

The Journal of the Section of Litigation

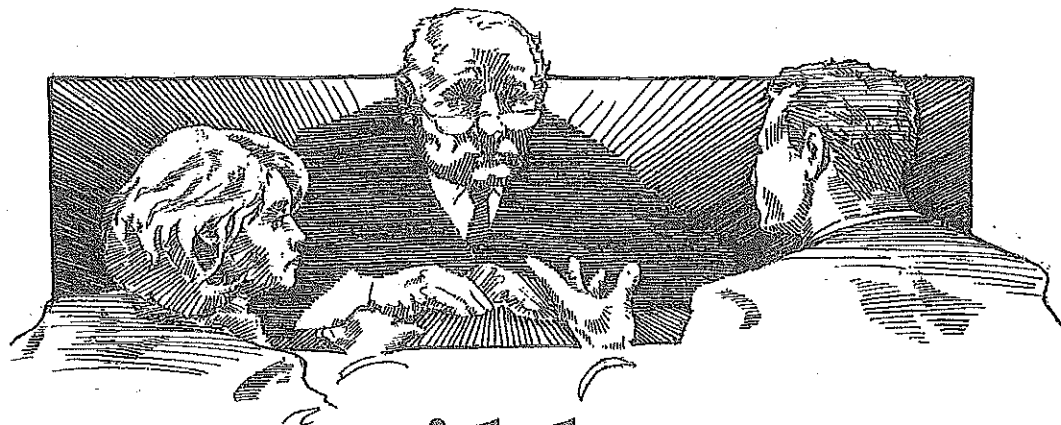
American Bar Association

# Litigation

Vol. 35 No. 1 Fall 2008



Just Deserts



## Sidebar

# Judges

by **Kenneth P. Nolan**  
Senior Editor

They're easy targets. Sitting up there all in black, everyone rising whenever they enter or leave, making rulings like some Greek gods, all-knowing, but falling for some sleazebag's bull. They think who they are. Glorified politicians.

The complaints are universal. Pompous, lazy, biased, even corrupt. And all true. Hey, I live in Brooklyn, and in the past few years, a half dozen or more judges have resigned or gone to jail for soliciting bribes, dipping into an elderly aunt's savings, practicing law while on the bench, paying for the nomination, and all sorts of ugliness.

And we've all been before these charlatans. We have the scars and wounds of injustice. We've all been hometowned. Battling not only our skilled adversary but also the judge, like the bald one who ruled against me as often and as deftly as possible. Made me smile just a touch when I read his obituary.

We remember the evil ones, the bizarre rulings that would be hilarious if not so devastatingly wrong.

"Mr. Smith, what do you think of the finding in *Jones v. XYZ*," asked the erudite judge, interrupting the squeaky clean, young lawyer.

"I'm sorry, Your Honor," stammered the kid at the bare podium

in a courtroom packed with others waiting to argue motions.

"Did you read it?"

"No, I haven't. I should have . . ."

"Perhaps you should consider another profession," the judge smirked.

Yet when I consider the many judges before whom I've appeared, I realize that the rotten few were aberrations. Almost all have been hardworking, courteous, and fair. What's sad about all those Brooklyn judges trading black for orange is that most were competent. As they say in the neighborhood: He's a good man, Mrs. Malone, but he has just one flaw.

And the job ain't easy. Overwhelming paper, life-changing decisions, second-guessed by judges breathing different air upstairs, and the pay is less than a first-year associate at a megafirm. New York state judges haven't had a raise in 10 years. Used to be a judge would command respect in the community, but that disappeared like so much in our increasingly vulgar society. Even some courthouses—not the federal palaces of course—are dumps.

*Kenneth P. Nolan is with the New York City firm of Speiser, Krause, Nolan & Granito.*

Yet even under these penny-pinching, exasperating conditions, justice is done. Often with grace, intelligence, and humor.

"Suck my d—," screamed the dirtbag defendant to the prim judge during sentencing.

"Application denied" was her swift and calm response.

Sure the system's flawed. It's agonizingly slow, costly, and frustrating. But complex billion-dollar cases are tried, rapists and murderers are given a fair shake, the poor and powerless are heard. From landlord/tenant to matrimonial to the Supreme Court, ordinary individuals try to do what's right, what's fair, what's American. And succeed. Unfortunately, these good public servants only make the news when there's an indictment, a foolish outburst, or some other anomaly.

I was recently involved in aviation litigation in Lexington before Senior Judge Karl S. Forester in the Eastern District of Kentucky. For reasons somewhat bizarre yet understandable, this litigation involved literally thousands of filings, hundreds of motions, and innumerable decisions. For example, one party filed more than 50 in limine motions within six weeks of trial. Did Judge Forester show ire, frustration, or even bewilderment? He did his job. Published rulings daily, resolved issues

large and small with sophistication and wisdom. He never even raised his voice, which is when I realized that all those, Yes, ma'ams and Thank you, sirs, are not just meaningless polite phrases, but teach civility and courtesy, something I and some of my Yankee colleagues should learn.

As a senior judge, Judge Forester could have refused this case and chosen an easier one. Instead, not only did he guide this litigation through a hundred depositions and hundreds of thousands of discovery documents, but he also did so without rancor or threats.

"What's your expert going to testify to, Mr. Nolan?" a hardened New York judge inquired.

"He's going to testify that there was a defect in the design of the car, Your Honor."

"If he does that, Mr. Nolan, I'm going to have him indicted for perjury."

Yes, the case settled.

That intimidating behavior was unnecessary. Instead, Judge Forester presided with soft-spoken deadlines and learned and incisive rulings until the case settled a few days before trial.

My good friend Matt D'Emic sits in the Brooklyn Mental Health Court in Supreme Court, Kings County. This innovative court was set up to guide defendants with mental illness toward treatment rather than jail. It's the largest of New York's 18 specialized mental health courts and takes nearly 100 participants each year. Judge D'Emic has headed this court from its inception six years ago with concern, courage, and wit.

Felons who plead guilty are steered to this court for treatment, and if they adhere to the program of treatment and court supervision, they avoid prison. With affable encouragement, Judge D'Emic asks about their personal lives, their families. He makes justice accessible. Defendants approach the bench, shake hands, speak directly to him. And if they violate the rules, they get locked up.

Sounds like an easy job, but the risks are great, especially in a city ruled by tabloids ready to pounce if one of the defendants commits a heinous crime while in this program. Then it will be the judge's fault. Still, Judge

D'Emic continues, like so many others, to do his job with competence and compassion.

Of course, there are many others. Judge Maxine Duberstein, one of the first female judges in Brooklyn, who combined maternal concern with an iron will. More than 20 years ago, I settled a malpractice case involving a disabled child before Judge Edward Korman of the Eastern District of New York, who continues to inquire about the family. Judge Robert Sweet of the Southern District of New York combines street smarts with humor and intellect. And on and on.

I'm sure if you consider your experiences, your list of vivid faces and their acts of quiet generosity will be extensive. □