

TEN COMMANDMENTS FOR THE NEW JUDGE*

by
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I. Be kind

If we judges could possess but one attribute, it should be a kind and understanding heart. The bench is no place for cruel or callous people regardless of their other qualities and abilities. There is no burden more onerous than imposing sentence in criminal cases. Would then that the judge had the wisdom of Solomon. But absent that, and possessing plenary and awesome power, the judge can thank God for a kindly heart. An understanding heart was the gift of God asked by the ancient king, and it is that gift above all others for which a judge should pray.

II. Be patient

Patience is one of the cardinal virtues, and it should be one of the most important commandments for the judge. Viscount Kilmuir of Creich, a former lord chancellor of Great Britain, once remarked: "There is much to be said for the view that a kindly and patient man who is not a profound lawyer will make a far better judge . . . than an ill-tempered genius." One of my associates asserts that there are but three fundamental requisites for a good judge. First, he should have patience; second, he should have patience; and third, he should have patience.

We must constantly keep in mind the marked displeasure we felt as practicing lawyers for the judge who would not hear us out. It may well be a waste of time to listen to extensive arguments on a point of law on which we have already made up our mind. But judges owe it to lawyers to let them make their points. It may well be that they can change our minds. At least they are entitled to try.

Do you recall the irritation you felt toward the judge who "stuck his nose" into your lawsuit? How we all looked askance when he took over the questioning of our witnesses and led them down unwelcome paths, prematurely elicited answers to key questions, and completely disrupted our well-laid plans for the systematic presentation of our case? Minding our own business and permitting lawyers to mind theirs is an essential corollary of patience.

The judge should be particularly patient with the young lawyers who come to court for the first time. The reception we accord them will make a lasting impression, good or bad. We want it to be good.

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III. Be dignified

I don't mean that you must go around with nose on high putting on airs; or that, on assumption of office, you should change your whole manner of life and circle of friends; or that, with monk-like subjection, you should withdraw from the world. I only mean that you must possess an appreciation of the great prestige of the judicial office and of the respect accorded it and its occupant by the American public.

"To the people of his jurisdiction, the judge is the personal embodiment of our American ideal of justice," wrote Arch M. Cantrall, former chief counsel of the Internal Revenue Service. He went on: "People generally, and lawyers as well, want to look up to their judges. They want to admire and respect him for his ability as a judge and for the way he runs his court. The ideal of justice seems to be innate in every American, and part of his nature is to want to look up to, and respect, his court and his judge."

Daniel Webster is quoted as saying that "there is no character on earth more elevated and pure than that of a learned and upright judge and . . . he exerts an influence like the dews of heaven falling without observation."

So long as they know the public's regard for the judicial office, conscientious judges will conduct themselves fittingly.

IV. Don't take yourself too seriously

The transition from bar to bench is a big one, and making the change with equilibrium is not always the easiest task. We must keep our heads about us. Senior Circuit Judge Harold R. Medina writes: "After all is said and done, we cannot deny the fact that a judge is almost of necessity surrounded by people who keep telling him what a wonderful fellow he is. And if he once begins to believe it, he is a lost soul."

Some judges may become so impressed with their importance that they forget the practical facts of their judicial birth. It is a fact that most federal judges are appointed through the influence or approval of the United States senators or other political officials, and many state judges are elected under party labels. This is not to detract from their qualifications, especially in recent years when the absence of objections from the American Bar Association is almost a prerequisite to federal appointment. In practical effect, judicial appointments, federal and state, must now be acceptable to the organized bar.

This is a great step forward, and the persistent work of the Federal Judiciary Committee of the American Bar Association is largely responsible for this meritorious state of affairs in the federal courts. I doubt if federal judges ever will be appointed solely on the basis of merit. That would be the millenium. So long as the United States

Senate has the constitutionally granted authority to advise and consent with respect to judicial appointments, it is unlikely that some politics will not be involved in most of them. But as long as we get qualified Democrats during a Democratic administration and qualified Republicans during a Republican administration we are doing about as well as can be expected.

The truth remains, however, that most judges reach office through politics, and that, I emphasize, is not a sinful thing at all. The point is that it is distinctly unbecoming to claim later that you were chosen solely because of your outstanding ability as a lawyer and leader of the bar, and that you were reluctantly persuaded to give up your lucrative practice and were practically dragged up to the bench. That would be taking yourself too seriously.

The greatest deterrent to taking yourself too seriously in any respect is a wise and observing spouse who periodically remarks, "Don't get so judgey."

V. A lazy judge is a poor one

The road to success on the bench is the same as in any other field of human endeavor. It must be characterized by hard work. Some people, and many lawyers, think that a judgeship is a sinecure--a form of retirement for the hard-working practitioner. That is not the case.

The truth is that you must learn to be a judge. It takes study and time. Things are completely different from the other side of the bench. In this country we are coming to appreciate that which legal leaders of the civil law countries have recognized for a long time--that lawyers should be especially trained for the bench. That is why it is important that new judges be relatively young--preferably in their 40s, I should say. Then they are young enough to learn the art of judging and, after learning it, are able to contribute a substantial period of experienced service before reaching normal retirement age.

VI. Don't fear reversal

If you are appointed to the trial bench, the most shocking experience that awaits you is the opening of your morning mail to find the slip opinion of the appellate court in one of your cases, at the bottom of which you see the ominous word, "Reversed." First you are shocked, later dismayed, then disappointed. Surely those judges could not have made such a mistake!

But after you slowly read the opinion of your superiors, containing logic and good reasoning, together with a tactfully included reference to the "learned trial judge's" proper handling of some aspects of the whole case, the experience loses its shock. And when it has happened a few times, you even come to the honest realization that in most instances the appellate court is justified in reversing you.

Reversal by a superior court now and then keeps us on our toes. It teaches us to be careful and industrious; it curbs our impetuosity and nurtures judicial-mindedness. Every so often, however, even these august appellate judges make mistakes. Thinking they possess a superior wisdom, rather than just a superior commission, they sometimes exceed their error-finding responsibilities and substitute their judgment and findings for those of the trial court. The law says they cannot do this. But they do! We should view their folly with tolerance. Really, there is nothing else we can do.

Here is a word of advice about reversals. Do not keep track of them. The judge who charts a batting average is likely to become hesitant and timid. Record keeping may make you too cautious--so sensitive to committing error that it deprives you of the intellectual courage that should be the hallmark of a good trial judge.

VII. There are no unimportant cases

This is another way of saying that you must give the same conscientious attention to every matter that comes before you. We may think cases can be classed as important and unimportant, but litigants do not feel that way. Their case is very important to them, and it must be to us.

We must not let ennui overcome us. The work of judges is too important and the results of their action too far reaching. "The judge who becomes accustomed to rendering justice is like the priest who becomes accustomed to saying mass," according to Piero Calamandrei, the late Italian lawyer and scholar, whose writings have gained such an appreciative American audience in recent years. He goes on to say:

"Fortunate indeed is that country priest who, approaching the altar with senile step, feels the same sacred turbulation in his breast which he felt as a young priest at his first mass. And happy is that magistrate who even unto the day of his retirement experiences the same religious exaltation in rendering judgment which made him tremble 50 years before, when as a young praetor he handed down his first decision."

I have come to have a great regard for the importance of this commandment after having observed one of my judicial colleagues for many years. He was a veteran of more than 40 years on the federal bench, and he gave the same meticulous care and attention to every case at the end of that time as he did when he first ascended the bench. I need not add that he earned and possessed the highest judicial reputation.

VIII. Be prompt

Perfection is a laudable aspiration, but for a trial judge it is not necessarily a virtue if it causes procrastination and undue delay. We

all want to do the best we can and reach the right decision in every case, but trial judges also must learn to make up their minds and decide issues with reasonable promptness. Indecisiveness is abhorrent to judicial responsibility.

This is not to advocate hasty decisions but to suggest that judges be wary of taking matters under advisement and letting them sit indefinitely. A good judge will read the briefs, listen to the arguments, independently research the issues, thoughtfully consider the relative merits and equities--then decide the case. Don't be hesitant about making bench rulings in appropriate cases. And in drafting opinions don't think it necessary to write a law review type of exposition on each issue presented. Brevity is a commendable brother virtue of promptness.

With the present backlogs and large volume of cases in many state and federal courts, the virtue of promptness is becoming increasingly important. A judge today must also be a good administrator and learn to manage his docket to effect the prompt trial of cases. Chief Justice Burger recently observed, "Ideals and concepts alone are relatively little use without the 'wheels' to make delivery--to deliver justice." As a judge, you are at the focal point of the wheel of justice. It is your job to keep the wheel turning, and this calls for prompt trials and prompt decisions.

IX. Common sense

It may be that in the first blush of assuming the duties of a judge you will be so engrossed with conflicting statutes, inconsistent decisions, and all kinds of government rules and regulations, that you will forget all about using one of the principal tools of a good judge. That is common sense. There is no substitute for it, with all respect to the splendid law books and reports. It has been said, "The law is common sense as modified by the legislature."

"A judge will never go far wrong," wrote the now deceased Chief Justice Udall of the Arizona Supreme Court, "if he applies this test: Does my proposed action square with good, common sense?"

You might be able to get by as a judge if you don't know much law, but you just can't make it without common sense.

X. Pray for divine guidance

If you believe in a Supreme Being, you should pray to Him for guidance. Judges need that help more than anybody else.

