

**PROFESSIONALISM IN A TRIAL JUDGE AS
EXEMPLIFIED BY JUDGE ALVIN B. RUBIN**

Growing up attending Louisiana public schools, *Reader's Digest* was required reading. One feature in every issue was an essay entitled "My Most Unforgettable Character." Now looking back some 35 years, I realize that my clerkship with Judge Alvin Rubin introduced me to my most "unforgettable character." A man of unquestioned integrity and intellect, Judge Rubin defined the role of trial judge

Canon 3 of the Code of Conduct for United States Judges is of particular interest for this essay and best sums up Judge Rubin's unforgettable character as a trial judge. It begins by providing that "[a] judge should perform the duties of the office fairly, impartially, and diligently," and states further, in part,

A.(3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity.

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law.

. . . .

(5) A judge should dispose promptly of the business of the court.

I submit that Alvin Rubin did not merely conduct his court with these principles in mind. He could have been the very model that the drafters had in mind when these words were set down on paper. Let me point to just a few examples.

Few busy people are interested in taking time away from their daily lives to serve on a jury. And while many judges will explain to the assembled venire that service on a jury is a civic if not a sacred duty, Judge Rubin brought a unique touch to his comments, combining both a history lesson and moment's introspection to those gathered in the courtroom. Judge Rubin

would take everyone back to the 13th century, to the time when King John signed the Magna Carta at Runymede and to the grant of important rights that were contained in that document. Without belaboring the point, the judge would bring the potential jurors to the present, stopping along the way to point out important developments in the right to trial by a jury of one's peers. There were times when you could see in the face of the potential jurors the realization that they were a part of something important, something worth sacrificing their personal convenience. Then the judge asked this question: "If you were a party to a lawsuit in this court, would you like it if the issues that were so important to you were to be decided by people who had nothing better to do than sit around Lafayette Square all day drinking wine?" This comment was always sure to draw a chuckle or two, but the point was a serious one and taken to heart by the members of the venire.

Judge Rubin promised the jurors that the court, the lawyers, and the litigants were appreciative of their willingness to serve and would do everything possible to make the experience a pleasant one; that their time would not be wasted, a promise that Judge Rubin kept. The trial schedule called for a full work day and was maintained. Lawyers asking for a few minutes of delay at the start of the trial because they thought they might be able to arrive at a settlement were politely instructed to proceed with the trial; settlement discussions could take place during one of the breaks.

This is not to suggest that Judge Rubin did not let lawyers try their own cases. Judge Rubin practiced law for more than 20 years prior to taking the bench and by all accounts was an excellent advocate himself. He recognized that lawyers and judges alike were necessary parts of the judicial system, that lawyers had an indispensable part to play, as did the court. Judge Rubin was fond of saying that prior to filing suit, a dispute was a private matter between the litigants

and their attorneys. But once suit was filed, the dispute became the public's business, and the court represented the public's interest in seeing that justice was fairly and efficiently rendered.

Judge Rubin generally allowed counsel latitude in determining the scheduling of trials and cutoff dates. However, once those deadlines were established, the judge did not take kindly to the efforts of counsel to obtain continuances. Pretrial conferences were also an opportunity for Judge Rubin to help bring about a prompt disposition of matters on his docket. Studying the pretrial order before the conference, he would engage counsel in an active and probing discussion of all contested matters and the proposed witnesses, which generally lead to a narrowing of contested issues and a reduction in witnesses and exhibits. In non-jury matters, the judge would often begin the trial by questioning first one side then the other about the opposing parties' findings of facts to see what was truly contested – requiring proof – and what was not. Because Judge Rubin prepared himself so thoroughly prior to trial, reading the cases cited by counsel and frequently performing independent research or having us, his law clerks, go beyond the cases cited by the attorneys, the judge was often prepared to rule on the law at the start of trial. He would then listen to the evidence and contemporaneously make notes and edits on the various proposed findings of fact and, at the conclusion of the trial or after a short recess once the evidence taking ended, he would return to the bench and dictate his opinion to be transcribed by the court reporters. Given the promptness and seeming spontaneity of bench-delivered opinions, it may surprise you that some of Judge Rubin's reported opinions that read so well were done in just this manner.

Judge Rubin believed that oral argument was important and virtually every motion filed with the court was accorded the opportunity for oral argument. To Judge Rubin, oral argument was not the time for regurgitation of lawyers' briefs. Indeed, he began every motion day

advising counsel not to do so. Instead, Judge Rubin felt that oral argument should be a colloquy with counsel. As with findings and conclusions, Judge Rubin would have read the submissions of all parties and frequently asked the law clerks to prepare a bench memo. Notably, by the time we received the parties' submissions, the judge had already underlined portions of the briefs and made notes in the margins. Sometimes Judge Rubin would even have the law clerks telephone the attorneys to let them know that certain questions were going to be asked at oral argument. Once the argument began, counsel could expect that the judge would have questions. Although some attorneys suffered anxious moments in anticipation of an oral argument before Judge Rubin, in fact the judge was actually seeking counsel's help in making up his mind. Incidentally, Judge Rubin was like that in private as well. He enjoyed discussing a wide range of subjects, questioning the opinions of those with whom he spoke.

Today oral argument is the exception rather than the rule. Judge Rubin recognized oral argument served not only to aid the process of decision-making, it also sharpened the oral advocacy skills of those coming before the court. Watching Judge Rubin manage his motion docket on any given Wednesday was a lesson in how to preserve this important function without wasting the court's time. Judge Rubin was no stranger to crowded dockets, yet he always had time for oral argument. He simply managed those arguments. Counsel did not repeat what was said in their briefs; counsel would answer the court's questions and if counsel wandered off point, he was redirected by the judge; and repetition was quickly cut off. In that way, the judge's inquiries were either answered (or not) and Judge Rubin would bring the argument to a close. Judge Rubin heard motions every week, while most of the other sections of court did so biweekly. When matters were taken under submission, we kept a list of them, along with the date that they were submitted. Maintained in plain sight of the judge and the clerks, matters on

the list were not permitted to languish and decisions were rendered promptly. In fact, Judge Rubin's docket was frequently half that of the other sections because of his belief in prompt management of the litigation.

And what of Canon 3's expectation that a judge be respectful and courteous? There are those who appeared before him who felt Judge Rubin pushed too hard, that he expected too much, even that he might be imperious. It is true that he could not countenance lack of preparation or poor quality work. He would let attorneys know when faced with either. He did so, however, while remaining courteous to counsel, never belittling them. Nor did Judge Rubin play favorites. Close friends in the bar could expect the same stern look and comments as any other attorney in the event of lack of preparation. Eventually, those lawyers practicing before Judge Rubin who were perhaps accustomed to giving less than their best came to realize that Judge Rubin was a no-nonsense judge but a fair man, one who gave them their day in court and his undivided attention. It was said of Judge Rubin that when you had a matter before him, he made you want to be well prepared. That is the mark of a great judge and teacher.

Judge Rubin taught his clerks that every case was important to the parties. He performed the duties of trial judge with this tenet always in mind. As a judge who embodied Canon 3, Judge Rubin was truly an unforgettable character.