

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Judicial temperament: Concerns and questions

BY DAVID W. INLANDER

I began my last column, Truth and the Law, by stating “This is not a political column.” For reasons that will become obvious, I must repeat this prelude once again. As I watched portions of the Senate Judiciary Committee confirmation hearings for Justice Kavanaugh, another basic legal tenant, the importance of displaying judicial temperament, became a focal point in the debate. Specifically, the importance of this quality for judges at any level, much less on the Supreme

Court, came under scrutiny. Does the level of anger or indignation of an accusation excuse conduct that might otherwise be viewed as highly inappropriate, especially from the bench?

I thought back to an article written a couple of years ago by retired Illinois Appellate Justice, David Sterba, in the *Chicago Daily Law Bulletin*. Justice Steba began his analysis on the most admirable

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Mary Ann McMorrow remembered

BY HON. RITA GARMAN

On the occasion of the 200th anniversary of Illinois' statehood, I have been asked to provide a remembrance of an Illinois hero. A hero is a person who is admired or idealized for courage, outstanding achievements, or noble qualities.

My hero is not a distant historical figure that I might admire in the abstract, but someone whose presence as a leader in the legal profession was real and tangible to a young woman lawyer who graduated from law school only fifteen years after she did. I

do not have to idealize my hero, Mary Ann McMorrow, because I knew her well and was witness to her achievements and her nobility.

Mary Ann McMorrow was a Chicago girl through and through. She grew up on the northwest side and stayed close to home as she attended college in River Forest and law school at Loyola University. She loved the city, and she loved the State of Illinois, devoting her entire adult life to serving its people.

She was a member of the Sandra Day

O'Connor generation—women who overcame barriers to gain admission to law school and who broke glass ceilings every step of the way. Beginning her career as the only woman in her law school graduating class, her career was a series of firsts—the first woman felony prosecutor Cook County, the first woman chair of the Executive Committee of the Appellate Court, and the first woman chief justice of the Illinois Supreme Court.

As my career developed in central

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Judicial temperament: Concerns and questions

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characteristics of members of the judiciary by quoting Socrates' description of the essential qualities of a good judge:

"Four things belong to a judge: to hear courteously; to answer wisely; to consider soberly; and to decide impartially." Justice Sterba continued, "These words remain as true today as they were when Socrates first spoke them more than 2,400 years ago. In sum, not only is a good judicial temperament befitting and required; it is essential to the integrity and honor of our system of jurisprudence. As stated in the preamble of the Code of Judicial Conduct, "[J]udges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system... Good temperament is vital to this endeavor."

Indeed, in his opening statement on the first day of the confirmation hearings, Justice Kavanaugh observed, "a good judge must be an umpire—a neutral and impartial arbiter who favors no litigant or policy." So, yes, impartiality was highlighted. But then the hearings began, and as in many litigated matters, the tensions in the room began to rise to a rolling boil. Tempers flared, voices were raised, and accusations flew. Justice Kavanaugh responded in a manner that alarmed many. In the words of University of Chicago Professor and former Dean, Geoffrey R. Stone, writing in the *Huffington Post*, Kavanaugh's demeanor in the hearings was "truly shocking, immature, irrational and uncontrolled," in contrast to the judicial standard of being "calm, thoughtful, open minded, respectful and mature."

In contrast, conservative commentator Andrew McCarthy argues that rather than situational demeanor, "the best measure we have of how someone will perform in a government office is how that person has already performed when in that office, or

in a very similar one. And the best measure we have of the seriousness and good faith of a critic's claim against a nominee is whether the critic consistently levels similar charges in analogous situations."

Subsequently, within a couple of days, over 2,400 law school professors penned an op-ed published in the *New York Times*, noting the historical and current problems with this nominee:

"Judicial temperament is one of the most important qualities of a judge. As the Congressional Research Service explains, a judge requires "a personality that is even-handed, unbiased, impartial, courteous yet firm, and dedicated to a process, not a result." The concern for judicial temperament dates back to our founding; in Federalist 78, titled "Judges as Guardians of the Constitution," Alexander Hamilton expressed the need for "the integrity and moderation of the judiciary." The piece continued, "We have differing views about the other qualifications of Judge Kavanaugh. But we are united, as professors of law and scholars of judicial institutions, in believing that he did not display the impartiality and judicial temperament requisite to sit on the highest court of our land."

No doubt, the hyper-political nature of the process has led to more contentious confirmation hearings, but as the dust has now settled, and Justice Kavanaugh has been sworn in, what are the lessons learned for judicial selection in this environment? Through what lens do we evaluate not only the qualifications, but also the demeanor of judges in the aftermath of the hearings?

In fact, beginning to answer these questions leads to many more. How should judges now deal with an outraged defendant or his counsel who is combative during a trial? Might the public display viewed by millions on television ramp up unacceptable behavior in the courtroom? Or, will the public merely chalk up the

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hearing, albeit for the highest court in the land, as merely another example of a political system desperately in need of repair, while maintaining the sanctity of the courtroom as being separate from the nomination process? Has this process diminished the public's view of the judicial system, and if so, what can we

do to alter that perception?

As a section council particularly focused on the subject of civility, we take these questions seriously. In the spring of 2019, we will once again be producing a day-long seminar on the topic of civility, ethics, and related topics. What is clear is that an

in-depth examination of this subject has never been timelier as we strive for increased respect for our profession. The time is now to tackle this challenge. ■

David W. Inlander
Chair, ISBA Bench & Bar Section Council

Mary Ann McMorrow remembered

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Illinois, I kept an eye on this impressive woman who was making great strides in Chicago. At every step of the way, when I was the first woman in my part of the state to achieve a position, Mary Ann McMorrow had been there a decade before.

When I was appointed to the Illinois Supreme Court in 2001, after a career of always being the “first woman,” I was finally greeted by a female colleague. I recall feeling a sense of great relief that neither of us was any longer an oddity. I was proud to be a member of the court when, in 2002, Justice McMorrow became the first woman to head a branch of state government.

Justice McMorrow received too many awards to list, but I know she was especially proud of the John Paul Stevens Award from the Chicago Bar Association and the Order of Lincoln, the state's highest honor, which she received in 2007.

On a more personal note, Mary Ann did not suffer fools gladly. I have a strong recollection of an oral argument during her term as chief, when, in a high-profile case, a very prominent attorney repeatedly interrupted her when she was asking questions and addressed her as “judge” instead of “justice.” She deftly asserted herself and maintained the dignity of the court, while steering him back to the subject at hand. She was my model for how to preside when my turn came.

She was not only a wise and thoughtful jurist, she was a gracious and kind human being—with a wicked sense of humor. She once told a story about writing the brief for an appeal to the Illinois Supreme Court early in her career. She expected to argue the case before the court, only to be told at the last minute that a male colleague would make the argument because it just wouldn't do to have

a young woman appear before the court. She paused. Then, after an expressive sigh, she explained that the man who removed her from the case later died, and she went to the funeral “just to make sure he was really dead.” The audience of mostly women burst into laughter, not only because the punch line was unexpected and humorous, but because she hit a nerve.

Mary Ann McMorrow was an inspiration not only to young women in the profession, but to all lawyers who admired her for her wisdom and character. One of the great honors of my life was that I not only served with one of my heroes as a colleague, but I also had the great honor of becoming her friend. ■

The opioid crisis and the elderly

BY DONNA J. JACKSON, JD, LLM & CHANTELE HICKMAN-LADD

“11.5 million persons reported nonmedical use of prescription drugs in 2016.” Even more startling, “134 people die every day from opioid related drug overdoses.” This opioid epidemic affects young and old alike. However, the opioid epidemic creates unique problems for the elderly because it affects them in multiple facets of their life.

As one ages, aches and pains may set in. These aches and pains leave the older adult seeking relief from the chronic pain. Older adults may also experience opioid use

through a child who is lost in or to a drug addiction, leaving the elder parent to care for his or her grandchildren. Similarly, a family member who is addicted to opioids may try and take advantage of an elder relative they care for or visit, which could inevitably lead to abuse and/or financial exploitation of the older adult. These complex issues make addressing the opioid epidemic and the elderly especially important.

The Elderly and Opioids

A Centers for Disease Control and

Prevention study found that in 2016, approximately twenty-seven percent of United States adults aged sixty-five to eighty-four, and thirty-three percent of adults aged eighty-five and above, suffered from chronic pain. Although these percentages sound small, this translates to an estimated 13,574,000 older adults experiencing chronic pain. With so many older adults suffering, one might ask how to combat their pain? The answer is more complicated than one might first imagine.

In a U.S. Department of Health &

Human Services study, it was revealed that approximately one in three Part D Medicare beneficiaries “received a prescription opioid in 2017.” “460,000 beneficiaries received high amounts of opioids in 2017,” although this is lower than 2016. However, “the population of older adults who misuse opioids is projected to double from 2004 to 2020, from 1.2 percent to 2.4 percent,” whereas opioid use in young adults, while still 8.1 percent, has decreased approximately three percent since 2002. One major concern with older adults taking opioids is that they face an increased risk of falling.

Intermixed in this issue of opioid use in older adults is the issue of overmedication, also known as polypharmacy. In 2006, approximately fifty-eight percent of older adults aged sixty-five and older “reported taking five to nine medications, and [approximately eighteen] percent reported taking [ten] or more [medications] over the course of that year.” The problem with the elderly being overmedicated is that taking multiple medications increases the risk of “dangerous drug interactions and serious side effects.” More specifically, overmedication could affect the cognitive and mental capacity of an older adult, leaving them to mimic symptoms of Alzheimer’s or dementia.

With opioid use continuing to be a rising concern, it is important to always consider if an opioid is necessary or if another treatment could also be effective. Furthermore, Parentgiving suggests having a “brown bag review”, where you take all of the medication to the older adult’s doctor or pharmacist to review, to consider whether some or all of the medication is necessary.

Grandfamilies and the Opioid Epidemic

“More than 2.6 million children are raised by grandparents, aunts, uncles, siblings, other extended family[,] and close family friends who step forward to care for them when parents are unable.” Research has shown that parental substance abuse is the main reason for grandparents stepping in to raise these children who would otherwise go into foster care. In fact, experts believe that the recent increase in the number of children going

into foster care is the result of the opioid epidemic.

Although research has shown “that children who cannot remain with their birth parents thrive when raised by relatives and close family friends,” many grandparents need help to maintain their family when grandchildren move in. “One in five grandparents raising grandchildren lives below the poverty line,” and “one in four has a disability.” These challenges make it difficult for the grandparent to care for his or her grandchildren. Generations United suggests more support services are necessary to assist the elderly in raising their grandchildren of the opioid epidemic.

Elder Abuse and Financial Exploitation

Approximately ten percent of older adults have suffered from abuse. Abusers “are most likely to be adult children or spouses... [who] have a history of past or current substance abuse” and mental or physical health problems. A person addicted to opioids may try to steal medications from their elderly family member, steal money from their elderly family member, and/or abuse this family member in the process of feeding his or her addiction.

The financial exploitation by an opioid user could lead to the depletion of an older adult’s life savings and resources needed for his or her long-term care. If medicine used to keep the older adult comfortable is stolen, the older adult could be left to suffer in pain until the theft is discovered. And if the older adult denies the opioid user access to the money or the medicine cabinet, physical abuse could result. Caregivers and family members must stay aware of this possibility in order to protect the elderly from abuse.

The opioid epidemic has a unique effect on the elderly. From personal opioid use to a family member’s opioid use, the elderly face many challenges surrounding the opioid epidemic. However, with awareness of and diligent work to try and address these problems, many of these issues can be attacked head on. ■

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Recent appointments and retirements

1. Pursuant to its Constitutional authority, the supreme court has appointed the following to be circuit judge:

- Bruce P. Fahrenbacher, 10th Circuit, September 1, 2018

2. The circuit judges have appointed the following to be associate judge:

- Salvatore LoPiccolo, Jr., 16th Circuit, September 4, 2018
- Sarah R. Duffy, 11th Circuit September 6, 2018

3. The following judges have retired:

- Hon. David R. Akemann, 16th Circuit, September 3, 2018
- Hon. Sebastian T. Patti, Cook County Circuit, September 4, 2018
- Hon. Susan Sumner Tungate, 21st

Circuit, October 31, 2018

- Hon. Kevin M. Sheehan, Cook County Circuit, November 5, 2018
- Hon. Denise K. Filan, Cook County Circuit, 3rd Subcircuit, November 7, 2018
- Hon. Brian Dean Shore, 17th Circuit, November 15, 2018
- Hon. Carole K. Bellows, Cook County Circuit, November 29, 2018
- Hon. John D. Bolger, Associate Judge, 22nd Circuit, November 30, 2018
- Hon. Mark H. Clarke, 1st Circuit, November 30, 2018
- Hon. Matthew E. Coghlan, Cook County, November 30, 2018
- Hon. Raymond Funderburk, Cook County, November 30, 2018

- Hon. John Knight, 3rd Circuit, November 30, 2018
- Hon. Vincent K. Lopinot, 20th Circuit, November 30, 2018
- Hon. Marya Nega, Cook County Circuit, 6th Subcircuit, November 30, 2018
- Hon. William G. Schwartz, 1st Circuit, November 30, 2018

4. The following judges have resigned:

- Hon. Jessica A. O'Brien, Cook County Circuit, September 4, 2018
- Hon. John S. Fotopoulos, Cook County Circuit, October 31, 2018

5. The following judge is deceased:

- Hon. Jan V. Fiss, 20th Circuit, November 18, 2018 ■

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