

SOME DO'S AND DONT'S FOR JUDICIAL OFFICERS

Justice K.N. Goyal

Eminent Vice-Chancellor of the Allahabad University late Dr. Amar Nath Jha, once addressing law students warned the in the following one sentence (which is being split up here for purposes of analysis), of what they may have to face when they go out to practice in the law Courts:

"You have to deal with

1. judges dressed in authority so comprehensive as to make one terrified;
2. judges who may know no law and yet lay it down, judges so learned that your arguments sound elementary and childish;
3. judges so morose and taciturn that they scarce open their lips;
4. judges waiting for the slightest pretext to make fun of you;
5. judges manifestly unfriendly to your case;
6. judges that interrupt you and disturb your line of thought;
7. judges that go to sleep."

He has thus pithily and sarcastically deprecated the following traits in a judge:-

Re: (1) A Terrifying Show Of Authority:

You have, by your deportment, to make the counsel, litigants and witnesses appearing before you feel easy, rather than nervous. This will normally result in reciprocal cordiality on their part and enable them to present their case or testimony in a cool manner.

This does not mean that you should appear to be weak and soft. You have to be firm with recalcitrant lawyers, acrimonious or frivolous litigants and shifty witnesses.

Re: (2) Ignorance Or Shallow Knowledge Of Law Which One Tries To Cover Up By Showing Off.

Unless you really know law, your showing off will not convince anyone. It will only make you an object of ridicule by lawyers and litigants and even by your colleagues. What is important is to make sincere efforts to acquire knowledge. Not all advocates are well equipped nor come well prepared. At the same time, not all of them are ignorant of law. You should not feel shy of *accepting* a valid point made by a lawyer even if it goes against your pre-conceived notions.

If you maintain a register of rulings which you have read in your spare time or which are cited before you in arguments, it will be very useful to you. (You will in fact have to maintain several such notebooks subject-wise).

It will often help you in putting a recalcitrant, bombastic or repetitive lawyer in his place. If you can point out to him a relevant ruling he will have to submit to it unless he is able to distinguish it. Such register will also enable you to guide many *junior* lawyers who may not be very well versed in law. Even when a lawyer is not able to give a valid argument in favour of his case but you happen to be aware of a ruling or legal principle which supports him you should not hesitate to tell the parties' counsel about it.

Display of/earning by unnecessary citation of too many rulings and giving *long* quotations from them in your judgments should also be avoided.

If you are really learned your knowledge will show itself in your handling of cases. You don't have to show it off.

Re: (3) And (6) Remaining Either (3) So Silent And Pompous During The Hearing That The Lawyers Do Not Even Feel Assured That You Are Following Their Arguments Or The Case Itself, Or, (6) Being Guilty Of Excessive Interruptions

Of Course you should not be guilty of too much interruptions either during the cross-examination of a witness or while a counsel is arguing.

Excessive interruption during *cross-examination* is liable to be misconstrued. The lawyer may be led to *feel* that you are unjustly trying to nullify the effect of an admission that he has extracted from the witness through cross-examination. Or that you are making the lawyer lose his setline of cross-examination.

It does not, however, mean that you should hesitate in doing your duty of protecting a witness from a lawyer's unfair or intimidating or bullying tactics during cross-examination. If the lawyer has put to the witness a misleading question, and before you could object to it the witness has blurted out some ambiguous reply and the lawyer insists on your recording it as an "admission" or "contradiction" of the witness, you must reject his plea. You should ask the lawyer to put a proper question afresh or yourself clarify from the witness what he really meant to say, and then record it.

In arguments also, the lawyer is entitled to put across his viewpoint in his own way. But if he is rambling and digressing you are entitled to tell him to come to the point. You can and should also ask him to answer a legal proposition which seems to you to go against his case, you can and should stop repetitive arguments. You should also clarify your doubts by questioning the validity of the legal proposition being advanced by him, so that he gets an opportunity to convince you by citing an authority or by re-phrasing his argument. But where a lawyer appears to take offence at such questioning and does not welcome such opportunity, it is more expedient to keep mum.

Re:(4) Trying To Make Fun Of A Lawyer:

This must always be avoided. Even if a lawyer is advancing a ridiculous proposition it is enough to indicate to him the fallacy or the mistake in his argument. But if you try to make fun of him many other

lawyers present in the courtroom may try to humour you by joining you in your laughter. Never be elated by such insincere appreciation of your "wit" The lawyer concerned will in any case become your enemy. He may also sometimes make an offensive retort, which may make you uncomfortable. No one should laugh at others' expense unless he is prepared to appreciate a repartee at his own expense as well.

Re: (5) Being Manifestly Unfriendly To A Party's Case

You are well aware of the two fundamental principles of natural justice. They are applied even to many administrative proceedings. With even greater force, they necessarily apply to proceedings in a court.

One is, the absence of bias. Justice should not only be done but should also seem to be done. The other is, hear both sides.

You have to so conduct yourself, in the court room as well as outside, as to give a clear impression of your impartiality and of fairness of hearing. Of course you can't help if a party or his lawyer makes a false pretence of being ~ treated unfairly merely because you reject his unreasonable requests, such as for adjournment, or because you refuse to succumb to his unfair tactics.

Re: (7) Being Inattentive

If you are not an ignoramus and are really alert and have applied your mind to the facts and the law you can never feel so bored or disinterested as to look like having gone to sleep. There is however one exception. If a lawyer is arguing endlessly and repetitively and is neither prepared to answer your queries, nor is in a mood to listen to any plea of yours to be concise, and in order to avoid creating a scene you let him go on, you, understandably, can't help going to sleep!

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