

Courtroom etiquette

By Gerard Mullins

Lawyers who appear for their clients in court must do the best they can within the confines of their legal and ethical obligations. They can occasionally find themselves in front of a judge or against an opponent who vehemently disagrees with their submissions. Sometimes, judges are impatient or critical of the material prepared by lawyers. Or an opponent may constantly interrupt to upset the flow of submissions. The challenge is to retain a calm demeanour and maintain respect for the court and the opponent. David Pannick, in his entertaining and thoroughly researched text, *Advocates*,¹ cites examples of flagrant breaches of courtroom etiquette which may appeal to the lawyer under pressure.

All practitioners know that the judge must always be treated with respect. This can sometimes be difficult. Some continually intervene when lawyers simply want to finish their argument. In *Offut v US*,² excessive judicial intervention was noted when the judge threatened counsel that 'if you say another word, I will have the Marshall stick a gag in your mouth'. Thankfully, judges rarely go to the lengths of the Californian judge in 1983 who, being advised that the district attorney intended to appeal a preliminary ruling, proceeded to poke him in the chest with his finger and tell him, 'Buddy boy, you're not going to get away with this.'³

Pannick makes the following statement about the obligation of the lawyer to resist the temptation to embark upon a confrontational course that may not assist the lawyer's client:

'During the hearing, the advocate must resist the temptation to insult the judge for failing to appreciate the strength of his case ... Similar consequences (and possibly suspension from practice) will follow for the rash advocate who reprimands the judge in court by suggesting that "you ought to be ashamed of yourself" and "you should cite yourself for misconduct";⁴ or comments "this court obviously doesn't want to apply the law";⁵ or replies to a question from the judge by saying that he has not come to court "to listen to a whole lot of stuff from you; I am not in the mood for it";⁶ or responds to judicial admonishment with the words "I'm getting out of this court, if you can call it a court";⁷ or describes a judge in court as "a horse's ass";⁸ or claims that the judge's ruling "smacks of Stalinism and Hitlerism and Mussoliniism";⁹ or says in court that the judge's ruling is "about the most outrageous statement I have ever heard from a bench"; that he feels "disgraced to be here" and that "if this is what your career is going to end on, if this is what your pride is going to be built on, I can only say to Your Honour, "Good luck to you"¹⁰

As a matter of commonsense, the lawyer should avoid making comments to instructing solicitors and others in the courtroom that may also be regarded as critical of the judge or the judgment.

Again, Pannick observes:

'Some general principles can confidently be stated. It is unwise for an advocate to pick a fight with the judge. The authorities tend to frown on advocates who make threats of personal violence to the judge who has not been persuaded by the advocate's submissions. An advocate should not call a judge a "contemptible cur" and threaten to "settle with him outside"¹¹ or to "get even with you"¹². Lawyers should also treat their opponents with respect, irrespective of their conduct. Shuffling papers unnecessarily, audible comments and guffaws are occasional interruptions that the advocate must tolerate.

The interruptions can be extreme. A defence lawyer in a California case reported in 1988 was to appeal in circumstances where his client had been convicted because, he contended, the prosecuting attorney 'farted about 100 times' during the counsel's closing speech to the jury.

But courtesy does not extend only to the judge and one's opponent. Although firm cross-examination is sometimes necessary, a lawyer must always be respectful to witnesses and to other persons in the courtroom. Pannick cites a case where counsel for a plaintiff during a personal injuries trial asked a defendant giving evidence to come down off the witness stand to help the reconstruction of an incident that led to the plaintiff's injury. During the course of the reconstruction, the plaintiff's counsel 'kicked [him] in the back in front of the jury box with sufficient force to drive him from where he was into the jury box'. This type of conduct is likely to be regarded as unacceptable, irrespective of the admissibility of the reconstruction!

Respect for the witnesses and the parties should not be reserved solely for the witness box. It is inappropriate, as Pannick recounts, to be disrespectful to witnesses within the confines of the court. He states:

'Jan Morris, in Manhattan in 1979, observed how "an aged court-appointed lawyer, down at the State courts, histrionically convinces the judge, with a florid wealth of legal jargon and gesture, that an adjournment is necessary, then spotting a row of hostile witnesses as he passes through the court room on his way out, loudly offers them a comment: "Too bad, assholes."¹³

Always remember: you may have to appear in front of this judge or deal with this opponent again tomorrow, next week or next year. If you treat them with respect, they are more likely to return the favour. ■

Notes: 1 Oxford University Press, 1992. 2 348 US 11 (US Supreme Court). 3 *Roberts v Commission on Judicial Performance* 661 P2d 1064. 4 *MacInnis v US* 191 F 2d 157, 160. 5 *Re Lawrence Buckley* 514 P 2d 1201. 6 *In the Matter of George D. Gates* 248 A 2d 671. 7 *State of Washington v Caffrey* 422 P 2d 307, 308. 8 *Re L. A. Paulsrude* 248 NW 2d 747. 9 *US v Schiffer* 351 F 2d 91, 98. 10 *In re Dellinger* 502 F 2d 813, 815. 11 *State v Crum* 74 NW 992 (1898). 12 Pannick at 61-2. 13 Pannick at 53.

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