



LESSONS LEARNED

ANNALS OF JUSTICE

By Steve LaCheen

Some of the best lessons in the art of criminal defense have less to do with knowledge of the law than with knowledge of the judges on the bench. “Know thy judge,” is no less important in federal court today, where 90 percent of the criminal cases are resolved by guilty pleas, than it was years ago in state court when a like percentage of cases went to trial “on a waiver,” that is, before a judge sitting without a jury.

“Horses for courses,” was knowledge learned through a combination of observation of cases tried by other attorneys, by one’s own sometimes painful experience and most often by listening carefully to the anecdotal wisdom imparted by older practitioners during those times when a group of attorneys found themselves thrown together on a given day in a given judge’s courtroom, waiting for their cases to be called.

An incident illustrating the wisdom of that adage occurred on one such day. While waiting in the lists, the lawyer sitting next to me introduced himself, with a dollop of condescension, as someone whose main practice was not in Philadelphia, but a neighboring suburban county. We exchanged some pleasantries, playing “lawyer’s geography,” and the talk turned to our respective cases that day.

“Well, I’ve got an easy one,” he said, indicating his client in the audience. “My young man is only charged with indecent

exposure, no touching, just showing off his wares, I suppose. I hear good things about this judge, so I assume it’ll be a suspended sentence, or probation at worst.”

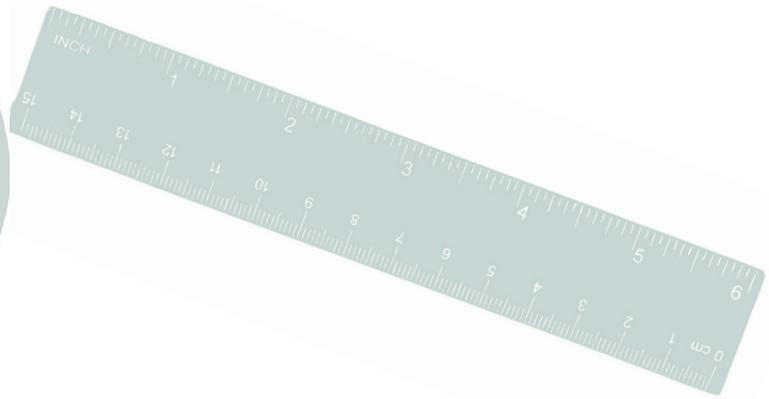
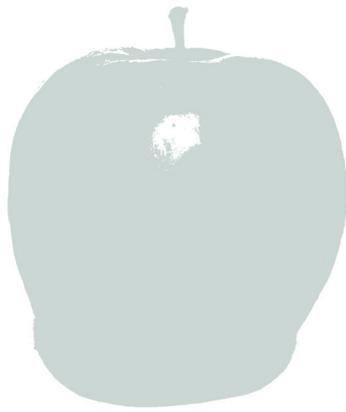
“I see,” I said, pausing slightly for effect, “but hasn’t anyone told you our judge is the father of six daughters?”

Discretion suddenly became the best part of his valor. “I guess I’ll ask for a continuance,” he said, meekly; and suiting the act to the lesson learned he

did just that, luckily for his client, who escaped to fight for probation another day.

“Know thy judge,” was advice that I had learned during the early days of my practice – before the revolutionary expansion of the legal rights of criminal defendants via the Bill of Rights – that is, during that antediluvian time when judges were far less subject to judicial review and, sad to say, far more prone to let their personal predilections dictate their decision-making process, especially when, 30 years before the guidelines, it came to sentencing.

So, I took notes, clipped news articles, recorded every bit of anecdotal evidence that I learned about our judges and read whatever I could find that they had written. There were, at the start, only 21 common pleas judges and about 10 county court judges, so it wasn’t too difficult to build “a book” on most of them. The judiciary has more than quintupled since, so it



would be harder to keep such tabs now; but, of course, we now have computer-driven search engines by which one can learn almost anything about anybody, even judges.

That said, however, there is still no ready substitute for the personal anecdote as a teaching tool.

On one such lesson-learning day, I was sitting in a “waiver room” among a small group of defense attorneys waiting for our cases to be called for trial. Gene, an older practitioner who recently returned to practice after an absence of several years due to some personal difficulties, was sharing his knowledge of the judge presiding in the room that day, and expounding on the vicissitudes of practice before judges of personal acquaintance.

“Generally speaking,” he said, with a droll smile that telegraphed the sarcasm in the remark that was to follow, “it’s not a good idea to ask a judge for a favorable decision, as a personal favor, that is. I mean, of course, by making a private request. It’s not good for several reasons, not only because it’s wrong and can get you in trouble, but because it’s a bad move, period.

“If the judge is a friend, or even just wants to help you in a given case, he knows what to do; and, if you ask, it’s like you didn’t trust him to do it, and that in itself can cause resentment. On the other hand, if what you ask for is something that can’t be justified, that is likely to cause resentment on both sides. So, it’s best not to ask.

“On the other hand,” he said, “not asking can lead to its own problem. It’s a real minefield. I’ll tell you what happened to me once. I pled my client guilty before a judge with whom I had been friendly for many years – I’ll call him Calvin,” he said, smiling, since that was the judge presiding in that room that day. “Well, it wasn’t a real bad case. Young fellow, with minor priors, kind of on the cusp of his future. Could go state,

could go county. I’m hoping for no time, maybe intensive probation, to give him one last chance to straighten out.

“Well, I made my pitch,” he continued, “but it fell on deaf ears. ‘Young fellow,’ the judge said, ‘I’m going to give you the one last chance your attorney has asked for. I’m going to impose a county sentence rather than send you to state prison.’ And he did.

“Now, here’s the really sad part of the story,” Gene said. “I bumped into my good friend Calvin a week or so later at a

social event, and I told him how disappointed I was that he had sent that kid to prison. What I got in response was a look of surprise, and a question: ‘Why didn’t you say something?’ Calvin asked.

“Well,” Gene said, pausing for effect, “I looked him in the eye and said, ‘I was standing there with him, wasn’t I?’ We haven’t spoken since, so it will be interesting to see what happens today.”

My recollection is that Gene’s client fared well that day, getting a result somewhat better than he might otherwise have been entitled to, or expected, for that matter.

I never forgot Gene’s cautionary tale; but the only use to which I was ever able to put it has been to repeat the story to the few judges I have known before they became judges, when we chanced to meet at social events, when I have

no cases on their docket, and am not, therefore, improperly asking for a favor, only sharing an anecdote – a lesson not too late for the learning – one I hope will be remembered later, if the occasion arises. ■

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