

# VIEWS FROM THE BENCH

NANCY BASKIN  
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# WHAT I HAVE LEARNED IN YEAR ONE

- Ties and jury selection
- My sense of humor is generally not appreciated in the courtroom
- Remembering *everyday* that for clients and maybe for attorneys being in court is a high anxiety day
- Give new attorneys a chance to learn to do something the right way
- Older women would like me to wear a jabot like Judge Judy

# WHAT I HAVE LEARNED IN YEAR ONE

- I miss having conversations with my friends who are also attorneys
- I really am an umpire
- I need my hair colored more frequently as it is turning grey faster
- If I have a question and ask other judges for their ideas I am probably going to get multiple different answers

# WHAT I HAVE LEARNED IN YEAR ONE

- Attorneys need to speak up
- Some folks think I talk too much at sentencings
- Think, *really* think, before I speak
- The work of the Courts is so important to our community and the judicial branch needs to continue to educate non-lawyers

# WHAT I HAVE LEARNED IN YEAR ONE

- There are a lot of great litigators
- There are a lot of litigators that could become great litigators
- There are a few litigators that need to up their game for the benefit of their clients and . . .
- There is one judge in particular (with the initials of NAB) who will hopefully improve with more time on the bench

# SCHEDULING

- Things are **busy** in Magistrate and District Courts
  - Judges have regular duties, problem solving courts, and traveling to other counties
  - 40% increase in criminal felony prosecutions
  - Civil filings – still waiting for numbers
  - Hearing dates are harder to find with increased caseloads, but we will find them!
  - Consider mediation earlier

# SCHEDULING

- Stipulations on scheduling deadlines are helpful and can eliminate need for scheduling conference but must be filed 14 days before the conference
- The Court is always available to help resolve informal discovery disputes. Call to schedule with clerk usually at the end of the day

# MOTIONS AND HEARINGS

- “It is easier to ask for forgiveness than for permission”
  - **does not** apply to litigation
  - If opposing counsel will not stipulate to an extension (still need to file stip and order) and request extensions of deadline **PRIOR** to the deadline when only good cause is required
  - Professional courtesy -- never know when you will need it extended to your client
  - Exceptions should not swallow the rule



# ARE MATERIAL FACTS TRULY UNDISPUTED??



# MOTIONS AND HEARINGS

- Limited time for argument so use time wisely
- Court has read the briefs, so present main arguments in a **fresh** manner and allow time for questions
- I ask questions not to grill, but to clarify

# MOTIONS AND HEARINGS

- Professionalism matters in hearings. If you are conceding a point/issue, let the Court know
- **Visual aids** are helpful to the Court
  - Timelines
  - Claims against more than one party

# MOTIONS AND HEARINGS

- Dispositive motions disguised as motions in limine
- Motions for reconsideration buried in responses to other motions
- I **want** motions for reconsideration if I have screwed up – saves clients money and saves me from being overturned by the appellate courts

# AM I A JUDICIAL ACTIVIST?



# MOTIONS AND HEARINGS

- Emergency motions are required responses/replies right before a hearing – courtesy emails as sometimes electronic docketing resembles the timeline of Homer's Odyssey
- Why the Court rules from the bench

# TRIALS

- I try not to give away trials, but it does happen occasionally.
- Stipulate to exhibits where possible, even if it is only to authenticity
- Trials are like a wild animal and the “No Surprise” Rule
- No argumentative speaking objections in front of jury

# TRIALS

- Know the judge's schedule when you estimate trial days (8:30 to 2:30, 9 to 5, 9 to 3:30)
- **Visual Aids – not sure why not used more frequently**
  - 60-85% of jurors make up their mind at the end of opening statements
  - Jurors retain more if they see and hear the presentation -- we are all visual learners!!



# TRIALS

- Jack Malcolm 's Effective Presentations: **SAVER**
  - **S** Stories
  - **A** Analogies
  - **V** Visuals
  - **E** Examples
  - **R** Repetition

# TRIALS

- Juror selection and limited voir dire
- Use the document camera to publish exhibits – people want to see what you are talking about
- Politely make your point with difficult witnesses --don't become the **ugly attorney**
  - It is your credibility at issue not the witnesses

# HAVE YOU EVER FELT THIS WAY??



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“Permission, Your Honor, to treat the witness with hostility.”

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# OR WANTED TO ASK . . .



“Permission to treat the witness as a hostile, self-important, arrogant jackass.”

# TRIALS

- Meeting in chambers and then making the record
- Sidebars – make sure the Court makes a record of these conversations outside the presence of the jury (which may be at the next break)
- **“Save your drama for your Mama!”**
  - Zealous advocate I understand
  - Arguing with the Court -- I don't understand why this is done nor do I appreciate it – be respectful and if you disagree with the Court's ruling then take it up on appeal

# TRIALS

- **Jury Instruction conferences**
  - Not much if any input on opening model instructions
  - Overlooked
  - Occur at the busiest time of the trial and when counsel are tired

# TRIALS

- **Instructions need to be:**
  - Correct statement of the law
  - Model where possible
  - Allow both sides to argue their theory of the case
  - Not every statement from an appellate decision = need for a JI
  - Responsibility of **Court and Counsel** to get instructions right (even if right is not in your client's favor)

# TRIALS

- **Special Verdict forms are critical**
- More detail the better in case there are post trial motions
- And there are *always* post trial motions!



# PET PEEVES

- Timely informing the Court of settlements and the impact on the Court's calendar
- The Courtroom is not a Starbucks
- Talk to your client **before** your case is called
- If need more time for complex case, ask for it in advance when the hearing is being scheduled

# WHAT DOES THE COURT DO OR NOT DO THAT DRIVES ATTORNEYS CRAZY

- Always open to suggestions. May or may not incorporate but appreciate you sharing your ideas.
- Remember judges are just people trying to make the best rulings they can
- Let's hear your comments– what can I do to make your job easier?

# QUESTIONS?

- Thank you for the opportunity to share my views from the bench.