

The *ALPHA* and the *OMEGA* Or Fun with Judges

BY STEVEN R. SHER

THE ALPHA

My first yearly term as editor-in-chief of this publication (then titled *The Shingle*) was in 1984. In two of my four editor's columns I wrote about what was then a hotly debated topic - criticism of judges - and whether the Philadelphia Bar Association and individual lawyers had a duty to defend judges from criticism, both justifiable and unjust, since judges did not have the ability to defend themselves under their judicial code.

Still so very full of myself as editor-in-chief of such a lofty publication as *The Shingle*, I took the not-so-popular position that, actually, lawyers should criticize judges where justified. That was the last time I ever mentioned the subject of judges. Until now.

THE OMEGA

Finishing my fourth term as editor-in-chief, and being 71 years old, I highly doubt I will wait around to re-ascend the associate editor masthead to become the head guy for a fifth time. Nineteen people will be ahead of me, and while some may drop off and others may not wish to lead the magazine, we are still looking at 10 to 12 more years, at least. This is, then, most likely my last editor's column ever. But you never know.

For my personal *Omega*, I once again discuss judges. Since I have wanted to write this for a long time, but did not want to raise certain people's ire, now, as an almost-retired, non-practicing lawyer, I get my chance.

Over the years, many of my students and other acquaintances have asked about my trial experiences. Frankly, I answered that they were quite limited, but that many, if not most lawyers rarely, if ever, see the inside of a courtroom, and I tell them why.

But there was always an unmentioned reason for my avoidance of trial work. It was fear: fear of failure. This fear, coupled with being something of a perfectionist - common, I later learned, with male eldest children of self-made fathers - also resulted in my being a procrastinator (i.e., these traits are often linked).

Unlike my *Alpha* columns, this one will not at all treat the

judiciary kindly and soberly. But the judges portrayed here have long departed this world, and I will not identify the other characters, either.

In one of my several pre-Drexel University law jobs, I worked for an elder solo practitioner who, in his younger days, was apparently (he thought) well-regarded by his peers and younger lawyers alike. A very proud man, he would identify himself on the phone: "This is XYZ; you know who I am, don't you?"

During my time with him, and for a while before, much of his practice was typical of a solo plaintiffs' counsel, with an emphasis on various types of negligence cases. But I was working on a matter of first impression for him (and for me) - an Age Discrimination in Employment Act case. In the mid-1970s these were not common, nowhere near as common as Title VII cases.

The defendant, a large national corporation, was represented by one of the largest (then almost entirely "WASP") firms in the city. Council of record, PDQ, had been (or would be) a Chancellor of this Association. He sent a new associate to a status call, where I represented XYZ. The judge, LMNO, was one of the Eastern District of Pennsylvania's most liked and respected men, and later would ascend to the Third Circuit bench.

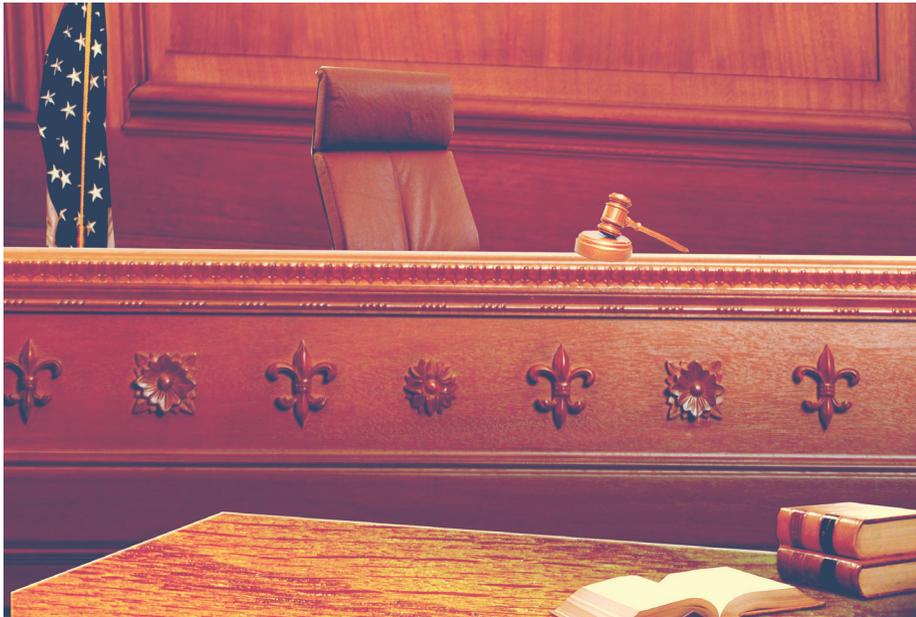
As our case was called, we two surrogates went to the rail. I opened, "Steven R. Sher, for XYZ, for the plaintiff, Your Honor." Judge LMNO quickly asked, "Oh, is this a slip and fall case?" Never did I (nor could

I) have expected my boss to be so belittled and disrespected. Standing as straight and tall as a five-foot-eight-inch man could, I replied, "No, Your Honor, this is an Age Discrimination in Employment Act case."

Judge LMNO then turned to my "opponent." Upon hearing for whom she was appearing, he asked, "Oh, how is PDQ? Give him my regards." I will never forget this surprising exchange.

A few years later, now a full-time, tenure-track assistant professor of legal studies, I had another discrimination case, this one as co-counsel with a friend. Ironically, my experience with XYZ had resulted in my semi-specializing in various





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employment discrimination areas, though no prior case had ever progressed to trial. But there I was, in the Eastern District, in front of a retired judge, himself a "Super-WASP" of old Philadelphia Main Line heritage. Unlike LMNO, this judge was not nearly as liked or respected. In fact, he had a reputation as a crotchety, almost mean-spirited, old man.

To begin with, as the bench trial opened, the judge's first words were: "The main concern during this trial should be the convenience of the Court and its staff." Co-counsel and I looked at each other in disbelief. Did his honor not remember that a lawyer's first duty and concern is owed to the client? Judge Super-WASP was to repeat this more than once.

Later, the client was on the stand in Super-WASP's courtroom, directly

abutting his seat on the bench. Literally.

At one point, when our client had taken a few moments to think before he spoke, Judge Super-WASP leaned over and forcefully poked him with his index finger, saying "Speak up." Not long afterward, the judge again leaned over and actually pushed the client sideways. All of us could see him fight not to fall off his chair. Defendant's counsel was as disconcerted as we were. We settled the case that afternoon.

So, readers, here in the *Omega*, you have read about the majority of my trial experience - fun with judges.

Goodbye. ■

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The Philadelphia Lawyer (USPS #025-241), printed with soy inks on recycled paper, is published quarterly in March, June, September and December by the Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, Pa. 19107-2955. Telephone: (215) 238-6300. E-mail: tplmag@philabar.org. Subscription cost for members is \$5 which is included in annual dues, and for nonmembers is \$45 yearly. The opinions stated herein are not necessarily those of the Philadelphia Bar Association. All manuscripts submitted will be carefully reviewed for possible publication. The editors reserve the right to edit all material for style and length. Advertising rates and information are available from Don Chalphin, Associate Publisher, ALM, 1617 JFK Boulevard, Suite 1750, Philadelphia, PA 19103, (215) 557-2359. Periodicals postage at Philadelphia and additional locations. POSTMASTER: please send changes to The Philadelphia Lawyer, c/o Philadelphia Bar Association, 1101 Market St., 11th floor, Philadelphia, PA 19107-2955.

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