

# A VIEW FROM THE WELL

## One Trial Lawyer's Observations About Attributes of a Good Judge

HON. C.J. WILLIAMS



**W**hat constitutes a good trial judge<sup>1</sup> depends in large part on one's point of view.<sup>2</sup> A judge may have a different perspective of what makes a good trial judge than a lawyer, a criminal defendant, or a civil litigant. This article purports only to articulate my opinion, from the point of view of a trial attorney, of what makes a good trial judge.<sup>3</sup> I have entitled it "A View," not "*The View*," intentionally, to reflect my recognition that other trial attorneys likely have different opinions of what makes a good judge.<sup>4</sup>



I am writing this article shortly before becoming a U.S. magistrate judge.<sup>5</sup> In the interim between my selection for this position and my investiture, it occurred to me that it will be important when I become a judge to remember what I considered as a trial attorney to be the attributes of a good trial judge.<sup>6</sup> My opinion of what makes a good judge may—very likely *will*—change once I become a judge. My hope in writing this article, though, is that it will help me remember another point of view and thereby help make me become a good judge. If it helps inform and assist other judges and trial attorneys, then it is all the better.

What makes a good judge, from a trial attorney's perspective? Upon reflection, I have identified 10 attributes that I believe make a good trial judge.<sup>7</sup> I assign no importance to the order of the attributes; rather, they are listed in the order that they occurred to me.

### **1. A Good Judge Maintains a Proper Demeanor**

Proper demeanor makes a good trial judge. By demeanor, I mean how a judge behaves and acts toward others in the courtroom.<sup>8</sup> By proper, I mean appropriate and dignified.<sup>9</sup> A proper demeanor is important to promote respect for the system, set an example for lawyers, and facilitate attorney-client relationships.

A judge should display a dignified manner, fitting with the seriousness of the position. That does not mean judges should appear arrogant.<sup>10</sup> Judges who fail to comport themselves in a manner consistent with the importance of their responsibilities, however, impair the respect due the office and the judicial system. Lawyers, clients, jurors, and others must expect judges to respect the judicial system. Judges who are too familiar, flippant, or informal can leave lawyers, parties, jurors,<sup>11</sup> and others with a mistaken impression about the seriousness of the proceedings. In most instances, one of the two parties will leave a courtroom having lost a motion or trial. When proceedings are conducted with the proper decorum, even the losing party will leave the courtroom respecting the system, regardless of whether he or she is happy with the outcome. A judge sets the decorum of the courtroom by example.

Proper demeanor also includes facial expressions and demonstrations of emotion. For better or worse, people will read meaning into a judge's expressions in an effort to discern the judge's opinion. Jurors watch judges for clues about what judges may think of the evidence.<sup>12</sup> Parties examine judges' faces for signs of favoritism toward or familiarity with the opposing side. All too often, people misread expressions and nonverbal signs.<sup>13</sup> To prevent unintended influences or presumptions, a judge should strive as much as possible to maintain a neutral expression and not react to evidence. Of course, judges are human, though.<sup>14</sup>

### **2. A Good Judge Displays an Appropriate Disposition**

When people speak of a judicial disposition or temperament, they are referencing a certain equanimity, calmness, or composure expected of a judge.<sup>15</sup> A good judge should maintain an even disposition in the courtroom and treat everyone with respect. It is especially important for a judge to be patient and pleasant to attorneys. This is important

not just for the legal profession but also because failing to do so can adversely affect the justice system.

Trial judges should presume attorneys are acting in good faith, with honorable intentions, until and unless proven otherwise. If that is the presumption, then it is important that judges exercise patience with counsel. It has been my observation over the years that when a judge becomes impatient with a lawyer, it is often because the judge is unaware of an issue. The lawyers often know things about witnesses, exhibits, or legal issues that could influence the way the lawyers are acting. When a judge is in the dark, he or she is likely to misinterpret counsels' conduct.

Patience is also important, because litigation is stressful work for lawyers. Litigators are constricted by court-imposed deadlines; pressured by clients; and overwhelmed with motions, witnesses, and exhibits. The case at bar is only one of many on attorneys' plates. Attorneys may be inexperienced, unfamiliar with local practice, or unacquainted with a judge's idiosyncrasies. Attorneys will, therefore, make mistakes and cause delays. Although an efficient courtroom may be a judge's priority, it is not high on the list for an attorney. An attorney's first duty is to his or her client. Accordingly, a judge should be patient with lawyers even when they are not as efficient as the judge would like.

Judges who are pleasant to lawyers also promote respect for the system and facilitate the attorney-client relationship. Understandably, a judge sometimes may become frustrated with lawyers. A judge who gives vent to frustration and publicly treats lawyers harshly diminishes respect for the profession and the court system.<sup>16</sup> A judge must rise above these emotions. A judge should not belittle or demean lawyers in the courtroom, no matter what the provocation. He or she should not personally attack a lawyer. This is especially important, because it can jeopardize the attorney-client relationship. When a judge publicly belittles a lawyer or the lawyer's competency or performance, and the lawyer's client is present, the judge may insert a barrier in the relationship between the lawyer and the client. The client, having heard a dressing-down of his or her lawyer, will question the lawyer's competency or, at the very least, whether the lawyer will be effective in front of a judge who apparently has a personal problem with the lawyer.

Lawyers, who have a duty to zealously represent their clients, may sometimes take positions or make arguments the trial judge believes are without merit. A judge who politely listens to the argument and then rules against the lawyer is far better than a judge who belittles the position or describes the argument or lawyer in pejorative terms. A judge is free to think these things but should not publicly express them. If the lawyer's conduct demands some type of reprimand (say, if a lawyer advances a frivolous argument), the judge should delay the censure until the end of the litigation and do it in chambers when it will no longer affect the attorney-client relationship.

Polite treatment of lawyers extends to judges' written decisions. The temptation may be great, sometimes, for a judge to take a lawyer to task in written opinions, either in the text or in footnotes, for mistakes, uncited authorities, or poor or frivolous arguments. Giving in to these urges, however, is seldom productive. Just as an oral dressing-down of an attorney in front of a client impairs the attorney-client relationship, so too does a written admonition. Such written reprimands may actually have more lasting impact on a lawyer's reputation and future employment than a tongue-lashing, especially

if the judge references the attorney by name in the opinion. A good judge should resort to a written reprimand only when it is intended to serve as a sanction. If a lawyer's performance is truly that poor, a good judge also has other ways to address the situation, including speaking to the lawyer in chambers after the litigation has concluded or, in appropriate cases, referring the lawyer to a bar disciplinary body.

### **3. A Good Judge Fosters Communication With Counsel**

A judge who facilitates communication with counsel, both in and out of the courtroom, makes for a good trial judge. A failure to communicate causes problems, errors, and delay.

The opportunity for attorneys to communicate with a judge is especially important during a trial. Attorneys, for example, will know if a witness is likely to testify about a matter that dances close to the line of suppressed evidence. If the judge gives attorneys a regular opportunity to address the court outside the presence of the jury, it will reduce the chance for errors and make the trial proceed much more smoothly.

During a trial, for example, a judge should provide time at the beginning and end of each day for the attorneys to raise potential issues.<sup>17</sup> Likewise, it is helpful each time the court recesses (for a break or lunch, for example) for the court to again inquire whether the attorneys would like to bring anything to the court's attention to make the trial proceed smoothly. If a judge provides these opportunities, it will not only decrease the potential for errors and increase the efficiency of the trial, but it will also decrease the need for sidebar conversations with the court during trial.

It has been my observation that judges detest sidebars, and for good reason. They slow down the presentation of evidence, they keep a jury waiting and invite the jurors to speculate, and, all too often, they are unnecessary. A judge should discourage sidebars and encourage parties to anticipate issues and raise them when the jury is not present. A judge should not, however, prohibit sidebars. Having discouraged them, a judge should then trust an attorney's judgment when a sidebar is requested.

### **4. A Good Judge Issues Good Decisions**

When I say a good judge issues good decisions, I don't mean decisions favorable to an attorney or the client. How a judge rules can be nearly as important as what a judge rules. A well-written or carefully articulated ruling can facilitate litigation, leading to better performances by trial attorneys. Such rulings can also aid parties in making a cost-benefit analysis of proceeding to trial, increasing the likelihood of settlements or plea agreements. Finally, a written decision or oral ruling that reflects that the judge has carefully and thoroughly considered the facts and analyzed the issues engenders respect for the decision and the judicial system.

I have appeared before judges who have made what I believed to be correct rulings, but who have pronounced the rulings with scant explanation for how they arrived at the decisions. I have more often appeared before judges who did not simply rule on matters, but who fully explained how and why they reached their decisions. Both types of judges may arrive at the same decisions, but the manner of conveying the decisions can have a vastly different impact.

When a judge thoroughly explains a ruling, in writing or orally, it helps the lawyers understand the strengths and weaknesses of their positions and the ramifications the ruling may have on other aspects

of the litigation. A thorough evidentiary ruling may assist the lawyers in crafting questions to elicit admissible information. Likewise, when a judge fully explains a decision and the reasoning behind it, parties are better able to assess the strength and weaknesses of their cases. This can assist parties in determining whether a pretrial resolution of the matter is in their best interests. Finally, the decision may help the parties recognize room for a negotiated settlement.

Of course, with written rulings, carefully drafted and thoroughly analyzed decisions form the basis for *stare decisis*. Not only do these rulings assist the litigants in the instant case, but they also assist lawyers, parties, and judges in future cases.

### 5. A Good Judge Has Empathy

Empathy is the action of seeing and being sensitive to another's feelings or experience.<sup>18</sup> Much of what a judge does in the courtroom is routine. A good judge will have empathy for the parties in litigation. Judges with even a few years' experience may have conducted scores of trials and presided over hundreds of hearings on motions to dismiss, for summary judgment, to suppress evidence, to change pleas, or to give sentences. For judges, these proceedings become routine and perhaps boring. For the parties involved in the litigation, however, it is often the first time, and perhaps the only time, they have ever been in a courtroom. To the party, this may be the most important proceeding in his or her life. A good judge should keep that perspective in mind and strive to be sincere. When a judge engages in a plea colloquy, for example, he or she should ask the questions in such a way as to convey that he or she seriously wants to ensure that the defendant understands the constitutional rights being forfeited by pleading guilty and fully comprehends the possible maximum penalties.

When a judge approaches hearings in this manner, it instills confidence in the judicial system. Judges often instruct jurors that it is important not just that the jurors do justice, but that they appear to do justice.<sup>19</sup> The same holds true for judges regarding the manner in which they approach courtroom proceedings. It is important not just that the judge does justice and makes the right decision; it is vital that the way the judge carries out the task creates the *appearance* of doing justice.<sup>20</sup>

### 6. A Good Judge Is Prepared

A good judge should be prepared. I am happy to say that in all my years as a trial attorney, federal judges have almost always been thoroughly and completely prepared. It has been my observation that most federal judges have carefully read everything submitted by the attorneys, have thoroughly reviewed the record, and often have conducted their own legal research prior to hearings on contested matters.

It bears reflection on why preparation is so vital for a judge. First, only through preparation will the judge know the important questions to ask or recognize the facts critical to the decision. Second, it falls upon the judge to make the right decision for the right reason, even if neither party has correctly identified the issues or correctly analyzed the case. Third, a fully prepared judge draws the best out of the trial attorneys, advancing the goal of properly analyzing and deciding a case. It will also cause the lawyers to be better prepared, knowing that they will be facing a "hot bench."<sup>21</sup>

Finally, and most important, a prepared judge promotes respect for the judicial system. Lawyers and parties can tell when a judge has taken the bench unprepared for the proceeding. I can state from

experience that when clients see a judge who is unprepared and unfamiliar with the facts and issues of a case, it deflates the clients' confidence in the system. When this happens, people are likely to believe that the outcome of the case depends more on chance or influence than on the sound judgment of the person in the black robe.

### 7. A Good Judge Is Decisive and Timely

Judges are called upon to make decisions as a matter of profession; yet some judges struggle with the task, delaying rulings and equivocating. Trial attorneys need judges to make decisions and do so in a timely manner. This is especially important regarding evidentiary rulings. It is far better for a judge to make a wrong decision than not make a decision at all.<sup>22</sup> Whether the ruling was correct, attorneys can at least then adjust to the court's ruling and determine how to try the case.

This is not to say that a judge should irresponsibly rule on motions when sufficient information is lacking. Obviously, a judge sometimes cannot make a decision because of a lack of information or context. For example, a judge may not have sufficient knowledge of the case, anticipated testimony, or context to rule on a motion in limine in advance of trial. It makes sense in those instances for a judge to delay ruling until he or she has the information and context necessary to rule. When possible, however, a judge should rule in a timely manner.

### 8. A Good Judge Manages Time Effectively

A good judge has an interest in the efficient operation of the court. Lawyers share that interest to a lesser degree. The primary importance for a lawyer remains what is best for the lawyer's client. In some cases, that interest may be advanced by short deadlines or a hard trial date. In other cases, it may be to a client's best interest to have more time to conduct discovery, file dispositive motions, or delay trial. Accordingly, a judge's interest in a timely resolution of a case may conflict with attorneys' interests.

A good judge should endeavor to strike a balance between expeditious resolution of litigation and flexibility. There is some truth in the saying that "justice delayed is justice denied."<sup>23</sup> A judge should set relatively short and relatively firm deadlines designed to steer a case to trial or resolution in a timely manner. A judge should grant extensions and continuances with hesitation and only when justified.

Sometimes, however, flexibility in deadlines can result in increased efficiency. A one-week continuance of a trial may result in the lawyers being more prepared, more selective in the witnesses called at trial, and more efficient in questioning the witnesses they call. In other cases, short extensions of time can allow parties the time they need to reach a settlement or plea. It has been my observation that lawyers seldom intentionally delay cases, stringing out litigation either because of inefficiency, for tactical reasons, or to justify increased bills to clients.<sup>24</sup> A judge should extend trial counsel some trust. When an attorney who seldom asks for extensions or continuances asks for one, a judge should rely on the attorney's judgment that more time would advance the interests of justice. A judge should be less flexible with attorneys who repeatedly come to the well of continuances but more flexible with those who seldom drink from that trough.

Flexibility in deadlines is also, candidly, just humane. Trial work requires long hours, all too often requiring lawyers to work nights, weekends, and holidays. Trial attorneys often miss birthdays and re-

citals, anniversaries and funerals. Although this is a reality trial lawyers recognize and accept as part of their chosen profession, to the degree possible a judge should be cognizant of the personal cost hard deadlines cause not only for the parties but also for the attorneys and their loved ones. A little flexibility on deadlines to accommodate preplanned vacations or holidays will go a long way toward increasing a lawyer's quality of life and goodwill toward the court.

### 9. A Good Judge Is Open-Minded

Perhaps it seems obvious, but a good judge should be open-minded. A common jury instruction tells jurors that they should not make up their minds until they have heard all of the evidence<sup>25</sup> and to consider all of the evidence before they arrive at their decision.<sup>26</sup> The same should be expected of judges.

A good judge does not prejudge the case. A good judge should fight against preconceived notions about witnesses, the parties, the lawyers, or the legal issue. Just as we expect jurors to treat the testimony of all witnesses the same, so too should judges. A judge should not approach cases with presumptions about the parties. A corporation with a negative reputation, for example, should be treated the same as one with a reputation for generous charitable contributions. A lawyer who has developed a reputation for poor work or absurd arguments may, in the case at bar, stumble upon a very meritorious argument. Finally, a judge should be open to novel arguments that challenge what is perceived to be a well-settled area of the law.

A good judge listens to and reads arguments by counsel with an effort to fully understand the facts and the legal arguments. He or she should strive to look past inarticulate pleadings and inartistic arguments and focus on the content and merit of the message. He or she should be willing to consider the possibility the party is correct. A judge who consciously and conscientiously tries to see the facts and argument from the party's point of view, and suspends doubt and skepticism, is a judge who is prepared to be persuaded.

### 10. A Good Judge Is Humble

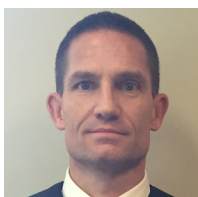
A good judge walks humbly. Trial attorneys joke bitterly about the "black robe disease"—that is, the perceived change in a lawyer's arrogance and intolerance when the lawyer dons a black robe and becomes a judge.<sup>27</sup> There is a perception that judges lose their empathy for lawyers' plights and burdens, assume a mantle of infallibility, and put on airs of superiority. Perhaps this is so. Or perhaps it is a product of jealousy, envy, and spite on the part of trial lawyers. More likely, it is a combination of these and other factors that cause a gulf between lawyers and judges.

To be sure, there is and needs to be some level of differentiation between attorneys and judges. The judicial system retains traditions, like judges wearing black robes and others standing when judges enter courtrooms, to instill a sense of importance and solemnity to judicial proceedings. This promotes respect for the law and our judicial system.

Remembering from whence one came, however, can go a long way toward developing immunity against the black robe disease. Judges are fallible and do not know everything. A good judge should acknowledge errors and mistakes, and even apologize when appropriate. He or she should also accept that lawyers will err and accept their apologies with grace. A judge should recognize he or she has the advantages of both sides' arguments, law clerks, and time, which lawyers do not enjoy.

Finally, a good judge maintains connections to the bar, attends bar functions, speaks at seminars, and rubs elbows with lawyers in informal settings. When attending these functions, a good judge should not take himself or herself too seriously,<sup>28</sup> a bar or social function is not the place for a judge to assume an air of superiority. Staying connected to the bar will help dispel the perception that judges believe themselves superior, infallible beings, and may even help prevent it from occurring.

Serving as a judge is a difficult and daunting responsibility. Viewing the position from the well of the courtroom instead of from behind the bench lends perspective that can only aid a conscientious judge in the performance of his or her duties. Years from now I hope I do not reflect on the words of this article with disdain for my misguided and naive opinions. Rather, I hope my future self recognizes the sincerity with which I approached the task of sharing a trial attorney's view of what makes a good trial judge. ☉



*C.J. Williams is now a U.S. Magistrate Judge. At the time he wrote this article he was an adjunct professor of law at the University of Iowa College of Law and an Assistant U.S. Attorney with the U.S. Attorney's Office for the Northern District of Iowa. He has an LL.M. from the University of Missouri (1997), a J.D. from the University of Iowa College of Law (1988), and bachelor's in business administration from the University of Iowa (1985). This article was written by the author acting in his private capacity and not as an employee of the U.S. government. All statements made herein reflect only the author's own views and opinion, and not those of the U.S. government, the U.S. Department of Justice, or the U.S. courts.*

### Endnotes

<sup>1</sup>This article's focus is limited to trial judges and does not directly pertain to appellate judges, although the reader will readily observe that some attributes of what makes a good trial judge could apply to appellate judges as well.

<sup>2</sup>Scott Baker, Adam Feibelman & William P. Marshall, *The Continuing Search for a Meaningful Model of Judicial Rankings and Why It (Unfortunately) Matters*, 58 DUKE L.J. 1645, 1653 (2009) ("The question of what makes a good judge depends in no small part on who is asking.").

<sup>3</sup>To be sure, my opinions have been influenced by opinions expressed by other trial attorneys. It should come as no surprise to judges that they, and their conduct, are the topics of conversation among practicing attorneys. I take responsibility, however, for any opinions expressed herein.

<sup>4</sup>By way of a caveat, it should be noted that I have spent more than 20 of my 27-year legal career as a federal prosecutor. This will inevitably color my perspective of what makes a good judge. A criminal defense attorney will likely have different thoughts than I. Although I spent five years in private practice as a civil trial attorney, my memories of what I thought of trial judges then have faded. So a civil trial attorney will likely have very different opinions of what makes a good trial judge. Finally, my career has largely been spent in federal court. A trial attorney who practices in state court may, therefore, have a different view.

<sup>5</sup>I was selected for the position in October 2015 through a merit selection process. THE CEDAR RAPIDS GAZETTE, Oct. 29, 2015, page 2A.

<sup>6</sup>This article originated, in part, from my research in preparation for interviewing for the magistrate judge position. I was disappointed

that there were few articles about what it takes to be a good judge.

<sup>7</sup>Of course, attributes of a good judge would also include experience, intelligence, and other inherent or acquired qualities. My focus in this article is not on those things I cannot change but on the things I can.

<sup>8</sup>Demeanor is defined as “conduct; behavior; deportment.” RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY (2d ed. 1998). Its synonym is “bearing.” *Id.*

<sup>9</sup>The definition of “proper” employed here is that of decorous, or marked by suitability, rightness, or appropriateness. *Id.*

<sup>10</sup>I once appeared before a trial judge who required everyone, including the jury, to assemble in the courtroom several minutes before he entered the courtroom himself and to remain standing until he entered. It happened one day during the trial that he was delayed returning from lunch, but his clerks dutifully had the jury enter the courtroom at the specified time and remain standing in the jury box. Out of proper respect for the jury, of course, everyone else in the courtroom likewise remained standing. We did this for more than 15 minutes until the judge finally arrived. I view this as arrogance that promotes disrespect for the judicial system. The jurors who were required to remain standing for such a long time until the judge entered the courtroom as if he were a member of royalty likely left their service with a negative attitude about judges as public servants.

<sup>11</sup>The jury system depends on jurors following a court’s instructions. See *Jones v. United States*, 527 U.S. 373, 394 (1999) (stating that juries are presumed to follow a court’s instruction). Generally, jurors are in awe of judges, and this promotes the likelihood jurors will follow a judge’s instructions. Cf. Brian McKeen and Phillip Toutant, *The Case for Attorney-Conducted Voir Dire*, 90 MICH. B.J. 30, 31 (2011) (“Judges, as robe-cloaked authority figures, may inadvertently chill jurors’ responses to questions during voir dire.”). Anything that detracts from that respect, therefore, runs the danger of decreasing the effectiveness of jury instructions.

<sup>12</sup>See, e.g., *United States v. Gantley*, 172 F.3d 422, 431 (6th Cir. 1999) (recounting that the judge’s “strong reaction” to a defendant’s intentional misconduct may have created bias against defendant); *State v. Hamilton*, 731 P.2d 863, 868 (Kan. 1987) (“The trial judge occupies a high position. He presides over the trial. The jury has great respect for him. They can be easily influenced by the slightest suggestion coming from the court, whether it be a nod of the head, a smile, a frown, or a spoken word. It is therefore imperative that the trial judge shall conduct himself with the utmost caution in order that the unusual power he possesses shall not be abused”). See also Andrew Horwitz, *Mixed Signals and Subtle Cues: Jury Independence and Judicial Appointment of the Jury Foreperson*, 54 CATH. U. L. REV. 829, 854 (2005) (noting that jurors look to “the trial judge for a series of clues, both verbal and nonverbal, about how to behave, what to say and do and, most importantly, what to believe.”).

<sup>13</sup>See generally Olin Guy Wellborn III, *Demeanor*, 76 CORNELL L. REV. 1075 (1991) (concluding that empirical studies lead to the conclusion that people often misread demeanor, emotions and expressions).

<sup>14</sup>“Judges, while expected to possess more than the average amount of self-restraint, are still only human.” *United States v. Weiss*, 491 F.2d 460, 468 (2nd Cir. 1974). Thus, “[j]udges are not required to sit stone-faced and erect at all times and to refrain from reacting to an event at which they are presiding.” *Lamborn v. Dittmer*, 726 F. Supp. 510, 517 (S.D.N.Y. 1989).

<sup>15</sup>See, e.g., Carl Tobias, *Judge Procter Hug Jr. and Good Judgment*,

3 NEV. L. REV. 29, 29 (2002) (describing Judge Hug’s judicial temperament as “evinced, for instance, in his equanimity, compassion, and sense of humor”); Beth Nolan, *Master of the Craft: A Tribute to Collins J. Seitz*, 40 VILL. L. REV. 565, 565 (1995) (describing Judge Seitz’s “ideal judicial temperament” as “calmness personified”).

<sup>16</sup>See *Offutt v. United States*, 348 U.S. 11, 13 (1954) (“Of course personal attacks or innuendoes by a lawyer against a judge with a view to provoking him[] only aggravate what may be an obstruction to the trial. The vital point is that in sitting in judgment on such a misbehaving lawyer[,] the judge should not himself give vent to personal spleen or respond to a personal grievance.”).

<sup>17</sup>Although this seems obvious, I’ve appeared before judges who have left the courtroom before the jury, leaving the parties no opportunity to bring matters to the court’s attention.

<sup>18</sup>Empathy is defined as “the intellectual identification with or vicarious experiencing of the feelings, thoughts, or attitudes of another.” RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY (2d ed. 1998).

<sup>19</sup>See, e.g., *United States v. Lasley*, 14-CR-0045-LRR (N.D. Iowa) (Doc. No. 99, p. 8) (Preliminary Jury Instruction 7: “It is important not only that you do justice in this case, but that you also give the appearance of doing justice.”).

<sup>20</sup>See *Offutt v. United States*, 348 U.S. 11, 13 (1954) (“Therefore, justice must satisfy the appearance of justice.”).

<sup>21</sup>See Willis P. Whichard, *From a Warm Bench to a Hot Seat: The Transition From Judging to Deaning*, 36 U. TOL. L. REV. 221, 221 (2004) (describing a “hot” bench as one where the judge is “well informed about a case”).

<sup>22</sup>“In any moment of decision, the best thing you can do is the right thing, the next best thing is the wrong thing, and the worst thing you can do is nothing.” Theodore Roosevelt. See [govleaders.org/quotes-leaders.htm](http://govleaders.org/quotes-leaders.htm) (last accessed April 27, 2016).

<sup>23</sup>See, e.g., *Martel v. County of Los Angeles, California*, 56 F.3d 993, 1003 (9th Cir. 1995) (en banc) (Kleinfeld, J., dissenting) (“Roscoe Pound said ‘justice delayed is justice denied’ ....”); *George Walter Brewing Co. v. Henseleit*, 132 N.W. 631, 632 (Wis. 1911) (“Gladstone has truly said: ‘When the case is proved, and the hour is come, justice delayed is justice denied.’”). See also Carrie E. Johnson, *Comment: Rocket Dockets: Reducing Delay in Federal Civil Litigation*, 85 CAL. L. REV. 225, 230 (1997) (“The notion that justice delayed is justice denied has repeatedly been recognized and confirmed.”).

<sup>24</sup>Indeed, in my research I could find very few reported cases where courts found intentional delaying tactics were employed.

<sup>25</sup>See, e.g., EIGHTH CIRCUIT MODEL CRIMINAL JURY INSTRUCTION § 1.08 (2014) (“[D]o not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.”).

<sup>26</sup>See, e.g., EIGHTH CIRCUIT MODEL CRIMINAL JURY INSTRUCTION § 3.12 (2014) (“Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or simply to reach your verdicts.”).

<sup>27</sup>See, e.g., Carl T. Bogus, *Culture of Quiescence*, 9 ROGER WILLIAMS U. L. REV. 351, 353 (2004) (defining “black robe disease” as an affliction of judges who come to believe they are omniscient and, as a result, become “impatient, disdainful, and cantankerous”); Clifford

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### Buy-in From the Legal Profession

With such a win-win-win, it is time for those strategizing as to how to increase pro bono participation to start considering how to accommodate attorneys at home. The essential component of our success, and for any pro bono provider's success, is buy-in from legal aid agencies and the profession in general. PBN was fortunate that individuals from PILI, the Chicago and Illinois Bar Foundations, and others in Chicago legal aid understood our idea at the early stages and helped introduce us to receptive agencies with the right projects. However, even with the benefit of such support, funding PBN for the long term is an effort that, perhaps, attorneys in other communities read about and do not want to take on. Ideally, local organizations and individuals committed to pro bono will consider initiating such a structured pro bono program catering to local specifics and particulars.

### Action Plan: Bringing Pro Bono Into the 21st Century

The advent of virtual technology and communication means that there are simple actions that can be taken in all legal communities nationwide. First and foremost, any conversation about recruiting pro bono attorneys should include the possibility of accommodating the hundreds if not thousands of attorneys in that state who may not be practicing law. Keeping in mind the hurdles for these attorneys, trainings and meetings can be scheduled in the morning or taped or available online. Also, if your state requires CLE credits for an attorney to practice pro bono (Illinois allows inactive attorneys to practice pro bono), those offering CLEs (e.g., law firms) can invite attorneys who are

not working to participate without charge, and preferably, virtually.

For a relatively small investment, communities can expand existing legal aid efforts while, at the same time, taking a needed step in accommodating attorneys' family-life choices. Five years of PBN pro bono later, 1,000 clients have been able to stay in their homes, sleep safely, and hug their children, or simply have been afforded access to our justice system that they would not have otherwise had. Concurrently, the PBN volunteer attorneys providing this pro bono service are building upon their legal skills and experience for the next step in their law careers. It is a symbiotic legal system that inures to the benefit of everyone involved: a win for the client, a win for the PBN attorney, and a win for the American legal system. ☉

### Endnotes

<sup>1</sup>In 2014, 38 percent of Illinois attorneys were women. *See* Ill. Atty. Reg. & Discipl. Comm'n, *Annual Report of 2014* [hereafter "*2014 IARDC Report*"] at p. 6, Chart 1 (April 2015) available at: <http://www.iardc.org/AnnualReport2014.pdf>.

<sup>2</sup>Pro Bono Network's Chicago success is mirrored in the D.C. Volunteer Lawyers' Project, an organization formed for similar reasons in Washington, D.C. That model, also involving convenience and backup, is quite similar (and at first unbeknownst to us in Chicago) and focuses primarily on domestic violence. I am proud to share that today it is the largest provider of legal aid for domestic violence victims in the D.C. area.

<sup>3</sup>For example, a phone call from an attorney to a landlord to turn on the heat works rather quickly and prevents expensive litigation over something easily fixable (but which is

not fixed unless an attorney places the call).  
<sup>4</sup>"Big Law Already Had a Pro Bono Problem. Then the Budget Crisis Happened." *CRAIN'S CHICAGO BUS.*, Sept. 12, 2015.

<sup>5</sup>Pursuant to Illinois licensing and registration rules, "retired" is a status that differs from "inactive" status. *See 2014 IARDC Report* at p. 7, Chart 2. In 2014, there were 11,485 Illinois attorneys who had an "inactive" registration status, and 92,756 who had an "active" registration status. *Id.* Further, of the "active" attorneys, approximately 33% (30,213) reported performing pro bono work. *See id.* at p. 9.

<sup>6</sup>*Id.* (In 2014, 26 practiced pro bono under Rule 756(j). Chart 2).

<sup>7</sup>The Justice Gap Study determined that there is, at most, one attorney for every 6,415 low-income persons (one for every 429 persons for the general population). "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs for Low-Income Americans," (Sept. 2009), at [www.lsc.gov/pdfs/documenting-the-justice-gap-in-america2009.pdf](http://www.lsc.gov/pdfs/documenting-the-justice-gap-in-america2009.pdf).

<sup>8</sup>The website for Legal Services Corporation ("LSC") reports that approximately 70% of those LSC assists are women, many of whom are trying to keep their children safe and their families together. *See* LSC website at <http://www.lsc.gov/about-lsc/who-we-are>, paragraph captioned "Who is helped by LSC-funded programs?." Moreover, LSC does not provide services to incarcerated women, which are another group of women who desperately need access to such services and are currently underserved by pro bono organizations.

### View From Well *continued from page 63*

E. Haines, *Judicial Independence and Judicial Accountability: How Judicial Evaluations Can Support and Enhance Both*, 48 *DUQ. L. REV.* 909, 920-21 (2010) (defining "black robe disease" as "the condition affecting some judges who abuse their power simply because they can. Those judges have little regard for either lawyers or litigants who appear before them. B[la]ck robe disease can manifest itself in laziness and the expectation that they don't have to

work any[more simpl[y] because they are a judge. Black robe disease can appear in a courtroom where a judge feels it unnecessary to treat lawyers, witnesses, or parties respectfully and revels in belittling others.")

<sup>28</sup>*See* Edward J. Devitt, *Ten Commandments for the New Judge*, 47 *A.B.A. J.* 1175 (1961) (Commandment number four is "Don't take yourself too seriously.").