

Judicature

BOLCH JUDICIAL INSTITUTE

Published by the Bolch Judicial Institute at Duke Law. Reprinted with permission. © 2020 Duke University School of Law. All rights reserved.

JUDICATURE.DUKE.EDU

72



Sitting on the bench

MY ADVENTURES IN A CONNECTICUT COURT

BY CARL J. SCHUMAN

A DRAWING OF THE HARTFORD, CONN., COURTHOUSE (istock.com)



Fellow judges, I highly recommend keeping a diary of your daily adventures in the courthouse. It would be hard to make up stories that are better than the reality of courthouse life.

I have kept such a diary over my 22 years sitting as a judge in Connecticut Superior Court, which is a trial court of general jurisdiction. Whenever a noteworthy event occurs, I make a note to myself in chambers and then write the full entry when I get home. I write mainly for my own consumption, as some of the entries include thoughts about the case, the lawyers, or the decision that might help me in the future. But I must admit that I have always written with the notion that I would put some of the more entertaining entries into the public domain.

And here they are:

January 1998. My first assignment as a judge is to Danielson in the Windham Judicial District. Upon arrival, I immediately realize that I am no longer in federal court (where I had practiced as an Assistant United States Attorney for the previous nine years). In fact, there is no court. What substitutes for a court is held on the second floor of the town hall in an assembly room. The clerk of the court must stand at a table because there is no room for a chair.

My “chambers” has a metal desk with a rotary phone that does not receive calls after 4 p.m. I share a bathroom with court personnel. And because there is no toilet in the lockup, I occasionally find myself having to wait outside the staff bathroom while a prisoner uses it and a sheriff stands outside.

In short, I am delighted to be in Danielson. Some unusual things happen here. A defendant moves, so to speak, to vacate his arrest for failure to appear in court on the ground that, on the day of court, his cow began to give birth and he had to deliver the calf. Motion granted.

August 2000. *Middletown Juvenile Court.* I have a pro se litigant who disrupts the court by constantly interjecting and raising his voice. I try to be patient with him, but finally he announces: “I’ve had it. I’m going to get a federal judge.” That’s fine, I said, thinking that, if he can find a federal judge who is more tolerant than I have been of his antics, I would gladly have the case removed.

July 2001. *Hartford Civil.* I have a pretrial conference on a probate appeal. One of the lawyers, whom I will call A.B., happens to be the probate judge in a different town. During ►

The judge is not necessarily in charge here. I hear the marshals telling a defendant: "Here's how things work. You just sign these papers, and the judge will approve the deal."

our discussions, opposing counsel, for his own strategic reasons, actually cites the probate judge's opinion in a different case, referring to the "well-reasoned decision of the eminent Judge A.B." A.B. then asks to review the decision. He does and, not to be outsmarted, remarks: "That judge didn't know what he was doing."

May 2002. New Britain Civil. We have a civil trial in which the plaintiff is Polish and has a Polish-speaking lawyer. At several points during the trial, the lawyer hears the answer of the witness in Polish and then, because he understands it, goes on to ask the next question before the translation by the court interpreter. "Hold on, counsel," I tell him. "If you want me to credit your client's testimony, I would suggest that you wait until it is translated into a language that I can understand."

November 2004. Waterbury Complex Civil Litigation. During a jury trial, the court reporter starts coughing. A lawyer gets up to give her a cup of water, virtually kneeling beside her to deliver it. Not to be out-lawyered, opposing counsel proclaims: "I would have given her a bigger cup."

In another trial, a young neuro-radiologist testifies as a defense expert. It was apparently his first time in this role. Plaintiff's counsel proceeds to ask him the standard question of how much he charged the defendants for his services. Answer: "One dollar." Question: "Why so little?" Answer: "Inexperience." It was not immediately clear whether he was referring to inexperience as an expert or inexperience as a doctor.

February 2006. Danbury "block" (or general) assignment. In a medical malpractice case, defense counsel is as feisty and partisan as imaginable. On cross-examination of the plaintiff's expert, defense counsel sneers: "So you're basically on the staff of plaintiff's lawyer, aren't you?" The jury apparently likes the sneering lawyer and returns a defense verdict after only one hour of deliberations.

May 2007. New Britain block assignment. One civil trial resembles a baseball game: three hours long, but with only seven minutes of action.

September 2008. I have been assigned to the criminal division at Waterbury

Superior Court. I spend the first week in Community Court. The judge is not necessarily in charge here. I hear the marshals telling a defendant: "Here's how things work. You just sign these papers, and the judge will approve the deal."

November 2008. After a jury returns a verdict in a murder case, I go back to speak to and thank the jurors. For me, this is one of the highlights of a trial. I have found jurors to be most impressive people. One of the jurors had just become a citizen in July. No sooner was she naturalized than she was hit with a jury summons. No complaints from her. She felt honored to be chosen and to have the opportunity to serve on a jury.

January 2009. Another jury selection. One of the attorneys asks a juror whether he would use common sense in deciding the case. The juror responds: "As opposed to what?"

April 2009. We try a misdemeanor case to a guilty verdict. We do not tell the jurors whether they are regular or alternate jurors so that all of them will give the case their maximum attention. After the verdict, I ask the jury how

they felt about not knowing their status. The foreman replied that they felt terrible because they all had to concentrate 100 percent in the event that they were going to be voting jurors. Precisely my point.

May 2009. I had a new law student intern start today. To protect his identity, I will just say that he is an elite runner who went to the Olympic trials in 2008. But today he got off to a false start of sorts. We are trying a murder case. The intern walked into our packed and unusually warm courtroom and sat down at the clerk's station. When the intern began to hear testimony from the medical examiner that the victim died from asphyxia due to manual strangulation, the intern started to faint. He got up, walked out of the courtroom, and took a lap around the building before he felt better. It was apparent that his training had not fully prepared him for a day in court.

October 2009. During jury selection, a juror told us that he thought he was unavailable for jury duty on November 2 and 3 because his wife was planning a surprise birthday vacation for him. After I mentioned that it wasn't exactly a surprise if he knew about it, I excused the juror because I did not want to upset his wife's plans in any way. "Act surprised," we told him.

February 2010. During closing argument in a criminal case, the prosecutor was making reference to the fact that the jury will get instructions on the law from "Judge . . .," and then she hesitated. It was obvious that she was having a senior moment and could not remember my name. So I filled it in. "Schuman," I said.

July 2010. Jury selection. A juror wrote on the supplemental questionnaires that I use: "I do not want to serve. If chosen, I will roll the dice or vote with the majority or do whatever it takes to get the case over with as soon as possible." Thank you, at least, for your honesty. Excused.

December 2010. Rockville criminal and habeas corpus. A phone rings during our habeas trial. Habeas counsel says, "I'm sorry, Your Honor, it's mine." I ask her to shut it off. She says that she has done so, and we resume trial. A minute later it rings again. Habeas counsel picks it up and, without even excusing herself, begins to walk out of the courtroom saying into the phone: "Could you call back later? I'm in the middle of a trial right now."

April 2011. Today I had to preside over petitions to change one's name. One prisoner was seeking to change his name for the third time. Can you please make up your mind, sir? Another prisoner wanted his name changed to Lucifer Iak-Satan Pagan. Denied — too evil. The best was saved for last: A prisoner actually wanted his name changed to Bam Bam Bam. Perhaps someone put him up to it, but I would not be a party to such a misuse of court resources. Motion denied.

February 2012. Hartford criminal. In criminal court yesterday, a father came in with his son, who was probably seven or eight, to move pro se to vacate his rearrest for failure to appear in court the day before. He had apparently mixed up his dates. I granted his motion and then ordered him to return to court on April 12. I told him not to forget it. At that point, the boy, who had been playing with a toy computer, stated loudly: "Oh, he won't forget it because it's one

day after my birthday!" It was a scene out of *Miracle on 34th Street*. I told the boy: "You be sure and remind him."

November 2012. Hartford civil. There is a court-watcher in our courthouse. He comes into most any case and quietly sits down for about half an hour. He looks like he may be homeless and comes to court to stay warm. He usually wears the same jacket. Yesterday I saw and recognized him outside the courthouse when I was coming into work. He said very politely, "Good morning, Your Honor." I replied in a friendly voice, "Good morning. See you in court."

February 2013. It is day five of a bench trial in a construction case, which will go one more day. Since the case is actually about stripping and painting metal bars over the windows at the Cheshire Correctional Center, I can say that, both literally and figuratively, presiding over the case is like watching paint dry.

June 2013. I am presiding at a hearing on a motion to dismiss for lack of personal jurisdiction under the long-arm statute. The plaintiff's lawyer has an unusual method for offering to prove that the defendant bar, located in Springfield, Massachusetts, advertises on radio stations that are heard in Connecticut and therefore has sufficient contacts with this state. The lawyer offers to recess court, have everybody walk to his car, and then listen to his car radio. At that point, defense counsel stipulates that these stations can be heard in Connecticut.

September 2013. My latest trial involves the incredible story of a person being transported to a hospital by an ambulance that caught fire en route and eventually exploded. Fortunately, the plaintiff was being taken to the hospi- ►

To make matters worse, his cell phone went off during argument and started playing "Eye of the Tiger."

tal as a precautionary measure, due to a heart condition, and the attendants got him out of the ambulance before he was physically hurt. But he is claiming PTSD. It's not a bad claim — isn't that your worst nightmare? Good lawyers make this case a pleasure to try. But after counsel for the defendant ambulance company presents closing argument, plaintiff's counsel gets up on rebuttal and claims that defense counsel sounded like a criminal defense lawyer arguing "blame the victim." Ironically, plaintiff's counsel usually serves as a criminal defense lawyer and has been known to make the very argument that he is attacking.

January 2014. I was doing my standard jury orientation this morning to about 75 good citizens who range in appearance from mildly interested to half asleep. I went into my usual speech about the importance in U.S. history of the right to serve on a jury. I mentioned the Founding Fathers, Reconstruction, and the women's suffrage movement. I then looked up into the audience, and there I saw my daughter's U.S. History teacher. I thought to myself, I better get the history right or I will be in trouble. I think I did, because I checked my source material when I got back to chambers. I told my daughter the story, but the only part she enjoyed was the fact that she had a substitute for the day.

June 2014. I saw a headline in the news clippings that we receive via email entitled "State Supreme Court criticizes judge's sentence." I clicked on the link, wondering who was the unlucky judge. As it turns out, I was that judge. At sentencing, I had questioned the defendant's late apology for his attack on a Western Connecticut State student, calling it insincere and noting that it had not spared the victim from a trial. Suggesting that the defendant could not exercise his right to a trial was not a good thing to do, of course. Yet most of the Supreme Court's opinion had to do with the reviewability of the claim, which was never raised before me in the trial court. The Supreme Court ultimately decided to review the claim based on what it called its "supervisory authority," which was a somewhat new approach in this context. So the headline should have been about the new standard for appellate review. But then again, who would have read it (including me) with that headline?

March 2015. *New Britain administrative appeals.* At oral argument on an administrative appeal, the lawyer started off by saying that he had heard that I had a reputation for reading the briefs before oral argument, so he won't belabor the facts. I thought to myself that, unfortunately, it is apparently the rare case in this lawyer's experience when a judge actually has

read the briefs beforehand. The lawyer then proceeded to show virtual total ignorance of the issues and to avoid almost every question I asked him. To make matters worse, his cell phone went off during argument and started playing "Eye of the Tiger."

April 1, 2015. I am substituting in criminal court today. The prosecutor called a case and proceeded to tell me that the defendant stole five goats from the victim's farm in Southington. The defendant had a possible claim to the two older goats because they were hers originally, and she had only asked the victim to take care of them for a while. But she had no valid claim to their three baby goats, because they were born on the victim's farm, and the victim had raised them. So the prosecutor said he would drop charges if the defendant returned the three kids to the victim and stayed out of trouble for a year. I responded: "Recognizing that today is April 1, sir, I want to make sure that you are not kidding."

July 2015. I am again in criminal court. While taking a guilty plea, I hear someone talking from the spectator gallery. I look up and observe that the sounds appear to be coming from a man in the audience who somehow fell asleep in his seat and was talking in his sleep. I had the marshal remove him, but not before listening to see whether,

during his nap, his conscience might come clean and he might confess.

February 2016. I am picking a jury in a risk of injury case. I like the prosecutor but he is a bit long-winded and fixed in his ways. A juror put it better than I could: "Sir, I didn't understand your question because you made a long statement before you got to the question part." Over the length of jury selection, the best question asked of a juror was: "You moved from Jamaica to Buffalo? Why would you want to do that?" And the best comment from a juror: "My father told me don't believe what you see and only believe half of what you hear."

April 2016. I am trying a murder case. The charge to the jury is long because of lesser-included offenses and self-defense. I notice that the prosecutor is nodding off as I am reading it. I hope the jury is paying better attention.

April 2016. Today we start a tax trial, and the first witness cannot get into the witness box because it is locked. I remark that I have seen witnesses who wanted to get out of the box but never one who wanted to get in but was unable to do so. We finally get a marshal to unlock the box. Why would you lock it in the first place?

June 2016. I am covering arraignments. For the first time in 18 years, I have a defendant come into court with socks but no shoes. He can clearly afford shoes. I think he just got out of bed and forgot to put them on.

September 2016. I have been reassigned to Litchfield. With this assignment, I will now have been assigned to courts in seven out of Connecticut's eight counties, with my home county of New

London being the lone exception. On my first full day there, I hear a ticking sound in court. I assume it is a clock and hope it is not a bomb. Then an air raid siren goes off. I am now convinced that we are under attack. I look at the marshals, who do not even flinch. Apparently, because cell phone texts and emails are not necessarily reliable out here in Connecticut's Northwest Territories, Litchfield still uses an air raid siren to alert volunteer firefighters or police. As another marshal told me, I am basically in a courthouse like the one from *To Kill a Mockingbird*. Welcome to Litchfield.

October 2016. We had a lunch for the staff. I talked to a court reporter who lived in the rural town of Goshen. Their family kept a surveillance camera in their yard just to watch wildlife. In one hour they saw five or six bears. How extraordinary, I thought. Until my ride home, when I saw a bear crossing Route 4 in Burlington.

February 2017. I had two nice lawyers in chambers. They saw my display of the syllabus in *Kelly v. Robinson*, which is the case I argued in the U.S. Supreme Court in 1986. We had a short chat about the case. After hearing that I won the case, one of the lawyers stated: "Judge, I will be sure to cite that case in any brief I submit to you."

February 2017. I heard motions on an animal cruelty case that I will try next week as a bench trial. The allegation is that the defendant pulled his pit bull puppy up by the back of his neck as a means of discipline. The defendant's attorney actually filed a motion to permit him to bring the puppy into the courtroom, put the puppy in the witness box, ask questions of the puppy or give it commands, and see how it

reacts to the defendant. Restraining myself from saying something like "you are barking up the wrong tree," I denied the motion by simply saying that the evidence is totally irrelevant. It so happens that several of the state's witnesses will have service dogs for unrelated health reasons. Can you imagine what might happen if the pit bull and the service dogs were in the courtroom together? The marshals would certainly have to work doggedly in that event.

February 2017. In criminal court, a public defender came to counsel table and stood there, without saying a word as the prosecutor called three cases and dismissed each one of them (because the defendants had completed programs). I said to the public defender: "You are doing pretty well and you haven't had to say a thing." He replied: "Sometimes it's better if I don't say anything."

August 2017. I am doing a court trial involving a challenge to a will and trust. A witness takes the stand. He is asked whether he accompanied the decedent to the lawyer's office to have the will drafted. The witness then turns to the decedent's brother, who was in the audience, and asks: "When did we go to the lawyer's?" I had to tell the witnesses that only lawyers can ask questions.

September 2017. I finished a one-week tour in the new courthouse in Torrington. I actually conducted a motions calendar on the court's opening day. The courthouse here is beautiful. It is a "Temple of Justice." The courtrooms are huge. But they are also misnumbered. Courtroom C1 is on the first floor, not the third. In any event, I have gone from one of the oldest courthouses in the state (part of ►

the New London courthouse is much older than the 1888 Litchfield courthouse) to the newest courthouse in the state.

October 2018. Now back in civil court in Hartford, we get a verdict in a products liability case against a pharmaceutical manufacturer. After the verdict, we had an open discussion with the jury, which the lawyers really appreciated. The best juror comment: “It was a little troubling hearing that these experts get \$800 per hour when I only get \$50 a day.”

November 14, 2019. The theme of expert pay vs. juror pay pops up again. In a corporate divorce case that, for

some reason, the parties elected to be tried to a jury, the plaintiff presented an expert witness in the field of investment management and venture capital. The expert had a degree from London School of Economics and a Wall Street background. Still, his charge of \$1,200 an hour (yes, that’s correct) was somewhat off-putting to a jury making \$50 a day. So cross-exam ended this way: Q: “And you’ve put almost 100 hours into this case?” A: “Yes.” Q “And so you’re making roughly \$120,000 in this case alone?” A: “Yes.” Counsel: “No further questions, Your Honor.”

I am hoping for many more adventures while sitting on the bench.



CARL J. SCHUMAN has been a judge of the Connecticut Superior Court since 1998. He is the editor of *Connecticut Criminal*

Procedure. He has served as an Assistant State’s Attorney, Assistant State Attorney General, and Assistant United States Attorney in Connecticut. He received a B.A. in government from Harvard University in 1976 and a J.D. from Duke University School of Law in 1979. An earlier version of this article appeared in the November/December 2018 edition of *Connecticut Lawyer* magazine.

Supporting **Judicature** is not just what we do,

it defines who we are.

WEITZ & LUXENBERG PC

WWW.WEITZLUX.COM

NEW YORK, NY | CHERRY HILL, NJ | LOS ANGELES, CA | DETROIT, MI