ILLINOIS STATE BAR ASSOCIATION

JUNE 2016 VOL 46 NO. 9

Bench & Bar

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

Abraham Lincoln's prayer for judges

BY JUSTICE MICHAEL B. HYMAN

The letter that presidential candidate Abraham Lincoln wrote to his friend, Congressman Joshua R. Giddings of Ohio, on May 21, 1860, is unremarkable, except for a short passage near the end. In those concluding words Lincoln formed a simple, yet piercing, statement of the power, influence, and impact a judicial decision can have—for good or ill—on the lives of those before the court and on others.

To me as a judge, what Lincoln wrote appears to address a concern that sometimes keeps me, and surely many judges, up at night, though judges and the judiciary were farthest from Lincoln's mind. His words also read like a humbling prayer that talks to my inner-self, though he never intended his words to be taken as a prayer. Nevertheless, Lincoln perfectly captures the soul searching and introspection that often goes along with the inherent subjectivity of judging. First some background about the letter.

Lincoln responded to a note from Giddings congratulating Lincoln on securing the Republican Party's presidential nomination a few days earlier. Giddings predicts Lincoln will be victorious in November, and advises him to avoid "corrupting influences."

Lincoln replied to Giddings, "I am not wanting in the purpose, though I may fail in the strength, to maintain my freedom

Continued on next page

Hon. Louis Garippo—"A great Judge, but a greater man"

BY HON. ALFRED M. SWANSON, JR. (RET.)

That description was from Judge Michael Kane's eulogy at the funeral mass for Judge Louis Garippo. Kane described Judge Garippo as a lawyer and judge with great perspective and impeccable judgment.

Judge Garippo died at age 84 following a long illness. During his career as a prosecutor, Judge, and private practitioner, Judge Garippo was a mentor to many, who describe him as "the go-to guy" for advice in the State's Attorney's Office. Retired Judge William Kunkle, the lead prosecutor

Continued on next page

If you're getting this newsletter by postal mail and would prefer electronic delivery, just send an e-mail to Ann Boucher at aboucher@isba.org

Abraham Lincoln's prayer for judges

CONTINUED FROM PAGE 1

from bad influences. Your letter comes to my aid in this point most opportunely."

It is Lincoln's next sentence that reveals a peril I sometimes feel, and succinctly defines the essential character of the noble work that we judges perform. With his customary eloquence Lincoln, invoking divine authority, wrote:

> *May the Almighty grant that the cause of truth, justice, and humanity shall in no wise suffer at my hands.*

Here is a message judges can relate to and endorse, universal in its applicability and utility. A reminder of the ever-present risk of calamity inherent in every decision. A declaration of the depth of obligation that each judge swears to uphold. A recognition that decisions can have real, undesirable implications and consequences, rarely intended or predictable.

Had Lincoln actually served as a judge, deciding questions of legality and justice, of life and liberty, he might have written just such a prayer. (See the accompanying article about Lincoln's service as a judge *pro tem*).

Lincoln's words identify three cornerstones, each intricate, compelling, and unwieldly, but ultimately vital, to courts in a free society. In my view, it is the function and purpose of courts, above all else, to advance, defend, and uphold truth, justice, and humanity.

The "prayer" also suggests that once a judge renders a decision, what occurs thereafter is hardly certain or within the judge's knowledge. Judges cannot direct the future any more than they can foresee it. Judges can only hope that their rulings elevate rather than impede "the cause of truth, justice, and humanity."

This "prayer" moves me to be faithful to that which exists in me; to disregard personal sentiment, popular opinion, ideology, or extra-legal considerations in reaching decisions; to make each proceeding as just and fair as possible; to appreciate and respect the human effect of each decision; and to fulfill my responsibilities in a manner that honors truth, justice, and humanity. As Lincoln once said, "It requires more courage to dare to do right than to fear to do wrong." ■

Justice Michael B. Hyman, Chair of the Bench and Bar Section Council, is assigned to Illinois Appellate Court, First District. He has Lincoln's prayer for judges printed on the face of a large clock on his office wall.

Hon. Louis Garippo—"A great Judge, but a greater man"

CONTINUED FROM PAGE 1

in the John Gacy murder trial, agrees. He said there was no need when facing an ethical question for attorneys to check the Code of Professional Responsibility or for a judge to refer to the Code of Judicial Conduct, when all they needed to do was ask: "What would Garippo do?" There was the answer.

One of those mentees was Judge Michael Toomin, now the presiding Judge of the Juvenile Justice Section in the Circuit Court of Cook County. Toomin told me Judge Garippo was down-to-earth and a very good teacher with an encyclopedic knowledge of cases. Toomin described Jude Garippo as a punctual, professional jurist who preferred bench trials to jury trials. In bench trials, Judge Garippo had a "one finger rule" as described by former Assistant State's Attorney Robert Egan, one of the Gacy prosecutors. Egan and Kane described the rule this way: If there was only one witness who placed the defendant at the scene of a crime, it would be very difficult to convict beyond a reasonable doubt unless there was some other corroboration in the evidence.

Judge Toomin tried several cases before Judge Garippo. Later, Toomin told me, Judge Garippo appeared before him and he recalled that Garippo put on a strong

Bench & Bar

Published at least four times per year. Annual subscription rates for ISBA members: $25.

To subscribe, visit www.isba.org or call 217-525-1760.

OFFICE
ILLINOIS BAR CENTER
424 S. SECOND STREET
SPRINGFIELD, IL 62701
PHONES: 217-525-1760 OR 800-252-8908
WWW.ISBA.ORG

EDITORS
Hon. Alfred M. Swanson, Jr. (ret.)
Michele Jochner
Hon. E. Kenneth Wright, Jr.

MANAGING EDITOR / PRODUCTION
Katie Underwood
kunderwood@isba.org

Postmaster: Please send address changes to the Illinois State Bar Association, 424 S. 2nd St., Springfield, IL 62701-1779.

and convincing case for his client – the defendant in a probable cause hearing.

Judge Garippo headed the State's Attorney's criminal division and became First Assistant State's Attorney during the investigation and trial of Richard Speck. Speck prosecutor William Martin described Garippo as a terrific person who led by example and not by dictating a result or through formal instruction. He called Garippo "a fantastic human who was caring, giving, compassionate, down-to-earth, and an extraordinary mentor."

Martin also described Garippo as a hands-off supervisor who was available for discussion on issues but did not second-guess decisions. Martin gave three examples of that support of his decisions during the Speck trial: 1) to not oppose the public defender's motion to move the trial to Peoria; 2) to not tell the investigating police officers they had a right to refuse defense requests for interviews; and 3) to allow defense counsel to depose the surviving nurse before trial.

Martin also described Judge Garippo as "one of the greatest judges ever to take the bench." Gacy prosecutor Kunkle agreed, adding that Garippo was the perfect judge for the Gacy trial – knowledgeable in the law, extremely fair, and hard-working. He said Judge Garippo required the parties to have their witnesses ready to begin at nine o'clock and that they often worked until five or 5:30 p.m., and also on Saturdays from nine to four. He wanted the case concluded expeditiously. Gacy's defense lawyer, Sam Amirante, called Garippo the "epitome of a good judge" who was fair to everyone and kept a handle on everything and the courtroom "under control with kindness." Amirante added, "If not for his patience, kindness and guidance, the trial would not have gone as well." Amirante and prosecutors Kunkle and Egan all noted that with the years of appeals in the Gacy case, not once was there any suggestion for a new trial.

Prosecutor Egan provided an example of Judge Garippo's calm, but firm, control of the courtroom. In the middle of the prosecution's rebuttal case with psychiatric witnesses to counter Gacy's insanity defense, Gacy suddenly spoke up that he did not know what was going on – saying he did not understand the proceedings. As Egan described the situation: Judge Garippo immediately sent the jury out of the courtroom and called Gacy before the bench and asked several questions to probe Gacy's understanding: Do you understand the witness who just testified and you spoke with Dr. Cavanaugh. Do you understand you have the right to speak or not to speak? Do you understand you have the right to speak with your attorneys? Are you satisfied they are doing a good job?

Egan told me Judge Garippo calmly and thoroughly asked these questions and others to protect the record and the trial by demonstrating through Gacy's answers that he understood the proceedings and was fit to stand trial. To Egan, that exchange demonstrated Judge Garippo's complete mastery of the law and procedure with an eye on the ultimate goal – a fair trial for John Gacy.

Another example of Judge Garippo's concern for people was his treatment of the Gacy jurors who were from Winnebago County and brought to Chicago and sequestered for the seven-week trial. On Saturdays after the court work concluded, Judge Garippo arranged for dinner for the jurors, as well as a movie or other relaxation. On Sundays, Egan said, Judge Garippo arranged for close family members to be bussed from Rockford so the jurors could spend some time catching up with events at home.

Kunkle said he was greatly moved at the end of the Gacy trial when Judge Garippo thanked the jurors. When we spoke, Kunkle quoted Judge Garippo from the trial transcript: "A couple of months ago, a group of prosecutors from another country came and couldn't understand how, in the United States, you could try a person who was arrested in this type of situation. A lot has been said about how much this case has cost. It's a small price. My voice is cracking because I really, truly feel it's a small price that we paid for our freedom. What we do for the John Wayne Gacys, we do for everyone."

"A great Judge, but a greater man." ■

In 1980, the author was a law student and a reporter for NBC Radio who was assigned to cover the Gacy Trial from beginning to end.

Remembering Justice Thomas Fitzgerald

BY MARIE SARANTAKIS

On May 11, 2016, the Illinois Supreme Court hosted a memorial tribute to another legal legend recognizing the late Justice Thomas Fitzgerald's continued impact on the legal community.

Justice Fitzgerald was born in 1941. He served a tour of duty in the U.S. Navy and graduated with honors from The John Marshall Law School, where he founded the school's Law Review. Fitzgerald was admitted to the Illinois Bar in 1968. He had remarkable gifts to share with the legal community from an early age, quickly becoming the youngest elected Circuit Judge in Cook County. Thereafter, he ascended to the ranks of Presiding Judge of the Criminal Division.

Fitzgerald was a trailblazer who would formulate an innovative solution whenever he saw a need. While serving in Cook County's Criminal Court, he saw that drug offenders were contributing to jail overcrowding and that they were receiving insufficient treatment options. In response, Fitzgerald helped develop an evening Narcotics Court to address these issues.

After Operation Greylord, he was appointed Supervising Judge of the Traffic Court to ensure that integrity was restored to the judicial process. Fitzgerald's ethics and tenacity made him a fitting leader to help initiate reform after the bribery and case-fixing scandal.

Noting Judge Fitzgerald's work in the community, in 1999, the Supreme Court appointed him Chair of the newly-formed Special Supreme Court Committee on Capital Cases. The Committee's task was to assess and improve the administration of justice in capital punishment cases. Under Fitzgerald's direction, the Committee drafted the rules that applied to trials involving the death penalty in

Illinois, until the abolition of capital punishment in 2011.

In 2000, Fitzgerald was elected to the Illinois Supreme Court. During his tenure, he continued to bring positive changes and exemplify a commitment to service. Justice Fitzgerald deeply cared about our nation's veterans and their access to justice. In 2007, he brought Illinois Department of Veterans' Affairs Director Tammy Duckworth, The John Marshall Law School, and the Illinois State Bar Association (ISBA) together to develop an initiative increasing the delivery of the legal aid to those serving our nation.

After he became Chief Justice in 2008, he implemented several initiatives to improve the quality of instruction for members of the Illinois judiciary. He appointed a special committee to codify Illinois' Rules of Evidence. He also presided over the impeachment trial of Governor Rod Blagojevich. Justice Fitzgerald worked diligently to ensure that our leaders would carry out their duties in a well-informed and ethical manner.

Justice Fitzgerald was known for his benevolence, sense of reason, and commitment to justice. In 2008, he received the John Paul Stevens Award and in 2010, was recognized as Chicago Lawyer magazine's Person of the Year. His colleagues on the Supreme Court referred to him as a "model for integrity." But perhaps his greatest honor comes from the testament of his family who continue to share and exemplify his wisdom and compassion. The late Justice is survived by his wife, Gayle, and five children, Maura (Scott) O'Daniel, Kathryn (Howard Chang), Jean (Shawn) Fendick, Thomas A. (Christina) Fitzgerald, Ann (Jason Butler), and eight grandchildren.

On May 11, 2016, the Supreme Court held a memorial service in honor of Justice Fitzgerald's memory. It was an intimate gathering attended by leaders of our State, the Judiciary, and local bar associations. Many of those in attendance paid tribute by sharing their personal recollections and fond memories of the Justice.

Chief Justice Rita B. Garman delivered the opening and closing remarks honoring her friend and colleague, describing him as the "shining light of our Illinois Judiciary" and a "model of collegiality and cooperation." Justice Robert R. Thomas recounted personal remarks that he recited before Fitzgerald during his retirement, and explained how those heartfelt words were "no less appropriate or true" today. He described Fitzgerald as a "kind and gentle spirit who always looked for the best in people and circumstances." Justice Mary Jane Theis then shared how Fitzgerald was "an important part of restoring public trust" after Operation Greylord and the trial of former Governor Blagojevich.

Following the remarks of Fitzgerald's colleagues, ISBA President Umberto Davi expressed how, "over the years, the ISBA has very much enjoyed working with Justice Fitzgerald," and followed by sharing a copy of the September 2008 Illinois Bar Journal with those in attendance. The publication featured the Justice on the cover and contained a detailed and insightful article, written by Helen Gunnarsson, explicating Fitzgerald's many meaningful and lasting contributions to the legal community. President Davi personally recalled his experience serving alongside the Justice on The John Marshall Board of Trustees. He described how Fitzgerald "was there to offer his quiet and thoughtful insight [...] offering his wealth of knowledge, analysis, and suggestions that invariably helped us all come to a resolution."

Attorney Nicholas J. Motherway described how he came to know Fitzgerald while they began their careers working at the Cook County States' Attorneys Office. Since that time "we were always in touch with the law and with each other," Motherway stated. Motherway noted the friendship the two maintained over several decades and recalled the joy and honor he felt to have been part of Fitzgerald's swearing-in as Chief Justice, in the very same courtroom, eight years before.

While each speaker knew Justice Fitzgerald in a distinct way, what each shared about the late Justice was his jovial demeanor. Accordingly, the Service celebrated the memory of Justice Fitzgerald in the good spirit Justice Fitzgerald would have desired. It was evident by the words spoken and the memories relived that the Justice made a lasting and positive impact on all of those he met. ■

Marie Sarantakis is a third year law student at The John Marshall Law School. She serves on the ISBA's Young Lawyers Division, Family Law Section Council, and Special Committee on Rule 711.

Judge Abraham Lincoln: A short account of a short 'judicial' career

BY JUSTICE MICHAEL B. HYMAN

During his circuit riding days, Abraham Lincoln occasionally would sit as a judge *pro tem*. Even in the antebellum Illinois prairie, this was highly unusual and without legal authority. Consequently, Lincoln's judicial duties were limited, and mostly involved uncontested matters.

We all are familiar with lawyer Abraham Lincoln's twice-a-year sojourn on his trusty horse, Old Bob, from courthouse to courthouse comprising Illinois' Eighth Judicial Circuit. Lincoln, one of a small entourage of lawyers traveling Central Illinois with Judge David Davis, built a reputation of trust, and established himself as *the* most sought after co-counsel in Illinois.

Lincoln had an affinity for resolving disputes whenever possible. Author Mark E. Steiner in *An Honest Calling: The Law Practice of Abraham Lincoln*, states, "When faced with local disputes, Lincoln often tried to serve as a mediator or peacemaker. Lincoln was in his element when handling lawsuits based on local disputes; the community orientation of these disputes favored mediation and compromise." This is in keeping with Lincoln's oft-quoted admonishment that lawyers serve as peacemakers, "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time….There will still be business enough."

Judge Davis knew the character and nature of all the lawyers who appeared before him. Whenever Davis either took ill or became temporarily unavailable to preside due to personal business, he favored the self-taught Lincoln to sit for him as judge *pro tem*, although there was no law permitting a lawyer to act as a substitute judge. Realizing this, Lincoln only would preside if all the parties agreed to accept his appointment.

Lincoln was able to serve as judge *pro tem* because Judge Davis, the litigants, and the attorneys who consented to let Lincoln hear a case never doubted Lincoln's faithfulness to the law, impartiality, or neutrality. They also admired Lincoln as a highly skillful trial and jury lawyer.

In *Judging Lincoln,* the authors examine Illinois judges during the years Lincoln practiced law, including the cases heard by Judge *Pro Tem* Lincoln. In at least 321 cases Lincoln substituted for Judge Davis. Many of the cases were disposed in 1858. The cases involved, by way of example, continuances (161), dismissals (31), default judgments (28), non-suits (3), final judgments (54) and procedural rulings (40). Most of the proceedings before Lincoln required little work on his part and tended to be relatively straightforward to decide.

Did Lincoln follow a judicial philosophy? Maybe.

We have some idea of Lincoln's thoughts on this subject because in 1858, a newly-elected justice of the peace for Sangamon County by the name of John F. King, consulted with Lincoln about how he should approach his duties. Lincoln's law partner and biographer William Herndon recalled that Lincoln told King, "There is no mystery in this matter. King, when you have a case between neighbors before you, listen well to all the evidence, stripping yourself of all prejudice, if any you have, and *throwing away, if you can, all technical law knowledge*, hear the lawyers make their argument as patiently as you can; and after the evidence and the lawyers' arguments are through, then stop one moment and ask yourself: what is justice in this case, and let that sense of justice be your decision." (Emphasis added.)

Lincoln continued, "Law is nothing else but the best of wise men applied for ages to the transactions and business of mankind."

That Lincoln decided cases based on gut feelings is borne out in *Lawyer Lincoln*, by Albert A. Woldman, one of the earliest examinations of Lincoln's 23 years of practicing law. Woldman discusses some of the cases heard by "Judge" Lincoln. In one dispute, a clothier sued the father of a boy who bought a $28 suit on credit. The lad's father had no idea that his fashion-conscious son had ordered the outfit. The clothier had to prove the purchase a necessity and appropriate to the boy's lifestyle, and, indeed, the father was a prosperous farmer. Legend has it that Lincoln said, "I have rarely in my life worn a suit of clothes costing $28," and ruled against the clothier. With that kind of legal reasoning no wonder the Illinois Supreme Court twice rejected Lincoln's trial judgments due to the legal officer's ineligibility!

In another case, involving neighboring farmers, Hartsfeller sought damages from Trowbridge after Trowbridge's cattle consumed all the corn stored in a crib owned by Hartsfeller. The land on which Hartsfeller put the crib was leased from Trowbridge for growing corn. Trowbridge warned Hartsfeller not to locate the crib within a fenced area where cattle grazed. Hartsfeller ignored the warning, and, sure enough, the cattle happened on the crib and emptied it of corn. Lincoln, apparently a judge willing to probe witnesses to get to the gist of the controversy, asked Trowbridge whether he had advised Hartsfeller to put the crib outside of the fenced area. Trowbridge replied, "Yes, sir." With that, the honorable judge announced, "Trowbridge, you have won your case."

Of Lincoln's "judicial spirit," Woldman wrote, "No characteristic in all of Lincoln's career appears more prominent than the judicial spirit –the passion for justice and the zeal to act as pacificator, arbitrator, referee, umpire, or judge." This judicial spirit was bound up with Lincoln's natural sense for discerning what was good and right. For Lincoln, good and right meant the cause of truth, which he considered to

be "your truest friend, no matter what the circumstances are."

In addition, Lincoln's "judicial spirit" meant the pursuit of the cause of justice, both in the courtroom and in the court of public opinion. According to a lawyer who saw Lincoln try cases, in one closing argument Lincoln said that the courthouse "is dedicated to the cause of justice" and "the only place where my client can seek protection and vindication."

As President, Lincoln furthered the cause of justice and humanity above all else, and lost his life for having purged the greatest injustice perpetrated by our nation. Finally, Lincoln's "judicial spirit" also comes through in what I have referred to as Lincoln's prayer for judges, described in more detail in the accompanying article:

> *May the Almighty grant that the cause of truth, justice, and humanity shall in no wise suffer at my hands*

To this we can say, Amen. ■

Justice Michael B. Hyman, Chair of the Bench and Bar Section Council, is assigned to the Illinois Appellate Court, First District. He has been a student of the life of Abraham Lincoln since he was five years old.

Lawyers can benefit from judicial heuristics

BY MICHAEL G. CORTINA

"Heuristics" are cognitive shortcuts, or rules of thumb, by which people generate judgments and make decisions without having to consider all the relevant information, relying instead on a limited set of cues that aid their decision making.[1] This article will explore different heuristics and types of thinking, and show how attorneys can use knowledge of heuristics to assist their clients.

System 1 and System 2

Studies have posited processes of thinking that have been labeled "System 1" and "System 2." System 1 processes are those in which thinking, judgment, and choice are more intuitive, experiential, and adaptive. They are also much faster and require fewer cognitive resources to complete. System 2 processes, however, are more analytic, relying on facts and normative rules and requiring many more cognitive resources which may not always be available.[2]

Both processes have their place, and neither should be deemed superior for every situation as there are times in life where analytics are less desirable than experience and intuition. For example: A person crossing a street in a crosswalk hears a horn and looks up to see a large truck barreling out of control right toward her. The System 1 process tells that person to jump out of the way to avoid being hit by the truck. The System 2 process would look at the truck, try to determine the truck's speed to see if there is a need to do anything other than continue walking, take into consideration whether other cars would block the path of the truck before reaching the crosswalk, etc. In other words, the System 1 processor would likely be safe, while the System 2 processor would likely become a pancake on the road before completing the analysis.

As a lawyer, the question becomes whether we want our judges to use only System 2 processes? It certainly seems likely that analytics would be desired above instinct and intuition. In fact, I attended a conference on judicial decision-making in 2015, and one of the seminars compared judges that used System 1 and System 2 processes, but the clear implication of the seminar was that judges who use System 1 processes were inferior to judges that use System 2. While analytical thoughts appear to be superior to "shooting from the hip," a better question is whether judges are even in situations where System 2 processes are always available?

Is a judge who is presiding over a jury trial able to use System 2 processes throughout the proceeding? Imagine what would happen if an objection were raised during testimony, and the judge required counsel on both sides to present arguments about why their respective positions were the correct ones, and then took time to consider both arguments and perhaps even conducted some independent legal research in order to make a ruling. During these few hours, the jury has been excused, the trial has been extended for another day, and a one-week trial is suddenly converted into a one-month trial. Simply put, System 2 processes are not generally available to judges in the middle of a trial and the notion that a judge is somehow inferior because the judge does what the judge should do – make a ruling – is simply not appropriate.

On the other hand, what would happen if a judge were hearing pre-trial motions in a case where the motions were fully briefed by both sides, but the judge ignored the briefs and made a ruling based solely on a "gut reaction" as to who should prevail? This would be a System 1 approach to judicial decision-making, and is clearly not the preferred method desired by attorneys appearing before the court.

The notion that System 2 decision-making is the preferred process for all such decisions is false because trial judges do not always have the luxury of fully-briefed motions or time to consider matters, and must make on-the-spot rulings based on their knowledge and experience.

Knowing this, how can a lawyer help her client? The answer is simple: take System 1 decision-making out of the equation whenever possible.

Briefs

A simple way to ensure that System 2 decision-making can occur is to brief an argument whenever possible. Oral motions should be disfavored, and written

motions should be presented to the court with courtesy copies given sufficiently in advance to allow the judge whatever time is needed to review the motion and consider the proper ruling. By allowing a judge time to consider a matter, rather than making an oral motion with no notice to the court, the lawyer is actively choosing System 2 decision-making over System 1. Pre-trial motions, unless trial strategy dictates otherwise, should be used to allow the court to make System 2 decisions on important issues before the trial so as to avoid the quick System 1 decisions that a court must make in the middle of a trial.

Biases

Biases always play a part in even the most balanced and shrewd person. It is a natural inclination that everyone has, but it is something that trial judges do their best to put aside. Justice is supposed to be blind, so there is no reason that any lawyer should do anything that would make a jurist peek from under the blindfold. Biases are also a part of System 1 decision-making, so lawyers need to avoid putting courts into situations where System 1 decisions are made and one way for a lawyer to do this is to avoid creating a negative bias before the court.

For example, judges generally have good memories and will remember if an attorney has been less than one-hundred percent truthful with them. That could create a bias and make the judge question a lawyer's argument before it is even made.

Another way to avoid bias is by being on-time and well-prepared for court. Aggravating a judge by arriving to court late certainly leaves a bad impression. Being ill-prepared and unable to answer simple questions about a case is another way to sway someone against your position. In addition, telling a judge "this is not my case," does little to elevate a lawyer's status and is simply not an excuse that a judge will accept; if you are appearing on a case, you need to be able to speak intelligently on it. If you are appearing in court for another attorney in your firm, you need to make sure that you are sufficiently versed in the details of the case to provide whatever information a judge may seek.

Presentation

How an attorney presents himself in court is also important. A few months ago, I attended a lecture by someone that I was told was a professional, world-renowned speaker. I met the speaker before the lecture and was taken aback by the fact that his sport coat was badly wrinkled, his hair was a bit unkempt, and he appeared generally disheveled. My initial reaction to this was that I had been sold a bill of goods and that this speaker could not be as engaging as advertised. It took most of the lecture, but upon hearing this speaker I realized that my initial reaction and bias against him was unfounded because he was excellent. Judges do not often have the time to listen to lawyers discuss matters for an hour in order to determine their worth as an advocate and must make decisions quickly. For this reason, it is important for every lawyer to always appear professional and her or his best.

By engaging in these simple behaviors (be truthful, on-time, well-prepared and appearing professional), a lawyer avoids the possibility of a judge forming a bias against her or him. This will avoid the negative impact of such biases and allow the court the freedom to rule without having to consciously set-aside these natural inclinations.

Both System 1 and System 2 decision-making have their places in the world of a trial judge. System 2 is the preferred decision-making method, but a trial judge must often make quick rulings, especially during trials. In order to represent the client in the best manner, a lawyer should do all that is possible to avoid heuristic biases and place arguments in a way that allows for System 2 decisions to be made. ■

The author is not a psychologist. This topic is of interest to me and made me consider what attorneys should know about heuristics and how this knowledge can be applied for the benefit of their clients.

1. Eyal Peer & Eyal Gamliel, *Heuristics and Biases in Judicial Decisions*, Court Review, Vol. 49, Iss. 2 (2013).

2. *Id.*

Recent appointments and retirements

1. Pursuant to its Constitutional authority, the Supreme Court has appointed the following to be Circuit Judge:
   - Hon. James B. Kinzer, 21st Circuit, May 4, 2016

2. The Circuit Judges have appointed the following to be Associate Judge:
   - Sophia Atcherson, Cook County Circuit, May 9, 2016
   - George L. Canellis, Jr. , Cook County Circuit, May 9, 2016
   - Vincenzo Chimera, Cook County Circuit, May 9, 2016
   - Hon. Jean M. Cocozza, Cook County Circuit, May 9, 2016
   - Geraldine A. D'Souza, Cook County Circuit, May 9, 2016
   - Mohammed M. Ghouse, Cook County Circuit, May 9, 2016
   - Patrick J. Heneghan, Cook County Circuit, May 9, 2016
   - Robert W. Johnson, Cook County Circuit, May 9, 2016
   - Hon. James L. Kaplan, Cook County Circuit, May 9, 2016
   - Hon. Marc W. Martin, Cook County Circuit, May 9, 2016
   - Mary C. Marubio, Cook County Circuit, May 9, 2016
   - Edward Robles, Cook County Circuit, May 9, 2016
   - Marita C. Sullivan, Cook County Circuit, May 9, 2016
   - Janelle Christensen, 19th Circuit, May 9, 2016
   - Paul B. Novak, 19th Circuit, May 31, 2016 ■

Bench & Bar
Illinois Bar Center
Springfield, Illinois 62701-1779
June 2016
Vol. 46 No. 9

Non-Profit Org.
U.S. POSTAGE
PAID
Springfield, Ill.
Permit No. 820