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Persuasion



Sidebar

May It Please the Court

I kinda know by now that good old Barack ain't appointing me to the Supreme Court. After all, most of the Nine could have been my classmates at Holy Name grammar school, and adding a fourth outer borough New Yorker might upset some of his fellow White Sox fans. Even with no judicial experience and only superficial knowledge of the Constitution, however, I could probably answer all those dopey hypotheticals from the pathetic senators whose only objective is to sit on Oprah's couch. So I won't be the swing vote that allows a Christmas tree to be placed in some dreary town square. Or sentence a delusional mafia wannabe to life for murdering his best friend on the orders of some old coot in a social club on 18th Avenue. And even though I had my picture taken with Mayor Bloomberg, he's not begging me to preside over the zoo that is housing court.

I'll never be a judge, which, quite frankly, is fine by me. Way too much reading, listening, and being patient. And you have to be fair, which I'm not. I couldn't sit silently while some blabbermouth convinced a jury that his thieving client was wronged. After an hour or so, my ADD would kick in, and I'd either be interrupting all over the place or just continue to check scores and read blogs on ESPN. It's easy to be pleasant to jurors and clerks and court officers, but lawyers? Have you ever seen the dreck who roam the courtroom halls in their stained ties and cheap shoes?

by **Kenneth P. Nolan**
Senior Editor

Like you, I'll just have to continue to drag my butt into the office, worrying about rent and computers and listening to my Virginia partner moan about New York City and State taxing everything and everyone. I'm so proud of my New York politicians who always win the gold medal for ingenious ways to create new taxes. Yet I have tuitions to pay and a government deficit to reduce, so donning a black robe and never paying for another drink are things I'll never experience.

Even though I can't fathom the agita in sentencing some hapless drug mule or the endless nightmare of mind-numbing motion after motion, I can still tell judges how to act, what to do. I'm an arrogant baby boomer, and I know it all. One caveat, just don't ask me to follow my own advice. My generation's mantra is simple: Live as I say, not as I do.

So I have a list for my colleagues who hold those scales of justice equal (most of the time). Those hard-working, underpaid legal scholars who I bump into occasionally on Friday afternoons at the driving range on Flatbush Avenue. "They haven't given us a raise in 10 years, Kenny, whaddya want?"

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Be on time. When I was a pup, I brought Shepard's supplements to read while I waited the hour or three for a conference or motion. Today I bring a book, the tabloids, *The Times* crossword puzzle. Sometimes I go bonkers and study the file. You can't decipher *Ulysses*? Have an active practice in state court and you'll get through it twice in a year. And we know that 92 motions and 21 conferences clog your Wednesday morning calendar. I don't mind waiting till second call if my adversary foolishly believed that living in the burbs, with its traffic, was better for her kids. But what bugs me is when the judge saunters to the bench 45 minutes late without an explanation or an apology. Nada, zilch, zero. Now, second call is 2:00 PM, which means 2:30 and you're stuck for nearly the day only to hear, "Counselors, everything's in your papers, right? OK, submitted."

Same with trials. The good judges are there early, an example for the jurors, ready to rock and roll. I have enough migraines with prima donna experts who can't work Thursdays or Tuesdays or every other Monday and crap like that. Starting at 10:00, 10:30 disrupts everyone's schedule, and instead of concentrating on my direct, I'm thinking about how to juggle witnesses. If you can't make it on time, just tell us why. We'll still mutter under our breath, but we'll understand.

Don't take a millennium to decide a motion. My record is three years, and I

lost. The judge was old and, I'll be kind, a lunatic. I finally told my client to call chambers directly because she no longer believed me. Should I write a nasty letter, complain to the chief judge, or just make discreet and polite inquiries and then quietly curse once the clerk told me for the hundredth time "we're working on it, not too much longer"? I've seen that diner pancake scene in the movie *Road Trip*. So if I'll never complain to a waiter, I'm not about to rat on a judge when she determines if I win or lose.

Can anyone read all these "judge, he didn't answer interrogatory 127 (A) (9) (e)" motions and remain sane? Never mind the summary judgment, 12(b)(6), and other garbage that drives you to have a shot of Patrón at lunch. Thank



God for naïve clerks who actually deem this stuff fascinating. Too many pages, cases cited, time wasted on juvenile "he told his client not to answer two questions" disputes. But it's like everything else you despise. Move it off your desk. If you can't, send word that you haven't forgotten, that you're busy, that you will decide . . . eventually.

You're not God. Let's be honest, 90 percent of judges were appointed because they were in kindergarten with some senator or, more likely, were in the same sorority with the one who bankrolled the senator's campaign. Or you kissed the ring of the county political boss. Or all of the above. Even though the system—whether federal or state—is far from perfect, most judges are qualified and conscientious. But not perfect. When you're wrong, admit it and move on.

Don't be a bully. My late friend Frank Maher was scheduled to select a jury in Brooklyn and was ordered by the assignment judge to begin immediately. "My expert won't be available for two weeks, Judge," he reasoned.

"I don't care, Mr. Maher, start now."
 "I can't, Judge."
 "Yes, you can."
 "No, I can't."
 "Mr. Maher are you going to select a jury?"

"No, Judge."
 "Mr. Maher, go stand in the corner over there until you're ready to select."

An hour later. "Mr. Maher, are you still standing there?"

"Yes, Judge."

Sure, you have power and prestige. Like church, you wear vestments and everyone stands when you enter. An understated firm demeanor is better than a maniac, always shrieking, intimidating. At the initial conference, the old

judge listened to our summary of the facts, gave us discovery deadlines and then turned to me, pointed his finger in my face, and angrily growled, "And if you don't keep these deadlines, SANCTIONS!" Luckily, I was raised in an era and family where verbal threats were commonplace—"If you don't clean your ears, potatoes will grow in them . . . if you fight with your brother again, Santa will bring you coal . . . if you don't study your spelling, you'll never get a job. . . ."

Most judges have wonderful temperaments, which shocks me because lawyers are so annoying, perpetually whining about frivolous claims or callous insurers. There's never enough—more documents, more depositions, more time. The creative juices only flow when deadlines approach. Then ridiculous excuses abound which would make me furious. I'd raise my voice and act like that nut in the Abbott and Costello routine who would go bananas whenever Niagara Falls was mentioned.

On occasion, judges are mean, even cruel—such as when the erudite judge

told the young lawyer who hadn't read a significant case, "Don't you think you should consider another profession." If I had guts, I would have stood up and objected. Like the two dozen other cowards, I remained silent.

Lawyers have to make a living. I know, I know, judges have tremendous pressure from the bureaucrats who now administer the courts, tracking dispositions, days on trial, and constantly demanding more cases be resolved. When asked how's it going, some judges respond honestly, "I move my cases." Not a mention of justice or fairness or thoughtful opinions. It's all about statistics. So I acknowledge your burdens. Your job, like mine, sometimes stinks.

Please remember, however, eons ago when you practiced and appreciate that it's much more difficult in this harsh economy. No lie. So don't mandate impossible deadlines or respond, "Not my problem, counselor" when some poor slob has a legitimate need for an adjournment. Our clients are not easy, and we have to pay our own health insurance. A fine line indeed between flexibility and firmness. Many, many judges accomplish this with smiles and laughter.

Be fair. It's natural that if you defended corporations against bogus employment discrimination suits, your perception of plaintiffs is that they're all lying, money-grabbing bandits. And if you've spent many years looking into the teary eyes of victims of corporate greed and neglect, we know you'll be sympathetic when my widower shuffles into your courtroom. Just don't let these natural predilections overwhelm the inherent fairness that you've sworn to uphold. Impossible at times, but you can do it. You're that good.

Don't be a crook. It's been a year or so since a judge has been indicted in Brooklyn. Probably a record. And, yes, you deserve more money. But you're never going to make the *Forbes 400*. It's frustrating to watch some incompetent punk receive a fee equal to five years' salary for a settlement that would never have occurred without your sensitivity and guidance. It's easy to become disillusioned and bitter. But keep your mitts out of someone else's pocket. Even though you're not "doing God's work" like Goldman Sachs, you're doing good, performing a valued public service. Take pride in your work, your accomplishments. ☐