

## WHAT DOES IT MEAN TO BE A CHRISTIAN ON THE BENCH?

*A Conversation with Matthew J. Kacsmaryk\* and James C. Ho\*\**

K: At a Christian lawyers event last month, you and I were asked: What does it mean to be a Christian serving in the federal judiciary?

I was inspired by that conversation. And I'm delighted that the Journal of Law & Civil Governance at Texas A&M has invited us to publish an extended version of that conversation.

H: It was an honor to be in the room with you and others for the discussion. You've been such a champion when it comes to helping young lawyers balance their careers with their faith. You've truly made the most of your judicial appointment—not to serve yourself, but to serve the nation, and to serve your faith. It should motivate all of us to do better, with whatever we've been given.

K: Many judges shy away from talking openly about their faith—and even think such discussions violate the judicial canons. That's why I thought this discussion was so valuable. What's *your* answer to the question: What does it mean to be a Christian and a judge?

H: In an ideal world, being a Christian should have nothing to do with being a judge. But in a fallen world, being a Christian has everything to do with being a judge.

Let's start with first principles. Being an originalist means following the text and original understanding of the law, no matter the

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\* District Judge, United States District Court for the Northern District of Texas

\*\* Circuit Judge, United States Court of Appeals for the Fifth Circuit

outcome—and no matter the effect on the judge’s standing or reputation in the community.

And if that’s truly what you’re doing, then there shouldn’t be a Christian interpretation of the text or an atheist interpretation of the text. There’s just a dutiful, faithful interpretation of the text. Reasonable minds can disagree at the margins, but if you call yourself an originalist, then there should at least be agreement about the mission. We may get to different answers at times, but we should be asking the same questions.

But although we’re all supposedly originalists now, we know that, in practice, that’s simply not true. We know that originalism is now permitted in polite company—but only until it leads to outcomes that are detested by the cultural elites who control the national discourse—and who dispense the prestige and respect and stature craved by so many judges.

That’s where faith plays a critical role in this fallen world. Being a faithful originalist is like being a faithful Christian. You have to be ready to be hated—to be booed by the crowd. And be okay with it.

And not just okay with it, but ready for it. As Christians, we know that God *wants* us to be challenged—and what’s more, He wants us to fight back. Think about Exodus 14, Numbers 32, passages like that. We’re supposed to be willing, ready, even eager to take heat for our beliefs.

But that’s not something you’re going to do, if all you care about are earthly concerns.

As Christians, we know that this is not home. We are not home. Hebrews 13:14: “For this world is not our permanent home; we are looking forward to a home yet to come.”

And not only is this not home—C.S. Lewis said it’s “[e]nemy-occupied territory—that is what this world is. Christianity is the story of how the rightful king has landed, you might say landed in disguise and is calling us all to take part in a great campaign of sabotage.”<sup>1</sup>

Our time here is fleeting, transient. But if we start to see this world as home, then we’ll quickly find ourselves on the wrong path. We’ll be seduced by worldly values. We’ll desire the praise of man.<sup>2</sup>

That’s the end of being a faithful Christian. And it’s also the end of being a faithful judge, in this fallen world.

K: Originalism in a fallen world. That’s an interesting way to put it.

Justice Kagan famously declared that “we’re all textualists now.”<sup>3</sup> As denominated by the Court, the Textualist Trinity has three members: (1) Text, (2) History, and (3) Tradition. When paired with tools like Corpus Linguistics, archived dictionaries, and near infinite databases, we should approach something like a Textualist Singularity: all words are known and can be known.

A decade later, that didn’t happen.

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<sup>1</sup> C.S. Lewis, *Mere Christianity*, reprinted in THE C.S. LEWIS SIGNATURE CLASSICS 46 (2017).

<sup>2</sup> See *John* 12:43 (KJV) (“For they loved the praise of men more than the praise of God.”).

<sup>3</sup> HARVARD LAW SCHOOL, *The 2015 Scalia Lecture | A Dialogue with Justice Elena Kagan on the Reading of Statutes*, at 08:29 (YouTube, Nov. 25, 2015), <https://perma.cc/Q29S-MZ8X>.

Most famously or infamously, the *Bostock* case produced three separate “textualist” readings of a statute enacted in 1964 and a sexual dimorphism as old as Genesis.<sup>4</sup>

Justice Gorsuch focused on Text, finding a “but-for causation” requirement because of “because of.” Justice Alito marshaled volumes and volumes of History. Justice Kavanaugh invoked longstanding Tradition rooted in Separation of Powers.

But these Titans of Textualism could not harmonize Text, History, and Tradition to agree on workable Title VII definitions of “sex” or “because.”

Reading these opinions, I discerned that Text, History, and Tradition should yield an agreed “ordinary public meaning” if jurists have a shared teleological end: *truth*.

I hear Pilate’s retort: “What is truth?”<sup>5</sup>

Here, I mean the truth the Textualist Trinity *should* yield: the “ordinary public meaning” of the words at the time of their enactment, as uttered and understood by the relevant writers and ratifiers—consistent with compositionality<sup>6</sup> and against any absurdity.<sup>7</sup>

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<sup>4</sup> See *Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020) (Justices Gorsuch, Alito, and Kavanaugh); *Genesis* 1:27 (“So God created man in His own image . . . male and female He made them.”) (NIV).

<sup>5</sup> See *John* 18:38 (“What is truth?” retorted Pilate.) (NIV).

<sup>6</sup> See James C. Phillips, *The Overlooked Textual Evidence in the Title VII Cases: The Linguistic (and Therefore Textualist) Principle of Compositionality* (May 11, 2020) (unpublished manuscript), <https://perma.cc/4WJL-F93N>.

<sup>7</sup> See John F. Manning, *The Absurdity Doctrine*, 116 HARV. L. REV. 2387, 2456–58 (2003).

Like the “target fixation” problem for pilots, any Textualist can crash the plane if focused too intently on Text (or History, or Tradition) to the exclusion of the whole—especially if the Textualist already decided the conclusion and is now manipulating Text, History, and Tradition to arrive at the desired result:

**Text** when Text seems to yield a preferred answer—even if History or Tradition might suggest a different result.

—or—

**History** when History seems to yield a preferred answer—even if Text or Tradition might suggest a different result.

—or—

**Tradition** when Tradition seems to yield a preferred answer—even if Text or History might suggest a different result.

Without any overarching commitment to harmonize all three to match the *truth*, all of us can “target fixate” on whichever one yields the desired result.

This is where the faithful Christian should have a Textualist advantage: we believe there is such a thing as objective, external, knowable Truth.

H: Listening to you discuss judicial philosophy and interpretive theory, I think many people would be surprised to learn that you never sought to be a federal judge. You had to be recruited.

K: In fact, if memory serves, *you* were the first person to ask if I might relocate to the Amarillo Division to fill the vacancy there.

As I recall, I said I was interested in returning to the Department of Justice but had zero interest in the judiciary. You said that's exactly what you liked about the idea—that it wasn't something I ever sought.

H: Matthew 20 reminds us that “whoever wants to become great among you must be your servant . . . just as the Son of Man did not come to be served, but to serve.” That's the same ethos that we should find in our judges as well. People who will use power, not to serve themselves, but to serve others. People who are *willing* to be a judge—but not *desperate* to be a judge. People whose goal isn't to get onto a bench, but to get into heaven.

Because if you do this job right, it's actually not a fun job. If you're doing it because you want stature and respect and prestige—you want to be praised by the right people and invited to the right parties—then you're going to be distracted. Instead of following the law, you're going to focus on reaching the outcomes that the popular people want you to reach. And we've all seen how that turns out.

I've been involved in the federal judicial selection process for over two decades now, from the Justice Department, to the Senate Judiciary Committee, to the Federal Judicial Evaluation Committee in Texas. And when I think about that process, I'm reminded of the Book of Acts.

When it came time to choose someone to replace Judas and join the remaining eleven apostles, Acts 1 says two things. First, they looked only at those “who have been with us the whole time.” And second, once they established a pool of people who had truly been with them “the whole time,” they chose—by lot.

What a fascinating concept. No campaigning. No interviews. Just look at the lifelong record. Because that's all that matters.

And then, so long as you've narrowed the pool that way, then it really doesn't matter who gets it—as long as they *get* it.

That's a far cry from how the process often plays out. There's a saying that I used to share with my associates, and now I share with my clerks: Nobody reads. That's true in litigation—it's amazing what lawyers miss—they miss what cases say, good and bad—they miss what's in the record. And it's true in judicial selection, too. I saw this in my own process, and in countless others.

Nobody reads. And that's why mistakes are made. Because if nobody reads, then it's not about who would do the job best. It's about who wants the job most.

And that's exactly wrong. It's exactly backwards. Because I want the people who are too busy to campaign—who just want to get the work done and then go home to their families.

That's exactly who you are. You didn't seek this job for personal glory. Because you didn't seek it *at all*. But now that you have it, you're making the most of it by serving others, not yourself. And your record speaks for itself.

K: You asked about me, but *neither* of us sought the federal bench. We have that in common: We both have public service in our DNA, but neither of us had the federal judiciary on our bingo cards back in 2017. As I recall, we've both joked that the Article III Branch is not just the "least dangerous" branch, but also our "least favorite."

My career trajectory looks nothing like the judiciary "game plan" preached in law school or the career service office.

My mother's side served in the Army. My father's side served in the Air Force. After the military, my father worked at General Dynamics / Lockheed Martin, on the Israeli Air Force F-16 program.

With this family history, I always thought I would serve in the military, national security, or law enforcement. After 9/11, I was recruited into the CIA and received an offer to serve as a Collection Management Officer (CMO) in the Directorate of Operations.

When I received my offer over two years later, I was newly married with new family obligations. I deferred, then declined the offer.

That reminds me of a story you've shared with me. You served at the Justice Department Office of Legal Counsel and the Senate Judiciary Committee before heading to the private sector. When Senator Cruz suggested that you take over as Texas Solicitor General, you actually declined at first.

H: I've known Senator Cruz for over 25 years, and as far as I can recall, it's the only time he was ever really angry with me.

Allyson and I were still new to Dallas. We were just starting our careers here. We also wanted to start our family. That was the whole point of leaving D.C. and moving back to Texas.

So I told him that I was profoundly humbled that he would think of me, but that I couldn't do it. But he and others kept at it, and they eventually convinced me to change my answer. As you say, public service is in both of our DNA.

But look, I don't want to suggest that it was some big sacrifice for me to take over the helm from Cruz. It was an amazing honor. And we didn't have kids at the time. So commuting to Austin from Dallas wasn't a big deal. And Allyson ended up commuting to Houston from

Dallas anyway, when Cruz recruited her a few months later to join his firm.

You, by contrast, had to relocate your whole family to take the bench. And since then, you all have had to endure more death threats and public attacks than most federal judges. I've heard you speak with great conviction about how your faith sustains you and your family.

K: If you are a Christian, suffering is not an aberration: it is a promised part of life in a fallen world, part of the sanctification process. But many Americans identify with religious traditions that *deemphasize* suffering.

In 2005, Notre Dame sociologist Christian Smith researched religious beliefs in the United States and ascertained that a sizable percentage of Americans adhere to “Moralistic Therapeutic Deism”—not orthodox Christianity. The “therapeutic” element prioritizes a kind of emotional, psychological happiness that bears little resemblance to the suffering promised in the “red letter” words of Jesus:

- “In this world you will have trouble.”<sup>8</sup>
- “The poor you will always have with you . . . .”<sup>9</sup>
- “If the world hates you, realize that it hated me first.”<sup>10</sup>
- “Whoever does not take up his cross and follow me is not worthy of me.”<sup>11</sup>

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<sup>8</sup> *John* 16:33 (NIV).

<sup>9</sup> *Mark* 14:7 (NIV).

<sup>10</sup> *John* 15:18 (NABRE).

<sup>11</sup> *Matthew* 10:38 (ESV).

- “Blessed are you when people hate you, and when they exclude and insult you, and denounce your name as evil on account of the Son of Man.”<sup>12</sup>

Reformed Baptist theologian John Piper once quipped, “Christians overseas fear the raised fist; Christians in America fear the raised eyebrow.” Sadly, many Christian lawyers fear professional or social disapprobation more than they fear the Lord.<sup>13</sup>

We should always be prudent and seek peace, of course. But we shouldn’t let the “raised eyebrow” deter us from telling the truth, deciding the hard case.

H: And you’ve had more than your share of hard cases—by which I don’t mean hard as a legal matter, but hard as a matter of retaliation by cultural elites.

K: Well, it’s not just me. We have strong District Judges here in the Northern District of Texas, and in other federal districts across Texas. And we are all aware of the 1-16 reversal rate at the Fifth Circuit in some of those headliner cases.<sup>14</sup>

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<sup>12</sup> *Luke 6:22* (NABRE).

<sup>13</sup> *See Proverbs 9:10* (“The fear of the Lord is the beginning of wisdom . . . .”) (KJV).

<sup>14</sup> *See, e.g.,* *Young Conservatives of Tex. Found. v. Smatresk*, 73 F.4th 304 (5th Cir. 2023) (reversing district court ruling against college tuition discounts for illegal aliens over U.S. citizens); *Young Conservatives of Tex. Found. v. Smatresk*, 78 F.4th 159 (5th Cir. 2023) (denial of rehearing en banc); *Neese v. Becerra*, 123 F.4th 751 (5th Cir. 2024) (reversing district court ruling against federal mandate on doctors to provide transgender medical care to children); *Neese v. Becerra*, 127 F.4th 601 (5th Cir. 2025) (denial of rehearing en banc); *see also* *All. for Hippocratic Med. v. FDA*, No. 23-10362, 2023 WL 2913725 (5th Cir. Apr. 12, 2023) (stay of district court ruling against FDA mifepristone

But those who adhere to a Judeo-Christian faith take heart in Deuteronomy 20:1, which teaches us not to worry about numbers.<sup>15</sup>

H: Deuteronomy 20 is actually one of my favorite chapters of the Bible. Under my annual “Bible in a year” reading plan, the assigned reading for my birthday just happens to be Deuteronomy 20. It’s a message that inspires and comforts me every year.

As you note, Deuteronomy 20 teaches us that it’s okay to be outnumbered in battle, so long as your cause is righteous. Justice Thomas speaks powerfully on this point as well, when he says that north is still north, right is still right, even if you stand alone.<sup>16</sup>

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authorization based on determination that pregnancy is an “illness,” and chemical abortion is the cure); *All. for Hippocratic Med. v. FDA*, 78 F.4th 210 (5th Cir. 2023) (reversing district court ruling).

<sup>15</sup> See Deuteronomy 20:1 (NASB) (“When you go out to battle against your enemies and see horses, chariots, and people more numerous than you, do not be afraid of them; for the Lord your God, who brought you up from the land of Egypt, is with you.”).

<sup>16</sup> Justice Thomas was asked: “What helps you stay so consistent in your philosophy and interpretation of the Constitution, in spite of the relentless attacks on you?” His response noted the profound importance of his “abiding faith.” As he explained, “I use my litany of humility. I keep it directly across my desk from me, that you understand that it’s not about you. It’s about things that are far more important than you. And whether people are mad at you has nothing to do with whether you’re right. You know, you can be in the middle of a hurricane. Or you can be on a calm day. North is still north. You can be in a thunderstorm. North is still north. People can yell at you. North is still north. It doesn’t change fundamental things. And in this business, right is still right. Even if you stand by yourself. And I think you’ve got to be comfortable with that.” THE HERITAGE FOUNDATION, *President’s Club Meeting with Justice*

Deuteronomy 20 also teaches that you must be fearless in battle, and that you must leave the afraid and fainthearted at home, because the fearful will only demoralize the fighters.<sup>17</sup>

I think that's an extraordinarily important point—for life in general, and for those who care about the composition of the judiciary in particular. Rewarding the weak demoralizes the strong.

K: Every federal judge receives something like a winning lottery ticket: lifetime tenure, guaranteed salary, “best of the best” law clerks, and Marshals who dedicate and risk their lives to ensure our protection. We are all blessed more than we deserve.

I served as an AUSA and worked on high-profile criminal and terrorism cases that attracted negative media attention and a handful of actionable threats. I am not surprised that controversial cases attract unwanted attention and occasional threats of violence.

But I *was* surprised by the internal culture of the Article III bureaucracy, which is more factional than I anticipated.

During my first year, the Administrative Office of the United States Courts (“AO”) issued draft Advisory Opinion No. 117, a canonical attack on Federalist Society membership and even membership in “religious organizations.”<sup>18</sup> In 2024, the Judicial Conference attacked

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*Clarence Thomas*, at 4:22 (YouTube, Nov. 12, 2007), <https://perma.cc/7JBT-GXQ6>.

<sup>17</sup> See *Deuteronomy* 20:8 (NASB) (“Who is the man that is afraid and fainthearted? Let him go and return to his house, so that he does not make his brothers’ hearts melt like his heart!”).

<sup>18</sup> Judicial Conference of the U.S., Comm. on Codes of Conduct, Advisory Op. No. 117 (Exposure Draft Jan. 2020).

single-judge divisions in Texas after decades of inattention to “judge shopping” by patent and bankruptcy litigants in federal courts across the country.<sup>19</sup>

For all four years of the Biden Administration, the Article III bureaucracy stayed silent when Judges Aileen Cannon, Drew Tipton, Wes Hendrix, and other so-called “Trump judges” were attacked—but mobilized *immediately* when Democrat-appointed judges received unsolicited pizza.

That has been the most disheartening and disorienting stress factor.

But my wife and kids are well-versed in Thomas Aquinas’s definition of love: “to will the good of the other.”<sup>20</sup> We focus on the mission and the “other,” not the external and internal threats. And we pray for the Marshals.

H: So the concern with the unsolicited pizzas is that the sender knows where the judge lives. But do you know who else knows where the judge lives? Protestors.<sup>21</sup>

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<sup>19</sup> Judicial Conference of the U.S., Comm. on Court Administration and Case Management, *Guidance for Civil Case Assignment in District Courts* (March 2024).

<sup>20</sup> THOMAS AQUINAS, *SUMMA THEOLOGICA*, pt. I-II, q. 26, art. 4 (Fathers of the Eng. Dom. Province trans., Benziger Bros., 1st Am. ed. 1947) (1274).

<sup>21</sup> See, e.g., James C. Ho, *Fighters, Climbers, and the War for the Judiciary*, 1 JLCG 421, 424 n.16 (2025); James C. Ho, *Not Enough Respect for the Judiciary—Or Too Much? Judicial Arrogance and the Myth of Judicial Supremacy*, HARV. J.L. & PUB. POL’Y PER CURIAM, No. 24, at 4–5 (Winter 2026).

These critics conveniently forget what was said *before* the most recent election. People who protested judges at their homes—activists who offered bounties to track down judges at restaurants—they weren’t just tolerated; they were celebrated by officials in Congress and at the White House.<sup>22</sup> Meanwhile, the Justice Department refused to enforce federal law prohibiting protests at judges’ homes.<sup>23</sup>

I’m so glad you mentioned the Marshals. Frankly, I’ve always been embarrassed when people talk about “judicial courage.”

You know who has courage? The people who actually put their lives on the line for their jobs—soldiers, police officers, firefighters—they’re the ones who show courage. I don’t know that it takes much courage to show up at a nice cushy office, and enjoy guaranteed salary for life, and smart ambitious law clerks helping us do the work every day.

K: Well, you and Allyson have dealt with death threats too, I know. You and Allyson also had some unique considerations that I didn’t face in deciding whether to take the bench.

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<sup>22</sup> See, e.g., Andrew C. McCarthy, *Biden Encourages People to Violate the Law by Protesting at Justices’ Homes*, THE HILL (May 11, 2022, at 10:00 ET), <https://perma.cc/9HW2-PPBQ>; Yael Halon, *Progressive Lawmakers Rally Behind Protesters at Justices’ Homes, Churches: ‘I Welcome It’*, FOX NEWS (May 10, 2022, at 22:56 ET), <https://perma.cc/KT58-99Y2>; Allie Griffin, *Jean-Pierre: ‘For sure’ White House approves protest of Kavanaugh steak dinner*, N.Y. POST (July 8, 2022, at 20:07 ET), <https://perma.cc/L383-VRMZ>; Thomas Catenacci, *ShutDownDC Group Offers Bounties on Twitter for Public Sightings of Conservative Supreme Court Justices*, FOX NEWS (July 8, 2022, at 16:41 ET), <https://perma.cc/82UK-3XJT>.

<sup>23</sup> See 18 U.S.C. § 1507; see also, e.g., *Oversight of the Department of Justice: Hearing Before the S. Comm. on the Judiciary*, 118th Cong. 30–32 (2023) (S. Hrg. 118-32) (exchange between Sen. Ted Cruz and Attorney General Merrick Garland).

I'm talking about the fact that you were both active Fifth Circuit practitioners before you joined the court. How did you think and pray through that decision?

H: Allyson and I have both been so very blessed in our lives, and that includes practices and careers that we really enjoyed. And by 2017, we were both really starting to hit our stride. So yes, like you, I wasn't planning to pursue the bench. Instead, we were focused on helping the Senators identify others to fill various vacancies—including you, of course!

So when I got the call from the Senator's chief counsel asking me if I would consider it, I was very surprised. Allyson and I discussed how it might work, with both of us as Fifth Circuit practitioners. And it's actually not as hard as you might think.

As a judge, I have to recuse, not just on every case that Allyson is on, but on every case anyone at her firm is on, whether she's involved or not. The recusal applies to the whole firm. And it's a big firm.

But that's okay. Because at any given sitting, there are multiple Fifth Circuit panels. So it's not a big deal for the firm to be recused on any panel I'm ever on. There are other Fifth Circuit panels. The firm isn't recused from our court altogether.

K: So how did it work when President Trump named you to his Supreme Court list in 2020?

H: From a recusal standpoint? Well, there was no vacancy at the time. The President wasn't actually nominating anyone. He was just putting out a list.

But if you're asking purely hypothetically about recusal, there are multiple Fifth Circuit panels, but there's only one Supreme Court.

I can't imagine that Allyson's firm would want to be categorically recused from the highest court in the land. Or any other major firm with a significant appellate practice, for that matter. To have to tell every client that, if you hire them, they can only seek cert from an eight-member Court? That would effectively end her career and her practice—one she's worked so hard, for decades, to build.

I brought this up when folks called me about the list in 2020. I didn't want to deceive anyone. But I was told it wasn't a problem. There was no vacancy. The only question was whether I was willing to be included on a list.

K: Final topic. I think non-Christians struggle to understand you and your motivations. With each forceful opinion or strong dissent, various commentators search for the most uncharitable explanation: Judge Ho is angry, editorializing, or auditioning.

But I've known you and Allyson for twenty years. Hilariously, I was the Baker Botts associate who first interviewed Allyson when she joined the firm: a total inversion of hierarchy. So I know that you firmly believe what you write and mean what you say. How do you respond to the critics who *don't* know you?

H: If you can't just tune out the critics, do your job, and go home to your families, then honestly, you need to find another line of work.

Chief Justice Roberts famously compared judges to referees. I agree with the analogy. But I draw a very different message from it. I see it as a cautionary tale.

People yell at refs during football games. I certainly have. I don't do it because I've got some deep philosophical issue with the ref's approach to pass interference. I do it because I want my team to win!

The same thing applies to judges. People want the outcomes they want, no matter what the law says. I don't see refs lecturing fans not to boo. You just have to accept that a lot of it is motivated. There's an agenda, or a narrative, that people want to push—whether it's the media, or the academy, or sometimes even your own colleagues. Careful readers know the truth. And that's good enough for me.

If anything, I wonder if people don't criticize judges *enough*.<sup>24</sup> There's a thing called home field advantage in sports. Those who have studied home field advantage have concluded that it's caused by refs who are responding to the booing of the crowd.<sup>25</sup> Sometimes the booing is just emotional. Sometimes it's deliberate—we call it “working the refs.”<sup>26</sup> But either way, it's been determined to be the leading cause of home field advantage.

Well, one way to eliminate home field advantage is for the away team fans to boo just as loudly.<sup>27</sup> Refs are *supposed* to tune out all of the booing, no matter where it comes from. But if the only way to keep the ref honest is to make sure they'll be booed no matter which call they make, then maybe we need *more* of that, not less.

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<sup>24</sup> See Ho, *Not Enough Respect for the Judiciary*, *supra* note 21.

<sup>25</sup> See James C. Ho, *Fair-Weather Originalism: Judges, Umpires, and the Fear of Being Booed*, 26 TEX. REV. L. & POL. 335, 341–43 (2022) (citing TOBIAS J. MOSKOWITZ & L. JON WERTHEIM, SCORECASTING: THE HIDDEN INFLUENCES BEHIND HOW SPORTS ARE PLAYED AND GAMES ARE WON (2011)).

<sup>26</sup> *Id.* at 350–51.

<sup>27</sup> *Id.* at 342–43 (noting that home field advantage was eliminated when games were played without any crowd during the COVID-19 pandemic).

I'm reminded of the old joke about the judge who is offered a bribe by the plaintiff. So the judge goes to the defendant and says: Give me the same amount, and I'll decide the case on the merits. It's a terrible joke, of course. But you get the idea. Judges aren't supposed to care about public criticism. But if they're going to be affected by public criticism, then don't blame people for making sure the criticism comes from all sides.

Now, if a judge sincerely thinks it would help to explain why a particular criticism is wrong-headed, that's fine. I've done that myself at times. But thank goodness we live in a country where citizens are free to say wrong things.

If you respect the First Amendment, then you trust citizens to separate wheat from chaff. Harsh criticism might reflect poorly on the target. But it might just reflect poorly on the *speaker*. And respecting the First Amendment means trusting the American people to be able to tell the difference—or at least not worrying about whether they can.

K: Since the 2024 election, the Federal Judges Association, the Administrative Office of the U.S. Courts, the American Bar Association, and individual judges have complained about “unfair” criticism of the judiciary. Curiously, these same organizations were silent during the last Administration. As Christians, we expect to be criticized for our faith and unpopular beliefs. The Bible teaches this message over and over.

H: Which brings our conversation back full circle. In a fallen world, being a faithful Christian has everything to do with being a faithful originalist.

Because a faithful originalist, like a faithful Christian, should not just expect harsh criticism. Indeed, you should wonder what you're doing

wrong if you don't get it. And you should not only be okay with it when it comes—you should embrace it. Pressure is a privilege.<sup>28</sup>

If you don't want to be in a line of work where you are routinely criticized—if your self-esteem is so fragile that life tenure, and a guaranteed salary that puts you in the top 10% of the country—if all of that is not enough for you to keep your oath, even when it hurts, as Psalm 15:4 teaches, then you shouldn't be doing this job.<sup>29</sup> You can quit. It's life tenure, not a life sentence.

There's an essay I try to re-read every so often, called *The Inner Ring*.<sup>30</sup> C.S. Lewis describes what motivates most people. The desire for elite approval. The desire to climb. To gain entry into the inner ring.<sup>31</sup>

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<sup>28</sup> See James C. Ho, *Pressure Is a Privilege: Judges, Umpires, and Ignoring the Booing of the Crowd*, HERITAGE FOUND. (Dec. 6, 2023), <https://perma.cc/S6L6-UP9P> (“The final rounds at the U.S. Open are held at Arthur Ashe Stadium. Those who have had the honor of competing there call it the most intense, stressful, pressure-packed stadium you'll ever play in. It's not just that the stakes are enormous. The stadium is also physically daunting. It's been described as ‘unapologetically large and loud’ like its host city. Every player who competes on that court must first walk by a plaque that prominently displays four important words: ‘Pressure Is a Privilege.’ Those same four words are also what judges should keep in mind every time we step onto the court.”).

<sup>29</sup> *Psalm 15:4* (quoted in *Lefebure v. D'Aquilla*, 15 F.4th 650, 663 (5th Cir. 2021)).

<sup>30</sup> C.S. Lewis, *The Inner Ring* (1944), reprinted in *THE WEIGHT OF GLORY AND OTHER ADDRESSES* 55 (1949) (cited in *United States v. Bell*, 130 F.4th 1053, 1054 (5th Cir. 2025) (Ho, J., concurring in the denial of rehearing en banc)).

<sup>31</sup> “I believe that in all men's lives at certain periods, and in many men's lives at all periods between infancy and extreme old age, one of the

You'll do things you shouldn't, because you want the inner ring. As Lewis puts it: "Of all passions the passion for the Inner Ring is most skilful in making a man who is not yet a very bad man do very bad things."<sup>32</sup>

But you don't have to be that way.<sup>33</sup> Just ask yourself: What's important to you? What do you want from this life? Is it prestige? Is it stature? Is it acceptance? Or is it truth—no matter who else cares?

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most dominant elements is the desire to be inside the local Ring and the terror of being left outside." *Id.* at 58.

<sup>32</sup> *Id.* at 63. As Lewis asks: "[H]as the desire to be on the right side of that invisible line ever prompted you to any act or word on which, in the cold small hours of a wakeful night, you can look back with satisfaction?" *Id.* at 61; *see also id.* at 60–61 (asking if "you have ever derived actual pleasure from the loneliness and humiliation of the outsiders after you yourself were in," or if "you have talked to fellow members of the Ring in the presence of outsiders simply in order that the outsiders might envy," or if "the means whereby, in your days of probation, you propitiated the Inner Ring, were always wholly admirable").

<sup>33</sup> "My main purpose in this address is simply to convince you that this desire is one of the great permanent mainsprings of human action. It is one of the factors which go to make up the world as we know it—this whole pell-mell of struggle, competition, confusion, graft, disappointment and advertisement, and if it is one of the permanent mainsprings then you may be quite sure of this. Unless you take measures to prevent it, this desire is going to be one of the chief motives of your life, from the first day on which you enter the profession until the day when you are too old to care. That will be the natural thing—the life that will come to you of its own accord. Any other kind of life, if you lead it, will be the result of conscious and continuous effort. If you do nothing about it, if you drift with the stream, you will in fact be an 'inner ringer.' I don't say you'll be a successful one; that's as may be. But whether by pining and moping outside Rings that you can never

As Lewis concludes: “Until you conquer the fear of being an outsider, an outsider you will remain.”<sup>34</sup> “The quest of the Inner Ring will break your hearts unless you break it.”<sup>35</sup>

“But if you break it, a surprising result will follow. If in your working hours you make the work your end, you will presently find yourself all unawares inside the only circle in your profession that really matters. You will be one of the sound craftsmen, and other sound craftsmen will know it.”<sup>36</sup>

Reading *The Inner Ring* is like reading the Bible. It gives me peace. Because this can be a lonely experience. I don’t mean being a judge. I mean being a Christian. It helps to be reminded that I’m not alone.

There’s a scene from the movie *Spanglish* that captures the same sentiment.<sup>37</sup> One of the main characters is a highly regarded chef. He’s trying to convince his colleagues that he doesn’t want a four-star

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enter, or by passing triumphantly further and further in—one way or the other you will be that kind of man. I have already made it fairly clear that I think it better for you not to be that kind of man.” *Id.* at 61–62.

<sup>34</sup> *Id.* at 64.

<sup>35</sup> *Id.* at 65.

<sup>36</sup> *Id.* “And if in your spare time you consort simply with the people you like, you will again find that you have come unawares to a real inside: that you are indeed snug and safe at the centre of something which, seen from without, would look exactly like an Inner Ring. But the difference is that its secrecy is accidental, and its exclusiveness a by-product . . . for it is only four or five people who like one another meeting to do things that they like. This is friendship. Aristotle placed it among the virtues. It causes perhaps half of all the happiness in the world, and no Inner Ringer can ever have it.” *Id.*

<sup>37</sup> SPANGLISH (2004).

review from the most prestigious food critic. He wants to be a great chef at his own little neighborhood restaurant. He wants to be able to work with good people. But he talks about how getting a four-star review changes people. It turns them into people he doesn't want to be.<sup>38</sup> That's *The Inner Ring*, in movie form.

Of course, no one believed him. But I do.<sup>39</sup>

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<sup>38</sup> “I worked at a restaurant in New York that had four stars. It’s like a line formed to become an [expletive]. People’s accents changed. The heart went out of the place. You understand?” “No!” See NOW PLAYING, *Chef Adam Sandler | Fancy Restaurant Kitchen Scene | Spanglish*, at 01:00 (YouTube, Aug. 9, 2022), <https://perma.cc/E2JP-3D9A>.

<sup>39</sup> This brings to mind another lead character from another movie who also wouldn’t have believed the chef from *Spanglish*: Miranda Priestly. See THE DEVIL WEARS PRADA (2006); see also MOVIECLIPS, *The Devil Wears Prada (5/5) Movie CLIP*, at 01:01 (YouTube, June 18, 2015), <https://perma.cc/L5XM-KEA9> (“Oh, don’t be ridiculous, Andrea. Everybody wants this. Everybody wants to be us.”).