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Judges: Respect is a two-way street.

Â Bill of Rights.Â (From the public domain.)Â Â In many ways, judges are antithetical to America's finest democratic ideals. Who else in AmericanÂ government gets cloaked in such enforceable majesty as judges? What other government official walks into and leaves a government chamber with commands to rise from everyone's seats, but ordinarily not rise in reciprocation? What other government official gets called your honor, but responds with "Mr." or "Ms." to the speaker? What other government official can find a person in contempt for disrespecting that official or his or her office, even if the disrespect is expressed in a calm tone of voice? What other government official gets a protected office of power for life at the federal level and for plenty of years in between elections and re-appointments in the states that do not have lifetime judicial seats? Â Judges are humans, and humans err. The republic will not collapse if we democratize judges more, even if that is toÂ commence no further than eliminating commanding the audience to rise when the judge enters and leaves the courtroom. I applaud theÂ judges who opt to have the room advised to remain seated, and at least one federal court has a tradition of reciprocating the rising by coming down from the bench after oral argument to shake the hands of the arguing lawyers. I am not ready to say that judges' tenure should be subject to the political winds any more than what already affects such tenure. I am wondering, though, about the extent to which all this majesty with which judges are cloaked is more a holdover from the insufficiently democratic English tradition than an adaptation to the more democratic governing system that purportedly took hold in America despite the inclination of some even to turn General George Washington into a king. Â State and federal executive branches further get in on the act of the undemocratic nature of judging, through the administrative law judge system. Just walk into any immigration courtroom, for instance, where you will see administrative law judges cloaked in black robes, looking superficially like real judges, being called "your honor", and being analogized to a "court". Heck, they are not real judges; they are employees picked by the executive branch, never considered or confirmed by the legislative branch, consequently not sufficiently independent from the executive branch, but so often acting in an undemocratic manner. What a sleight of hand to follow a spirited contested election for president, governor or mayor, with the victor or his or her appointees selecting these administrative law judges who are not real judges and who serve in such undemocratic roles.Â I say to strip administrative law judges of the title of judge, to strip them of their black robes, and to call them what they really are: hearing examiners, hearing board members, adjudicators, tribunal presidors, or anything else other than words that smack of judge, your honor, or court. Â Fortunately, many judges are folksy people who care about doing the right thing (as they define the right thing, of course) and who are unmoved by the trappings of the office and are motivated more by the best judicial traditions of Solomon. Fortunately, many judges do not get jaded through day-in and day-out visits to variations on the same often seemingly-whining/complaining themes, while battling often crushing dockets and insufficient resources to justly serve each litigant. Such judges continue to see each litigant as an individual on his or her merits, with real problems riding on the court case,Â and not as just another drunk driving case; just another divorce case; or just another fender bender. They continue to engage in conversation with laypeople and lawyers, without crossing over the line of ex parte communications and ex parte favoritism. Those are the judges who should be the role model for every new judge and for every judge at risk for being jaded or worse, or who already has crossed that line. Â A lawyer I know who seems to be highly respected by judges and who is the age contemporary or older than most of them told me that many judges he knows very much dislike plenty of what they do. It seems that some of them started out with the goal of serving the public, but got jaded. If the jading does not go away, should the judge stay on the bench? Â At a trial lawyers seminar several years ago, I got a chance to serve as a mock judge at a mock personal injury jury trial. I was surprised when one of the mock jurors told me afterwards that I would make an excellent non-mock judge. How would I be able to last as a judge without being impeached? Imagine my first bond hearing: Judge Katz: "I see you are charged with burglary after having been convicted of burglary three times already, I am reducing your bond to \$5.00." Defendant: "Huh?" Judge Katz: "Okay, fifty cents, then, but not a penny lower." Imagine how I would be at sentencing; criminal defense lawyers would fight each other to be first on the path to my courtroom. Â The best judges treat litigants, lawyers, witnesses, jurors and everyone else as if the judges were not wearing black robes in the first place, but who instead feel honored and humbled to have the opportunity to exercise such awesome power and who invest themselves fully to exercising that power fairly, justly, and according to the real meaning of the law. For them, the black robe is not something that elevates them over the courtroom's other visitors, but is a reminder to them of the extraordinary power that they weild. When judges take that approach, I do not get too concerned about their being called "your honor" orÂ "the court" or entering and leaving the court after everyone else is told to rise. Â Judges being human, judges wielding extraordinary power, and power being what it is, such horror stories as the following ordeal of Casey Price (see here, too) will continue to happen. The key is to make them as rare an occurrence as possible. In a nutshell, Casey Price proceeded to a jury trial for drunk driving. Judicial blunder number one: As the jury deliberated, the judge was already talking aloud about the type of sentence she might impose in the event of a guilty verdict. Â Kudos to Ms. Price for being acquitted by the jury. But wait. The joyous aftermath does not happen for Ms. Price. Instead, in judicial

blunder number two the judge orders Ms. Price to be drug tested, rather than releasing her from the courthouse on the spot. Next, a courthouse drug testing office blunder rears its ugly head as Ms. Price gets treated as if she is a criminal rather than as the innocent person the jury declared her to be. Some lawyers say wonderful things about this judge. Apparently this judge is mainly experienced with civil cases. If this judge is not removed from the bench, hopefully she will be removed from criminal cases. This week, Casey Price filed a criminal complaint against her judge. You heard that right, a criminal complaint, not a civil complaint. If Ms. Casey's complaint were only civil in nature, I would be patting her on the back all the way. However, I am not inclined to cross over from my criminal defense role to encouraging Ms. Price's criminal complaint; I will wait first for her to file a civil complaint. In any event, an essential element to being a great judge is to follow the golden rule. Respect is a two-way street; no exceptions. Jon Katz.

Posted by Jon Katz in Constitutional Law at 00:00