

Public Impressions Of The COURTROOM SCENE

By Jack Pope of San Antonio

(Editor's Note: Following is an abridgment of an address made by Associate Justice Jack Pope of the Fourth Court of Civil Appeals before the San Antonio Bar Association.)

The courts belong to the public. What happens in courts, therefore, is of public concern. Those of us who play leading roles in the courtroom drama must never forget that we are performing our professional roles before the public. The object of the courtroom scene is not to curry favor or to win plaudits, but to do justice, and often the true hero may win public disapproval rather than acclaim. When that disapproval is caused by our delay, harassment, waste and things which make people ashamed of their courtroom justice, or doubtful of the sincerity of the professional Bench and Bar, then we should examine ourselves.

The State Bar of Texas, through its Committee on Public Information, is rendering valuable service in many fields of public relations. A number of local Bar Associations supplement these excellent activities. The San Antonio Bar Association has taken great strides in this same direction. All of these things point up the fact that we lawyers are and ought to be interested in what the public thinks of us. At last, we are trying to put our best foot forward.

But there is competition with this program. That competition comes in the form of your and my actual conduct in the courtroom—that which the public actually sees when it goes to the courthouse. One can imagine how frustrated the public must be when they hear and read how orderly things are down at the courthouse, but somehow, they just did not observe it when they were there.

Recently a lady at church, who had served the week before on a jury, asked me: "Do all judges sleep on the bench?" She continued, laughingly, that the judge reclined with his eyes closed during the trial, but she added that he "seemed to have the right answers when an objection was made." The point is that we do not permit lawyers to loll about with their eyes closed, nor witnesses on the stand, nor jurors in the box. But the judge can. So

I want to talk a few minutes about things as they sometimes are, and not as the script says they are.

Every judge I know is satisfied with the manner in which he conducts a trial. But as a lawyer, I was not always satisfied. I was not as satisfied with the judge who did not study his case as I was with the one who stayed on top of the case at all times, who analyzed the pleadings in advance of the trial, who tried to isolate the special issues, who anticipated the problems as the case progressed.

A judge who thus controls the case usually keeps it moving and saves time for everybody. His rulings are clear and certain. He does not vacillate, he does not temporize. There is less occasion for conferences and jury recesses. A judge who is on the ball keeps the lawyers on the ball. All too frequently, an ill-prepared case by the judge benefits the side of injustice by tolerating the admissibility of bad though harmless evidence.

Delay conscious

We should become delay conscious, and avoid every needless delay as we would the plague. Unless by the delay the case is actually moving forward, there should be no delay. And that is a job for us, and not our public information men. Delays are problems of administration, and administration of justice is as important as a knowledge of substantive law. Administration is primarily the job of the judge. Procedure should proceed. Mr. Justice Holmes, in *Herron v. Southern Pacific*, 283 U.S. 91, said: "In a trial by jury in a federal court the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law."

Surveys of public opinion conducted by both the State Bar of Texas and the American Bar Association as to the lay viewpoint of lawyers and courts brought forth the suggestions from more than half the persons polled that judicial proceedings would be improved either by more honesty or less delay. These criticisms by the public are severe. But the citizen sees other things which diminish his esteem for courts and blur his mental image of public justice. Fortu-

nately, these occurrences are rare, but an occasional occurrence is too often.

The lawyer walks into the court without taking off his hat, in a sport shirt or without a tie. While objecting, he remains tightly seated, addressing his remarks to opposing counsel instead of to the court. He approaches the bench and dawdles over the bench, resting his elbows on the bench. We would shudder to even imagine such things occurring in a federal court. I wonder if there is any sound reason for a distinction.

Judge sets tone

What does the citizen see when he observes the judge? Not often, but too often, he sees what he does not want to see. In my opinion, it is the judge who sets the whole tone of a trial, and often for an entire community. The judge on the bench represents the State of Texas. Deference and respect is to the State and not the individual. A judge who is indifferent will create an atmosphere of indifference which is caught by the jury and others present. A judge who appears flippant, unconcerned and frivolous may unconsciously weaken human rights.

A judge, on the other hand, who is intensely interested in seeing that a full and fair hearing is conducted will stimulate the noblest citizenship of jurors and generate a wholesome atmosphere for the administration of justice. A citizen has the right to see those things in court that he has been taught he ought to see.

1. From the time the docket is sounded, the court should be on the bench and all persons should be seated.

2. When the court ascends the bench, complete order should be observed. The bailiff should be schooled and trained to enforce this courtroom spirit of order.

3. The judge, the clerk, and the bailiff should run the court organization. Lawyers should not be asked to call in jurors or witnesses, or get the clerk.

4. At the time for convening of court, it should convene. It should proceed without interruption except for regular recesses. Uncontested matters and personal affairs should not interfere. The trial should have a full right of way along a one-way street until it is pressed to a conclusion.

5. When the judge addresses counsel, it should be done impersonally, as by "Counsel," rather than by first name. Counsel should also behave impersonally toward the court.

6. The court should control fully the manner of behavior and should not let the trial degenerate into a trial by side-bar remarks, by jest, by wit, or by insult.

7. The court should require objecting counsel to rise at his place and state his legal objections. Stating the legal objection does not always mean a legal argument either.

8. The court should require the objections and remarks to be addressed to the court and not to counsel.

9. The one objecting or making a motion should first speak. The opposing side should respond,

and the movant should close. Roundtable discussions and interruptions by opposing counsel should not be permitted.

10. After the court has heard fully and has listened patiently, he rules, and he should not tolerate further arguments. Arguments after the court has ruled too often degenerate into quibbles and quarrels.

11. The court should announce his ruling. Remarks such as "Let's go on with the argument," "Let's proceed," do not show what ruling is made. Another practice by some judges is to wave at the lawyer to proceed. Counsel have the legal right to insist upon a ruling.

12. Judges on the bench should not smoke. Witness should not smoke while testifying, and lawyers should not smoke while questioning. In federal courts nobody smokes; but it seems to be rather shocking to suggest a different rule for state courts.

13. When the oath is administered, it should be administered in a manner calculated to impress jurors with the importance and solemnity of their promise to adhere to the truth. Each witness should be sworn separately and impressively at the bar or the court. The perfunctory mouthing of words by clerks or courts is a degradation of the courtroom scene.

14. Jurors, the bailiff, and spectators should not read newspapers in the courtroom, and bailiffs should be trained to so advise persons.

15. All of us judges should learn to keep our judicial mouths shut. In Bacon's Essay, "Of Judicature," he says: "Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal. It is no grace to a judge first to find that which he might have heard in due time from the Bar, or to show quickness of conceit in cutting off evidence or counsel too short; or to prevent information by questions though pertinent." He further wrote: "Judges ought to be more learned than witty; more reverend than plausible; and more advised than confident."

16. A train of uncontested matters runs through every courtroom, carrying its witnesses and spectators. They, too, should be handled in open court if formal evidence, however brief, is to be heard. They, too, should be solemnly heard. This is one of the hardest things that a judge does to earn a day's wages. He must maintain an interest in a story he may have heard many times before. But the people who are in court on that matter may be in court for the first and last time. To them, this is court, and this is their case. Their image of the court will come from the measure of respect and dignity with which their case is heard.

17. All judges must strictly conform to the same high standards, else the good that is accomplished in one court during one week may be lost the next week in another court.

By now, some of you are asking: "Are you try-

ing to make a federal court out of every court?" And my answer is: "Would that be bad?" If you get more cases tried quicker and with less delay, and with public approval of our courtroom manners, the Bar, even more than the public, would benefit. Your files would not be clogged with cases that have grown cold, while your interest has waned, your witness died, and your fee spent. Moreover, the people would not fear the legal profession.

The thousands of jurors, witnesses, parties and spectators sitting in Texas courtrooms constitute our cap-

tive audience. We need no public information program to show them how justice is done, for they are watching with their own eyes. What those people see does more to raise or lower their esteem for the Bench and Bar than all the Madison Avenue techniques we can buy. It is time we moved upward and stopped a downward drift toward informality in our state courts.

If we would sell our profession to the public, we must improve it. We work with it daily and we are the ones who should shape its future.

A Few Words With the Honorable Jack Pope

Interview by H.W. Brands, December 1985-June 1986

Do you recall what your thoughts were on heading to Corpus, as you were about to begin the practice of law?

Oh, yes, very much so. I was frightened. I was ready. I had complete confidence that I was going to make it as a trial lawyer. Here again, I do not think that the mind or concept of young lawyers back at that period was in terms of what kind of a lawyer are you going to be, what will you specialize in. Then more than it is now, law was law. I went there with the concept that if a client needed assistance on the criminal side of the docket, a lawyer gave it to him. If it was a corporate matter, the lawyer gave it to him. If it was a personal injury or an oil and gas matter, the lawyer is supposed to research it and provide that service to the client. I never thought much in terms of being a trial lawyer or an office lawyer. Whatever the client needed, that is what the lawyer was expected either to give to him off the top of his head or research, and provide it for him. The concept is entirely changed now.

I have, since that time, seen this same experience on the part of a score or more of people who had the opportunity to be a judge, and the decision is always the same. Once it sinks into you—"You, a judge? A district judge?"—I was then 33 years old—the next step is, "If I don't like it, I don't have to run for office. If I don't like it, I can resign. So why not take it on, and give it a try?" And without going through all of the ramifications of the thing, that was the decision that Allene and I came to. But it was not that easy.

Well, what were your first thoughts then on taking the bench?

Well, I was awed. I made a resolve that I was going to prove to my critics that I was a patient judge, that I was not going to take cases away from the lawyers and try them, that I was going to be attentive, and that I was going to study the cases that I worked on. At heart, I'm a book man. I love the books. I think I

ran a good court. I was told that I ran a good court. The press was good to me because I ran a court.

You said that people said that you ran a good court. Could you be a little bit more explicit about what you understood by running a good court?

Yes. I knew how to try a case, and I knew that it wasn't necessary for a lawyer to romance a jury for an hour and a half or two hours. And when the panel would come in, I would tell the lawyers to cut their questions brief and don't repeat the same questions. Ask some general questions, and then go take one juror at a time. It expedited things. The taking of evidence, the examination and cross-examination of witnesses—I knew my rules of evidence. I knew them from study at the University of Texas, I knew because of my intensive review, and I knew from my experience as a lawyer. Many lawyers come into court rarely, and they are not on top of those rules. I was reading the advance sheets to stay abreast of things as they developed.

Did you have any well-defined judicial philosophy when you entered the court?

I suppose that I did basically, because once I became a judge, I looked for a place where I could learn the skills of being a judge. There was no place in Texas where anyone could go to attend an institute, or even hear a lecture on what is a judge, what does a judge do, how do you impanel the jury, where do you find the oaths that you administer to the grand jury, to the jury panel—anything. There was not, so far as I remember, anywhere in the United States at that time that a judge could go to school to learn how to be a better judge. This, I think, is one of the gigantic steps that we have made in the progress of the law. Now, there are many schools, intensive training for weeks and months, so that a judge can learn the skills of being a judge.

I took office, and knew that the following week, I would have a jury panel. I had appeared before many juries. But, to get them in place, to get them—32 or more that would be selected for lawyers to question—all of those things took administration, and I had to go to the statutes, and mentally run through all of those steps, so that one would move and move and move.

Now to answer your question more directly, I mapped out a curriculum of self-study for myself. I started putting together a black notebook—I've still got that notebook right over here, and that notebook stayed with me till the day I retired from the Supreme Court, with my adding notes. My theory was that once you have looked up this material, write it down and index it, so that you don't have to look it up again and again and again. So I started putting on paper things that the jury should be charged about, the way you do it—I would carefully write these words.

Then, I wanted to learn some principles of being a judge, and I went to some biographies—the biography of Oliver Wendell Holmes, of Brandeis, Cardozo, those primarily—and Cardozo was the one that I think I learned the most from, because he had written two books on what does a judge do when he takes off his coat and works in his shirtsleeves? What are the things that go through his mind? And Cardozo's two books I really parsed, and made a notebook of them, and I still have that notebook. I would say that those three—I read the book of Judges in the Bible, and I read legal history—back then, I had more freedom, after I would leave the court, than I even have right now. I made the resolve that I would read one chapter of something every night before I went to bed. I kept that up for about 10 or 12 years, and that self-education got me up to a level that was my highest. I reached my highest stage of education, really, about 1956 or '57, and then, outside pressures started moving in, you know, and it kind of interrupted that. I read philosophers. I read no fiction—I never had time for fiction. I read sociology. I was trying to immerse myself, and to develop a judicial mind. Well, by this time, it didn't take too long for me to sense that this business of being patient wasn't all that hard. But I had to educate myself as a judge.

Now when you entered the Supreme Court in 1965, you were about halfway through what would be your entire judicial career. Can you describe some of the changes that you had noticed in the law in Texas, up to that point?

But on the law—I came in there right at the edge. In 1937, I began the practice of law. At that time, there was a great movement to make what was then regarded as a tremendous reform in Texas law—and that was for the courts to have rule-making power. The one who is credited as the moving force is Judge James P.

Alexander. He was a great reformer. Actually, there were others, who probably had as great a force—and one is Judge Stayton, who was a law professor at the University and taught me every procedure course that you could have. He taught me criminal procedure, and one year of civil procedure, and appellate procedure. He was a great scholar and a great teacher, had a great impact upon me, and I think there was my source for my ongoing interest in procedure. I'm still working with procedure, and I will meet with the pattern jury charge on Friday and Saturday of this week. We are rewriting the book on pattern jury charges.

But the Legislature, in 1939, had given to the Supreme Court of Texas rule-making power which meant that the Legislature would no longer write the rules on how to plead a case, how to submit a charge to the jury—all of the some 800 rules of procedure—but the Supreme Court would study and promulgate these rules. In 1941, those rules became effective. Prior to the time those rules were effective, there were some institutes conducted over the state of Texas, which itself was an innovation.

Looking back, what do you see to be the major contribution that you made to the Texas judicial system during your years on the court? Or perhaps put another way, what particular qualities do you think you brought to the court?

That I have provided the industry that was needed for each task that was set before me. I, in my own mind, have always been able to sleep well, and once I had decided a case, I did not look back. I went to the next case. And I don't think that I was motivated by anything other than the right and wrong of the law as I saw it. So, really I've had a story-book life. And, if I've had any success, it wasn't from any particular gifts. It was from industry and hard work. And I have been able to maintain that zest for the job, and did, right up to the very end. And I still have a zest for it, though I am taking things much, much easier—I'm reading some literature and some history and—I never was much on fiction—some nonfiction materials that I really got away from during my tenure on the Texas Supreme Court, because of the pressures of the cases.

So anyway, that's my evaluation of my career, and but for an understanding wife, it would never have happened, because she's always permitted me the privacy of this library and has respected it. In fact, if at nine o'clock I'm in reading or listening to television or something, she would just ask me, "Aren't you going to work tonight?"

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