

All Rise: An Afternoon With Judge Harry A. Hanna

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As lawyers, we hear jokes about our profession all the time. Most are funny because they are clever and often true. I read one recently that attempts to discredit lawyers, but actually outlines how a lawyer can go from good to great: “Good lawyers know the law. Great lawyers know the

judge.”¹ Knowing the judge does make a great lawyer. Not because the judge will grant favors or ignore the law, but because knowing the judge is necessary to appreciate the full picture, including the needs of the court and the best means to meet those needs when practicing law. A great lawyer not only knows the law and applies it to the facts of the case, but she also knows and understands her audience. In the courtroom, the audience starts with the judge.

If you are lucky enough to practice in Cuyahoga County, Ohio then you know Judge Harry Hanna. Judge Hanna always knew he wanted to be a lawyer. Next month he will celebrate 30 years on the bench, 22 spent overseeing Cuyahoga County’s dedicated Asbestos Docket.² Judge Hanna considers himself blessed to have an occupation he enjoys, finds challenging, and never boring. During his career he has seen changes to asbestos litigation and gained a valuable perspective into the unique docket he maintains. I recently visited Judge Hanna to talk about his life, career, observations from the bench, and plans for the future. We are all fortunate to learn from my conversation with him.

The Changing Landscape

Over the years, Judge Hanna has observed a variety of changes to the litigation landscape. Specifically, he now

sees a better “cross section of the community” serving as jurors. Long-gone are the days when lawyers and friends of lawyers/judges were barred or excused from jury duty. Judge Hanna applauds those changes.

Judge Hanna has also noticed that with the big asbestos targets³ no longer viable, the products/equipment/devices in question are more specialized and intricate. This change requires the lawyers to educate Judge Hanna and the jury to ensure the claims and defenses are clear to a layperson. Along the same lines, with the change of defendants, punitive damages are “just about extinct” from an evidence standpoint.

Practice Tips

While Judge Hanna has much praise for the lawyers who appear before him, he identified some practice tips based on his observations and discussions with juries. While some seem obvious, the fact that jurors are noticing the issues makes them worthy of reviewing.

First, mind your manners. Remain professional at all times. The jury is watching and they expect and appreciate professional behavior from lawyers. Judge Hanna has noticed that, contrary to what some lawyers and television producers think, juries do not like overly aggressive lawyers and such behavior is not productive. Yelling at witnesses and being abusive will not help persuade the jury. Rather, Judge Hanna warns being a “blowhard” offends the jury. Judge Hanna finds that the softer approach is the better approach with a jury. With few exceptions, Judge Hanna observes that the lawyers he sees treat each other with respect and are collegial. He recognizes that the unique nature of the Cuyahoga County asbestos docket lends

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itself to better behaving lawyers as each knows they will be working opposite each other routinely and they will be appearing before Judge Hanna on any issue that arises. Judge Hanna's open door policy to answer questions or resolve issues for parties helps keep everyone on their best behavior. When the parties know the judge will answer the phone any time he is called in the middle of a deposition or if a discovery disputes arises, parties naturally tend to have less conflict. As Judge Hanna puts it, when you are repeatedly going to be working across the table from someone, "you might as well be a decent human being."

Second, remember the audience and take your time explaining the product/equipment/device at issue, utilizing experts as needed. Often lawyers forget that not everyone knows what they know and they skip steps — do not skip any steps! Alternatively, lawyers may not fully understand the product they are defending. If you do not understand the product specifications, it will show in your defense. So take the time to learn and then explain product specifications through demonstratives, graphics, or the product itself. The judge and jury, along with your client, are relying on you to explain why your client's product/equipment/device could not have caused the plaintiff harm. Do not lose this opportunity to educate them. Additionally, utilize experts to assist in your defense, including at the summary judgment stage. Judge Hanna recognizes the importance of experts in this litigation and worries that there is a limited pool, which will only continue to decrease. With that in mind, lawyers need to remember they can also wear an expert's hat to make sure the jury and judge understand each aspect of their defense.

Third, keep good company. As the asbestos litigation changes, non-local lawyers are becoming more common. They may be involved from the start, come in for motions, or appear at trial. Regardless of their involvement, if your case involves a non-local lawyer make sure they understand and follow the local procedure. Judge Hanna has thick skin, so absent outrageous behavior or flagrant and intentional disregard for the law, he will not fault a party. That said, it has become clear that some non-local

lawyers do not follow applicable rules and procedure; not only does this disrupt the case flow, but it also reflects poorly on the local lawyer. Judge Hanna has also noticed that some non-local lawyers do not appreciate the local landscape. So make sure your non-local lawyers know which way the Lake⁴ is, the different sides of town, and how to pronounce local streets and cities (aka "Hough" is not pronounced "how").

Fourth, time matters. With an increasing motion docket, Judge Hanna spends most of his time reading transcripts and briefs. He reads every transcript cited, even the never-ending expert transcripts. He recognizes that he needs to understand all the evidence in the case before he can rule; while he does not think a lawyer would deliberately mislead him he knows that each side will focus on the facts that are best for their argument and may "skim" over the bad facts. Judge Hanna respects his job as gatekeeper, so before he decides a claim as a matter of law, he wants to be sure he has read the evidence and understands it. Lawyers should remember this when deposing witnesses and writing briefs. In depositions, be judicious, but thorough. In motion practice, do not hide the ball and be prepared to address your bad facts as Judge Hanna will know them. In addition, Judge Hanna welcomes motion binders that contain all the documents cited in the motion; so for your next argument, make his life easier and take him a motion binder. Timing also matters to keep the jury's attention. Judge Hanna normally takes breaks during trial at the 50-55 minute mark (without disrupting the flow of the trial), so keep that in mind when planning your arguments and witness examinations. Additionally, while video-depositions are sometimes necessary due to scheduling issues or cost considerations, everyone knows that they are often boring to a jury.⁵ To counter this problem and keep an attentive jury, Judge Hanna normally only plays 20-25 minutes at a time. Thus, when selecting which portions of a video-deposition to play, be sure to consider when breaks will be taken.

Fifth, follow the leader. Watch and learn from those who are sitting first chair. Judge Hanna praises the lawyers who appear in his courtroom for being professional and prepared. They are zealous advocates without being

overly aggressive. They recognize when the legal issues and case facts are complicated and they take the time to educate the decision-maker, be it Judge Hanna or the jury. They treat each other, the witnesses, Judge Hanna, and the jury with respect. As Judge Hanna recognizes, these simple behaviors make the practice of law satisfying and result in better representation.

The Future

With seven children and twenty-two grandchildren, one may think retirement would be calling. Judge Hanna, however, is “not going anywhere.” He loves his work, even with the challenges. He appreciates the dedication and professionalism shown by the lawyers who enter his courtroom. He also recognizes the importance of building relationships as lawyers, not only because we all need to work together, but because it makes the work more enjoyable. Those of us who appear before Judge Hanna are happy he will continue to serve Cuyahoga County. We appreciate the relationships we have built with him, the experience he provides, and the lessons we can learn from him.

Endnotes

- ¹ Anonymous.
- ² See James Kline’s article to learn about this docket.
- ³ Companies/manufacturers who were the original miners and manufacturers and suppliers of asbestos and asbestos-containing products.
- ⁴ Local lawyers know you just say “the Lake” when talking about “Lake Erie”- what other lake exists to a Clevelander?
- ⁵ Judge Hanna’s view from the bench tells him that a jury appreciates a live body, as they like to size up the witness and enjoy the drama of a courtroom examination. Therefore, if the witness will help your case then move mountains to bring them live to trial.

Karen Ross is Counsel at Tucker Ellis LLP where she serves as local and national counsel in premises, asbestos, silica, coal mine dust, and other toxic exposure litigation in Ohio and across the United States. She also works with healthcare providers and companies in other industries to provide litigation-avoidance counseling and representation. Ms. Ross is also dedicated to community service. In addition to her work as a mock trial coach for John Hay High School students in the Cleveland Metropolitan School District, she serves on the boards of the May Dugan Center and the Lakewood YMCA.

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