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Introduction to Leslie W. Abramson's "Deciding Recusal Motions: Who Judges the Judges?"

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INTRODUCTION TO LESLIE W. ABRAMSON'S ARTICLE, *DECIDING RECUSAL MOTIONS: WHO JUDGES THE JUDGES?*

David R. Cleveland*

Amidst growing national concern about declining lawyer civility in the late 1980s and early 1990s, the United States Court of Appeals for the Seventh Circuit created a Committee on Civility to explore a perceived growing incivility in the legal profession. The Committee examined the existence, extent, and causes of this apparent lack of civility in the practice, and it made recommendations for restoring civility. The Committee's eighteen-month study culminated in an interim report that was widely read and discussed across the country. The report confirmed a widely-perceived decline in civility, particularly in the larger jurisdictions within the Circuit, and it identified a variety of causes for this decline. In mid-1992, the Committee issued its final report and a model civility code. The final report called on all lawyers, judges, and law schools to promote civility in the profession.

In light of this national and local conversation, the Valparaiso University Law Review held a symposium: Professionalism in the Practice of Law: A Symposium on Civility and Judicial Ethics in the 1990s. The scholarly works presented at that symposium were published in the Winter 1994 volume of the *Valparaiso University Law Review*. The work that follows, *Deciding Recusal Motions: Who Judges the Judges?* by Professor Leslie W. Abramson, was not only a standout from that volume, widely cited in subsequent years, but it has been the most electronically accessed article in the history of the Law Review.

The title of the article plays on the historical philosophical question, "quis custodiet ipsos custodes?" ("who guards the guards?") commonly attributed to Juvenal, the late-first/early-second-century Roman satirist.¹ A more modern phrasing, "who watches the watchers?" is likely familiar to most readers. The phrase invites skepticism about whether those in positions of power ought to be trusted to govern themselves or whether they should be subjected to other oversight. This broad question maps elegantly on to the very specific question of whether judges should rule on their own recusal. Our traditional notion of judges holds them up as learned, respectable, impartial, and beyond reproach who, one side would

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¹ It shares this reference with an early monograph on judicial removal practices, *Who Judges the Judges?* by William Thomas Braithwaite.

hold, should be trusted to decide their own fitness to impartially decide the matter. Alternatively, judges are undoubtedly human and thus both subject to, and suspected by others of, the usual human passions, frailties, and interests, which calls for an outside review of their fitness to hear a given case.

Abramson's work surveyed the existing practices in American courts and proposed a system for recusal review. It was not only timely but also timeless, as it continues to be referenced in scholarly and litigation works alike.