors alike, Judge Merz speaks highly of his first-year criminal law class with Professor Vorenberg (who later went on to become the ninth dean of Harvard Law School as well as Archibald Cox’s principal assistant in the Watergate Special Prosecutor’s Office). In addition, Judge Merz recalls that one of the central themes of his law school education was, “Your job is to keep your client OUT of court.” An interesting lesson for a man who would come to thrive on the hours he spends in the courtroom.

A reflection of Judge Merz’s debate team successes, as well his successes in the law school arena, was his ability to convincingly propose to Margot. When asked the date he and Margot married, Judge Merz immediately smiled and said “Sept. 7, 1968.” He didn’t hesitate; he didn’t have to think about it; he knows.

Judge Merz graduated from Harvard Law School in 1970. He now admits that at the time he “didn’t have a plan” and he “didn’t plan to come back to Dayton”—it just happened that way. During the summer of 1969, Judge Merz worked as a summer associate for the Dayton office of Smith & Schnacke. When he graduated from law school, Smith & Schnacke offered him a position as an associate. At the time, the firm was a large, well-respected firm in Ohio and a job offer from Smith & Schnacke was a huge step forward on any new lawyer’s career path. Judge Merz accepted the offer and returned to Dayton with Margot. His starting salary was \$13,500—only \$1,500 less than Wall Street firms were then offering new associates.

Initially, Judge Merz did transaction law for the Mead Corporation, one of Smith & Schnacke’s biggest clients. He

speaks warmly of his experience with the firm and notes “it was a good place to work.” He is clearly proud to have been a part of a law firm where lawyers were advised to take whatever amount of time a project required and “to do it right”; a law firm where no one ever had to take a cut in salary; and a law firm where any lawyer who stayed past five years became a partner. In 1976, Judge Merz became a partner in the firm.

In 1969, Judge Merz “was pretty sure” he was going to be drafted when he finished law school. However, on Dec. 1, 1969, the Selective Service System instituted the draft lottery which, according to the Judge, “drastically changed the draft.” Judge Merz’s number was 362 and he was never called. But, it was a time of national unrest with respect to the draft. So, during his time with Smith & Schnacke, in addition to transactional law, Judge Merz represented clients who were seeking conscientious objector status from the Selective Service System. He was, by his own admission, “virtually the only lawyer in this part of the state doing that work.”

Judge Merz explains rather succinctly the origins of his desire to become a judge: “I read Jerome Frank’s *Courts on Trial*; recognized that the ‘real law’ is made by courts; and I wanted to be there.” In 1976, the Ohio Governor Jim Rhodes appointed Judge Merz to a vacancy on the Dayton Municipal Court. Judge Merz served on the Municipal Court until he was appointed to the federal bench in November 1984.

Judge Merz sought the federal appointment primarily because it involved more interesting work and because it offered “slightly better pay.” When he was sworn in on Nov. 20, 1984, U.S. magistrate judges were known simply as “magistrates” and, according to Judge Merz, “after no small amount of lobbying and a significant amount of money spent by the national organization,” in 1990, magistrates received the title of ‘magistrate judge.’

At the time of his federal appointment, the Judge was “inundated” with Social Security cases—“about 800 pending in the Dayton location of Court alone.” He quickly became known as an expert in handling such matters. Over the years as a magistrate judge, Judge Merz has worked on a “healthy mix” of cases. He was assigned his first non-death penalty habeas case “on day one in 1984,” and he soon developed a passion for habeas corpus law. Over the years, he has either decided or issued Reports and Recommendations on the merits in literally hundreds of habeas matters including death penalty habeas petitions. Judge Merz will not hesitate to tell you that “it is something I do well.” By way of explanation, Judge Merz refers to the

Judge Merz recalls that one of the central themes of his law school education was, “Your job is to keep your client OUT of court.” An interesting lesson for a man who would come to thrive on the hours he spends in the courtroom.



book *Flow* by Mihaly Csikszentmihalyi, which explores the concept of joy in doing something you are good at doing. He notes that addressing habeas cases is a joy for him because he gets to do something he does well. Judge Merz has been able to develop an area of expertise, that does not usually happen in the life of a judge: “Judges are generalists, hopping all over the place, and they don’t get to develop an area of expertise like some lawyers do.” In addition, Judge Merz enjoys habeas work because “there is new law all the time, there are new arguments all the time, and you get to exercise your mind all the time—it is that kind of a challenge.” At the present time, about two-thirds of Judge Merz’s caseload is habeas and at least half of the habeas cases on his docket are death penalty habeas cases. His expertise in this area of the law is recognized both in Ohio and throughout the country.

Judge Merz admits that the death penalty habeas cases can be emotionally difficult, especially when “you realize that your signature is a necessary link in the chain for the lethal injection to happen.” But since he is a link in that chain, does Judge Merz’s death penalty habeas work conflict with his beliefs and obligations as a devout Catholic? In “Conscience of a Catholic Judge”, 29 U. DAYTON L. REV. 305 (2004), Judge Merz, “propose[s] a moral dilemma: Can one be both a good Catholic and a good judge if one’s judging involves the death penalty?” While the answer may seem obvious in view of the fact that Judge Merz continues to address death penalty habeas petitions, the answer does not come without a deep analysis of the history of the Church’s teachings about the death penalty, of a judge’s strong moral duty to follow the law, and of how the two interact.

Although Judge Merz has a passion for habeas work, when asked to identify his all-time favorite case, he does not hesitate to respond loudly, “The car case!” The “car case” (*Deym v. von Fragstein*, No. 3:95-cv-0073 (S.D. Ohio)) is the stuff of legend in Dayton, Ohio, and involved the possession of a 1937 Daimler Benz Cabriolet used by the European noble Hubert Graf Deym to transport his bride on their honeymoon shortly before World War II. In the chaos and looting of the war, Hubert’s prized car was

stolen and believed to be lost forever. In the most unlikely of circumstances, the car resurfaced in the early 1990s in Dayton, prompting Hubert’s civil action in the Southern District of Ohio to see the vehicle returned. At the time this case found its way to Judge Merz, the Cabriolet was valued in excess of \$600,000. Judge Merz enjoyed the case because it involved history related to World War II; the Treaty of Bonn; the question of whether one of the parties was a German citizen on the specific date of Oct. 1, 1954; and the trek the automobile had made from Europe to Dayton. Rarely, if ever, does a judge dip his hands into this type of history. Over half a century after Hubert’s honeymoon vehicle was lost to war, Judge Merz wrote the decision that ordered its return. Noted attorney Jim Dyer of the Dayton firm of Sebalby Shilito & Dyer was one of the attorneys representing Hubert in this case. On Judge Merz, Dyer explained that few judges can navigate the tumultuous waters that are international treaties and the spoils of war as masterfully. Dyer perfectly summarized the sentiment shared by all attorneys who know and have appeared before Judge Merz, “we are lucky to have him.”

Judge Merz retired on March 29, 2011 and was back in the office the very next day—March 30, 2011—as a recalled U.S. magistrate judge. He is not “double dipping” since he gets his pension and no other remuneration for his services to the Court. He continues to routinely work six days a week while on recall. If you ask Mrs. Merz what is different now that Judge Merz is retired, she will tell you that “he leaves the office an hour earlier on Saturdays.” Judge Merz decided to seek appointment as a recalled magistrate judge because he “wants to keep his finger on the pulse of where law is made.”

Over the years, Judge Merz has served the legal community in numerous capacities including sitting on, and chairing, committees and subcommittees for the Ohio State, Dayton, and Federal Bar Associations; the Federal Magistrate Judges Association; and the Carl D. Kessler Inn of Court. In addition, Judge Merz has been on the faculty of the University of Dayton School of Law and the Ohio Judicial College. With respect to community involvement, Judge Merz has served the Montgomery County Historical Society, the Dayton Metro Library Board, the Sinclair Community College Legal Assisting Program Advisory Committee, the Ohio Library Council, the United Way of Greater Dayton, the National Conference of Christian and Jews, the East End Community Service Corp., and the Harvard Law School Association of Ohio. Judge Merz’s church-related volunteer activities include serving his parish in various capacities, as well as serving as a member of the Archdiocese of Cincinnati Pastoral Council. In 2004, the president of the U.S. Conference of Catholic Bishops appointed Judge Merz to the National Review Board for the Protection of Children and Young People. Judge Merz is particularly proud of his service on the National Review Board, of which he was chair from June 2007 to June 2009. Although his service on the board has officially ended, the judge continues to serve as a consultant to the board as well as to the bishops.

Judge Merz describes himself as “a reader.” Indeed, the Judge has a personal collection of 11,723 books, which he proudly describes as “almost four times the size of Jefferson’s library.” An accompaniment to that collection is Judge Merz’s book log that he started on Jan. 1, 1963, when he was 17 years old. The log contains the name of every book Judge Merz has read since then, the author’s name, the number of pages, and the date he finished reading it. A mere “reader” indeed! Judge Merz belongs to two book groups and two other groups that “discuss ideas that come out of books.” In addition, Mrs. Merz founded the “Millennium Dinner Society” in 1998. The idea behind the society was to get ready for the new millennium by having dinner once a month with members while discussing one past millennium. Although the group has long run out the second millennium, it still meets regularly and the members discuss a particular historical event or issue.

Judge Merz and his wife are the proud parents of son Peter and his wife Cynthia Ridler, and son Nick and his wife Katey Crews. They are also the really proud grandparents of Kaitlyn Lucille and Henry Michael. Peter, who knew from age three that he wanted to be a ballet dancer, is a graduate of the University of Cincinnati and a tenured professor of ballet at Pointe Park University in Pennsylvania. Nick, who wanted to write but who was “way ahead in math,” studied design at Stanford University and works for Apple in California. If there was ever proof of the Merz family impact on our daily lives, look no further than the iPhone in your hands.

Judge Merz thinks that “the difference between being a lawyer and being a judge is that lawyers get to try to get a judge to make the law the right way and judges get to try to make the law the right way.” Judge Merz has been on both sides of that effort. He has been successful in both instances, and the U.S. District Court for the Southern District of Ohio has benefitted from his successes and his many years of dedication to being a sound and reasoned judge.

By the way, when you walk into Judge Merz’s chambers, you may also notice the collection of U.S. Supreme Court Justice bobble heads. His own bobble head is among them. ☺