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FEATURE ARTICLE

Multitasking in Court

A rather bizarre and interesting case is wending its way through the Oklahoma judicial disciplinary system. The Chief Justice of Oklahoma initiated the case, whose charges involve the in-court behavior of a new judge, Traci Soderstrom, during a murder trial this past summer. The facts, as alleged by Chief Justice M. John Kane IV and reported by various media outlets, seem taken out of a bad television sitcom.

Judge Soderstrom's acts occurred at the trial of Khristian Tyler Martzall. Mr. Martzall was on trial for murder. There are few situations in which a judge must be more vigilant and decorous than a murder trial—when someone's life has already been lost and the life and freedom of the defendant depend on the trial's outcome. It would appear from the Chief Justice's forty-seven page complaint, that Judge Soderstrom was rather insensitive to the grave and delicate nature of the proceedings. According to reporting by the Associated Press and *U.S. News & World Report*, Justice Kane characterized Judge Soderstrom's actions in the following way:

> The pattern of conduct demonstrates [Soderstrom's] gross neglect of duty, gross partiality and oppression. . . The conduct further demonstrates Respondent's (Soderstrom's) lack of temperament to serve as a judge.

These are extremely harsh words to come from the Chief Justice. The acts so characterized involved several things. First, throughout the trial, as caught on the courtroom security cameras, Judge Soderstrom was actively on her mobile phone texting and using social media. According to reports, Judge Soderstrom sent over 500 texts during the course of the trial. This, alone, should be very concerning. But perhaps even more concerning was the content of these texts, which mocked virtually everyone involved in the trial. *The New York Times* reported:

> Judge Soderstrom and the bailiff "called murder trial witnesses liars, admired the looks of a police officer who was testifying, disparaged the local defense bar, expressed bias in favor of the defendant and displayed gross partiality against the state," . . .
>
> While the district attorney was addressing jurors during jury selection, Judge Soderstrom wrote that he was "sweating thru his coat," to which the bailiff responded: "Yes. It's gross. He's gross and a horrible speaker."

> The judge texted the bailiff that the jury was "going to hate" the district attorney, then responded to the bailiff's "crass and demeaning reference" to the prosecutor's genitals with a "ha ha" icon, the petition states. In another text to the bailiff about the district attorney, Judge Soderstrom wrote: "Why does he have baby hands? … They are so weird looking."

In a text that would seem to be almost enough proof on its own of the judge's partiality, she wrote during the defense attorney's opening statements: "She's awesome," and "Can I clap for her?"

Indeed, in one text, to the bailiff, another court officer, the judge called the co-defendant a liar at least three times—including while the co-defendant was on the stand. Other texts contained derisive comments about people's hair and their sexual attraction.

It is extremely important to recognize that this was a murder trial involving the death by battering of a two-year-old girl—not the sort of trial that one would expect a judge to treat as a source of merriment. The obvious outrage in Chief Justice Kane's complaint is understandable and echoes the language of the Oklahoma Code of Judicial Conduct:

> [1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.
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> [2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

It is hard to fathom that a judge would engage in such behavior in a courtroom. We can hope that this case is only a fluke. But, in a culture that does not necessarily trust or respect lawyers, judges, or the judicial system, the facts set out in Judge Kane's petition certainly don't help the legal profession.

Due to the fact that so many of those involved in the break-in and cover up of the Watergate scandal—including President Nixon—were lawyers, there was great fear that widespread public trust in lawyers was on the verge of being lost. I fear that after years of very public attacks on judges and the system of justice, many Americans no longer trust the judiciary nor do they take it seriously. While the case of Judge Soderstrom may be a fluke, it may also be a warning that the legal profession and the judiciary at every level has to find better ways to convince the public that the legal system is a critical part of our nation and that the public must recognize that there are few offices in our nation that are more important to the maintenance of our democratic institutions.

NEW AUTHORITY ON LEGAL TECHNOLOGY

Kansas Courts' "Security Incident"

Recently I participated in a Topeka Bar Association CLE on digital and cyber security with Paul Cope and Diane Bellquist. The CLE—scheduled several weeks before—happened to fall one week after a "security incident" that had made it impossible to use Kansas courts' electronic filing system and other online court services. On October 12, 2023, the Kansas Supreme Court had issued Administrative Order 2023-CC-073 stating that these court services were "inaccessible."

Although there was some amusement expressed at this situation, for the most part the reaction of everyone present was one of serious concern. There was concern about how long discontinuation of the court system's online services would continue and, also, whether this was just one more incident in a growing problem with our reliance upon online services.

The legal profession has become totally dependent on the internet and connected digital devices. From cell phones to cloud storage to artificial intelligence programs, it is hard to imagine a legal practice or a court not living in the online world. As an historian of legal practice and a "senior citizen," I am familiar with what practice was like before the internet and most digital devices. It was slower. It

was less efficient. Research that today can be done in minutes took hours (thereby costing clients more). But it was also, for the most part, a good deal more secure than it is today. Further, lawyers felt in control of their work and their work product. Rather than email documents, which is inherently insecure, lawyers used the postal service and, when necessary, couriers. Client records were kept in paper files in locked storage areas.

Several years ago, news services reported that the Kremlin had placed an order for a large number of typewriters. The speculation was that President Putin had lost confidence that online communications and digital devices could be secured sufficiently for the most secret data. Thus, he had decided that the most confidential documents would be produced the old way: typewritten on paper. At the time, I remembered reading about a speech given by one of the senior technology entrepreneurs in the 1990s in which he declared "privacy is dead."

The efficient functioning of the American legal system depends upon the ability to communicate and store information securely. Yet, every day the news carries stories of data breaches, ransomware attacks, and malicious destruction of digital systems. Now, it appears, hospitals and medical centers, universities, law firms, and governmental agencies—including courts—are the focus of many of these attacks.

More and more lawyers and judges find themselves frustrated and feeling helpless to prevent these "incidents." Indeed, the American Bar Association's Ethics Opinion 483 deals primarily with being prepared for cyberattacks and outlining how law firms must react to them, rather than avoiding them in the first place. There is a sense in this opinion and others that such attacks are inevitable.

Obviously, the continuing problem of cyberattacks on lawyers, law firms, and courts present major ethical risks. These risks are raising the costs of law practice and court administration as both lawyers and courts must spend large amounts on security and, when security fails, measures necessary to mitigate the damage done. Perhaps, it is time to rethink both ethical rules and law firm and court practices to deal with the new world of cyberattacks. And, indeed, it is almost certainly necessary, as Opinion 483 advises, to be adequately prepared for when the inevitable happens.

Twenty years ago, on a visit to San Francisco, I discovered that a U.S. Navy destroyer was not only docked, but was conducting public tours. I thought that it would be fascinating, so I boarded the ship for the tour. The officer in charge took our tour group onto the bridge. I noticed that on a shelf beside all of the high tech equipment there was a WW II vintage tube radio transceiver and a brass sextant that could easily have been found on an eighteenth century sailing ship. I asked the officer whether one of the crew was a history buff. He laughed and said "no." The

transceiver and sextant were there to be used if the high-tech equipment failed and couldn't be repaired. Better to be safe than sorry.

There is a message there for lawyers and judges as well. It may be time to keep a spare typewriter and fax machine connected to a telephone landline in reserve, along with the number of a good courier service. And having a few good printed legal texts to use when it becomes impossible to use online research services might not be a bad idea either. The legal profession and judiciary can do business, albeit more slowly and less efficiently, without the Internet. Kansas Supreme Court Administrative Order 2023-CC-073 demonstrates that.

ETHICS & MALPRACTICE RESEARCH TIP

New Articles from *The Current Index to Legal Periodicals*

1. Michael Ariens, *The Fall of an American Lawyer*, 46 J. Legal Prof. 195 (2022).

   Anything Professor Ariens writes on legal ethics is worth study.

2. Margaret Canary, *The Importance of Lawyers' Control over Regulation of the Legal Profession: A History of Self- Regulation, from the Long Parliament of 1641 to the Alabama State Bar*, 46 J. Legal Prof. 309 (2022).

   The Legal profession needs to understand its history. The history of professional autonomy in the area of regulation through control of professional discipline is critical.

3. Ralph B. L. Marcuccilli, *Ethical Issues Surrounding the Exchange of Equity for Legal Services*, 46 J. Legal Prof. 325 (2022).

   Lawyers often have an opportunity to accept in equity in clients' businesses as a non-monetary fee. There are significant ethical issues when one does this.

A BLAST FROM THE PAST

Sacred Authority

As well, in the domain of public as of private law, the great fundamental opinion ought to be, THAT AUTHORITY IS SACRED.

— George Sharswood, *An Essay on Professional Ethics* (Phila., 1856), p.xl

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