

The View from Above (the Bridge)



Toward the end of my judicial career, I was hearing a particularly unpleasant divorce case. The parties did not necessarily care about having their property and custody issues resolved in my usual fair and wise manner. Rather, they each wanted to make sure that I understood what a perfectly no-good person the opposite party was. The only way they could do this, of course, was to recount in excruciating detail every argument, insult, and grievance they had inflicted on one another during their entire marriage.

I had originally sought election to the probate bench to deal with children's issues. At this moment, therefore, I was particularly grateful to the legislature for enacting "court reform," which resulted in my being given responsibility for the Family Division of the Circuit Court for my Upper Peninsula county. This day, I was responsible for equitably dividing pots, pans, hunting jackets, fishing poles, and hip boots. I realized that the time had come for me to step down from the bench. I also began to reflect on my life as a small town lawyer and judge and what it was that attracted me to this small mining town in the Upper Peninsula.

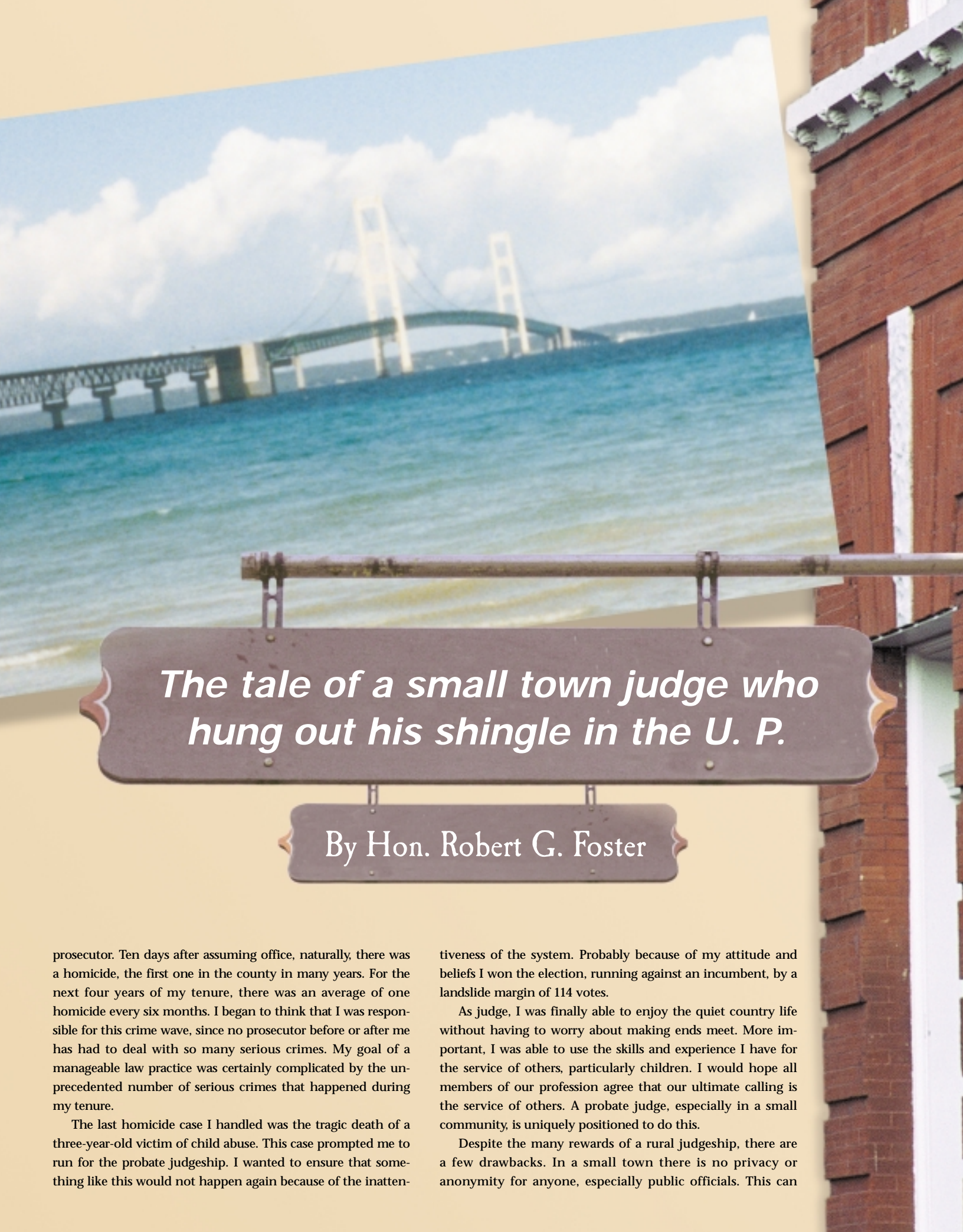
I was not always a country boy, having grown up in Grand Rapids and Kalamazoo. But during my second year at that bastion of liberal thought in Ann Arbor, it was my good fortune to meet a girl from the Upper Peninsula. This lovely girl opened my eyes to the opportunity and tranquility that rural life could offer.

After graduation from the University of Pittsburgh Law School, having had quite enough of city life, we picked up and headed north. My intent was to literally "hang out my shingle" and wait for fame and fortune to find me. After two years working for a rural legal services program, I took the opportunity to go into private practice with an established sole practitioner. Unfortunately, this coincided with economic times that were even more arduous than usual in the chronically depressed Upper Peninsula. Practically as soon as I entered private practice the local iron mine shut down. It was the largest area employer at the time. Overnight, 500 jobs were gone in a county with a population of only 25,000. The market for wills, deeds, divorces, and business formations disappeared.

While I expected some economic sacrifice for living in God's Country, I didn't care to starve to death. I found the common wisdom to be correct: that a law practice in a small town is a good way to use an expensive and prestigious education to live in poverty. I discovered that I was not suited for a life of deprivation.

Naturally, I did what country lawyers for generations have done; I turned to public service and seized the opportunity to fill a vacancy in the office of county prosecutor.

Twenty years ago, the Upper Peninsula was far removed from the problems of civilization. There was (and still is) virtually no street crime and certainly no violent crime. At least that was true until I became



*The tale of a small town judge who
hung out his shingle in the U. P.*

By Hon. Robert G. Foster

prosecutor. Ten days after assuming office, naturally, there was a homicide, the first one in the county in many years. For the next four years of my tenure, there was an average of one homicide every six months. I began to think that I was responsible for this crime wave, since no prosecutor before or after me has had to deal with so many serious crimes. My goal of a manageable law practice was certainly complicated by the unprecedented number of serious crimes that happened during my tenure.

The last homicide case I handled was the tragic death of a three-year-old victim of child abuse. This case prompted me to run for the probate judgeship. I wanted to ensure that something like this would not happen again because of the inatten-

tiveness of the system. Probably because of my attitude and beliefs I won the election, running against an incumbent, by a landslide margin of 114 votes.

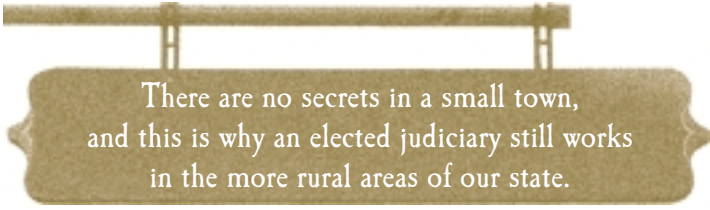
As judge, I was finally able to enjoy the quiet country life without having to worry about making ends meet. More important, I was able to use the skills and experience I have for the service of others, particularly children. I would hope all members of our profession agree that our ultimate calling is the service of others. A probate judge, especially in a small community, is uniquely positioned to do this.

Despite the many rewards of a rural judgeship, there are a few drawbacks. In a small town there is no privacy or anonymity for anyone, especially public officials. This can

be a benefit. High visibility makes winning (or losing) elections easier. For instance, my first contested campaign for the judgeship cost a sum total of \$997, simply because the candidates were already well known in our small community. No amount of campaigning or advertising can counteract a reputation developed day by day over a career or lifetime. I won my next contested election by a margin of two to one, despite being outspent three to one. In a rural area, an elected official, or anyone aspiring to be one, campaigns for office anytime he or she steps outside their door. There are no secrets in a small town, and this is why an elected judiciary still works in the more rural areas of our state.

Prominence is a double-edged sword, however. High public visibility means that if I need a replacement widget in the middle of a home repair project, I can't just run to Wal-Mart in my greasy, rumpled work clothes. If I am not showered, shaved, pressed, and sober every time I appear in public, my fellow citizens would undoubtedly conclude that "my drinking problem" had gotten the better of me again.

A small town judge's private life is fair game for public scrutiny and comment. It is easy for the details of a judge's life to become public knowledge, and the entire community immediately knows my affairs. When it comes to dissemination of information, the Internet is a primitive form of communication compared to the typical small town. There are things about myself that I did not know until I heard them on the street. Similarly, there are events in my life, widely known and believed in the community that never happened. One can only hope that the fictitious events are evenly balanced between the good and the bad, although I am uncertain which is considered which in a small town.



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One of the chief frustrations of a small town judge is the necessity of dealing with local governing units, primarily over the operation and funding of the court. Unfortunately, awareness of the constitutional doctrine of separation of powers is not a prerequisite for election to local office, nor even thought to be relevant by those who are elected. Consequently, most local politicians assume that if



Illustration by Beisy VanderVeen

they fund the court system, they have a right to decide how it is run. A small town judge either must defer to this attitude, potentially sacrificing the integrity of the court, or reeducate the politicians every election cycle.

The process is complicated by the fact that, in the eyes of the typical rural politician, all public employees are overpaid and underworked. Naturally, the probate judge, whose responsibilities and necessity are seen as questionable at best, is considered the most overpaid and underworked of all public servants. While this belief is not entirely without foundation, this attitude can complicate the ability of a truly competent and dedicated public servant to perform the duties of office. If the judge is particularly aggressive in meeting his or her responsibilities, a conflict with the county board is inevitable. Funding disputes between judges and their funding units have been common in the past, ultimately prompting our Supreme Court to limit local courts' budgeting authority. See Supreme Court Administrative Order 1998-5.

To avoid conflicts, a small town judge must have strong diplomatic and political skills. When a county commissioner questions the need to spend so much money on the court system when "only 10 percent of the population ever uses it in the first place," responding taxes those diplomatic and political skills to the extreme.

Another drawback of living and working in the Upper Peninsula is the way in which those who are forced to live below the bridge perceive Yoopers. At best, we are perceived as “quaint” by the rest of the state. At worst, we are treated as a different species altogether. The recent Jeff Daniels’ film *Escanaba in da Moonlight* certainly does not enhance the image of those of us in the Upper Peninsula. The characters in *Escanaba*, while perhaps exaggerated, certainly exist up here. It is a mistake to assume, however, that there are no higher functioning life forms here.

I do not resent the condescending attitudes I sometimes encounter in Troll Land below the bridge. When this happens, I just smile to myself, since I know that if the truth was known, all would envy the quality of life and professional satisfaction I have enjoyed living and working in the North.

Nevertheless, I do not want to paint too rosy a picture of Yooper life. It might encourage others to immigrate here. The quality of life in the Upper Peninsula will be destroyed if “civilization” manages to find us. I would hate to have to start locking my doors when I leave home, or to be afraid to glance to the left or right while stopped at a stoplight, or to have to spend an hour in traffic at either end of my workday. I enjoy living within walking distance of everything, with recreational and social opportunities just outside my door, free of the aggravation

and insecurity of the city. After all, the U.P. is the only place I know where—when crossing the Mackinac Bridge—you have to pay admission to enter and a fine to leave. Up here it is still possible to find the ideal balance between one’s personal and professional life, even though, in the Upper Peninsula, WINTER is spelled in capital letters.

Therefore, the next time you are in the company of a Yooper lawyer or judge, try not to resent his or her superior and serene attitude. For lawyers fortunate enough to find a way to support themselves up here, there is simply no better place to live and work. While it is true that the Upper Peninsula is hundreds of miles and at least 10 years away from the rest of Michigan, most days, that is a good thing. ◆



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