

Other Areas of Practice

On judge neutrality: Beware the lamb in Rhodesian Ridgeback's clothing | Marcel Strigberger

By **Marcel Strigberger**



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(January 8, 2021, 2:29 PM EST) -- Of course I'm objective; I'm a judge.

OK. But is it possible that judges have personal idiosyncrasies that colour their objective lenses?

For example, I once had a nonjury dog bite trial. I opened with, "My client was delivering a pizza, when suddenly the defendant's dog, a Rhodesian Ridgeback, lunged and bit him. Rhodesian Ridgebacks were actually bred in Africa to fight lions. They're highly dangerous ..."

At that point, the judge interjected, "Ahem. No, they're not. My daughter has a Rhodesian Ridgeback, and he's as gentle as a lamb."

I cannot say my confidence in the case did a 180-degree turn. However, I suddenly wished I had opted for a trial by jury. At least there would have been a chance one or two jurors might have once worked for Domino's.

We lost this case, His Honour finding no evidence of the dog's predisposition to maul unsuspecting guests. Judicial bias? No way.

Speaking of dogs, a colleague, Henry, had a case where a shih tzu bolted and ran up, growling to his client's leg. The client "slightly" kicked the pooch resulting in getting charged with some cruelty against animals offence.

Henry, to give his articling student some court experience, sent Alvin to enter a guilty plea, expecting a small fine.

Alvin returned to the office, tail between his legs (proverbially speaking). Gasping, he reported that the judge hammered the client with seven days in the slammer. Henry soon discovered that the judge was a former director of the SPCA.

Can you fault the judge? At least the student got that court experience.

Often, the judges' backgrounds are more known.

We had a judge I'll call ID (no relation to the Freudian ID). Here, ID stands for impaired driving. He was a curmudgeon well known for his aversion to drunk drivers.

Although judges routinely issued a fine for a first offence, ID would generally hit the inebriated driver with incarceration. No informed lawyer would enter a guilty plea before him. Shakespeare's iconic plea, "The quality of mercy is not strained," would have no meaning for him. Tweety had a better chance of getting a break from Sylvester.

We had another judge who was assaulted by thugs who also stole his prized Omega watch. Did this incident affect his objectivity? Maybe. I once witnessed a mugging sentencing in his court. The Crown read a facts synopsis. I don't know the outcome as I had to scoot off to another courtroom, but the last part I heard was the judge saying, "Rolex? That's even more valuable than an Omega." Whatever

happened, I'll bet the defendants' lawyer learned a valuable lesson.

Conversely knowing the judge's penchants can help.

We had an elderly judge originating from England who had served as an admiral in the Royal Navy. Rumour had it that he, (Judge O, for ocean) had a soft spot for sailors, wise lawyers would be sure to bring out any of their clients' maritime connections they could muster, however remote.

Unfortunately, whenever I appeared before O, none of my clients had had any sailor experiences. I was tempted to import something seaworthy, but I never had the guts to open with, "Your Honor; ahoy!"

On one occasion, my client originated from Saskatchewan. He had never seen an ocean. I felt marooned. The best I could think of in addressing sentencing would have been, "George does hail from Saskatchewan, but he always wished he had been born in Halifax."

Which brings us to what do we do if we come across a judge where we sense some reasonable apprehension of inherent bias?

First, we have those situations where you have no clue of any of the judge's inherent biases.

Taking my dog-bite case, I was completely in the dark. It would have been great to be able to question the judge at the outset:

"Your Honour, before we begin, does your daughter own a Rhodesian Ridgeback?"

"Yes, counsel. How do you know?"

"Wild guess, sir. I request you recuse yourself."

No such luck.

And even when you do know the judge's negative biases, you may have few options. I doubt it will help much if you tell that judge who got mugged, in speaking to sentence of a robber client, "At least he didn't take the victim's watch."

What to do? Mark Twain said, "A good lawyer knows the law; a clever one takes the judge to lunch."

I don't quite recommend you try this in your courtroom. However I actually ran across Judge O, the admiral, at a reception. I cautiously navigated the chat to his naval career, commenting, "I believe more young people today should join the navy." Judge O agreed proudly, adding as we clinked glasses of sherry, "It turns boys into men."

Did he remember our chat weeks later with my Saskatchewan client who pleaded guilty to his third theft offence and was facing a likely custodial sentence?

Judge O rolled his eyes when I mentioned that landlocked province, and eyeballing the client asserted sternly, "Sir, I should send you to jail, but I am moved by your unfortunate surrounding circumstances and your fine lawyer's cogent comments. There will be a fine of \$250."

Much relieved, I wondered which comments he was referring to.

Marcel Strigberger retired from his Greater Toronto Area litigation practice and continues the more serious business of humorous author and speaker. Visit www.marcelshumour.com. Follow him @MarcelSHumour.

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