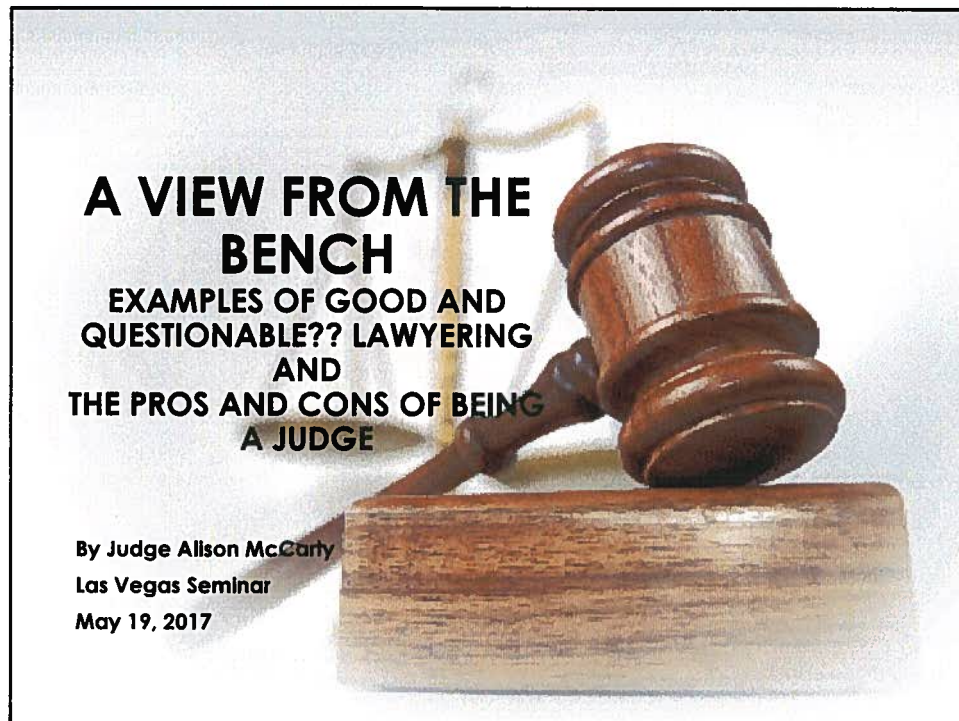




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**23<sup>rd</sup> Annual Las Vegas Seminar:**  
**Workers' Compensation:**  
**It's Been A Long, Strange**  
**Trip**

**A View From the Bench**  
*The Honorable Alison E. McCarty*  
*Summit County Court of Common Pleas*  
*Akron*



## DISCLAIMERS

- Hodge podge of examples
- Mostly civil cases, a few criminal examples
- Some of the behavior translates from one area of the law to the other – not all related to workers' compensation cases

## CHEERS - FPT

Judge – "what's the status?"

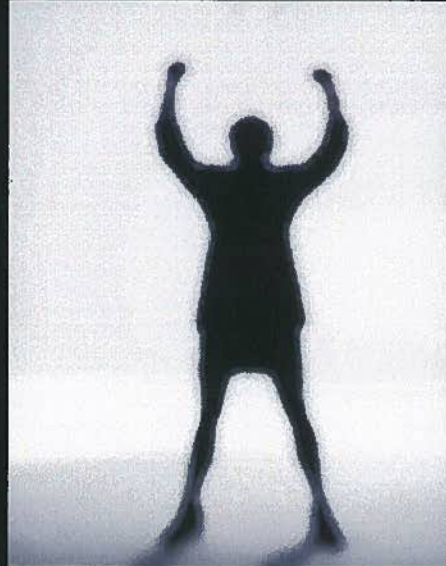
Lawyer: My client was T-boned while driving in the course of his employment

He went to the ER immediately

Then saw his Dr.

Then physical therapy, including chiropractor

Claim was previously allowed for strain and sprain of spine, disallowed for a substantial aggravation of the pre-existing condition of the herniated discs



## JEERS - FPT

Judge : "What's the status?"

"um....I'm not sure who was driving the car...did he go to ER?"

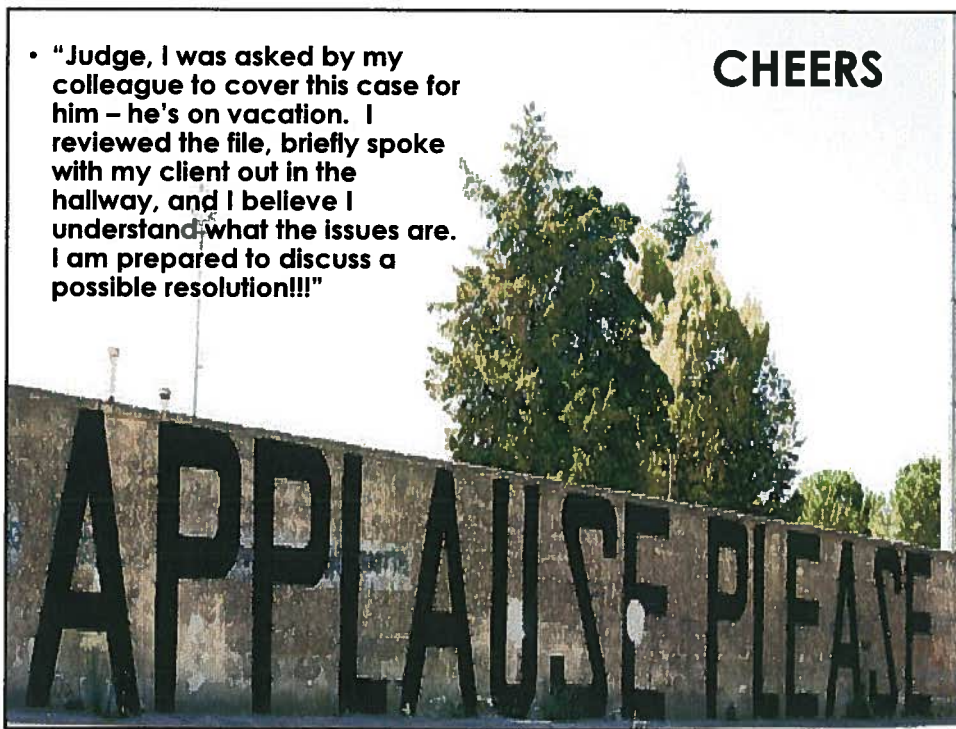
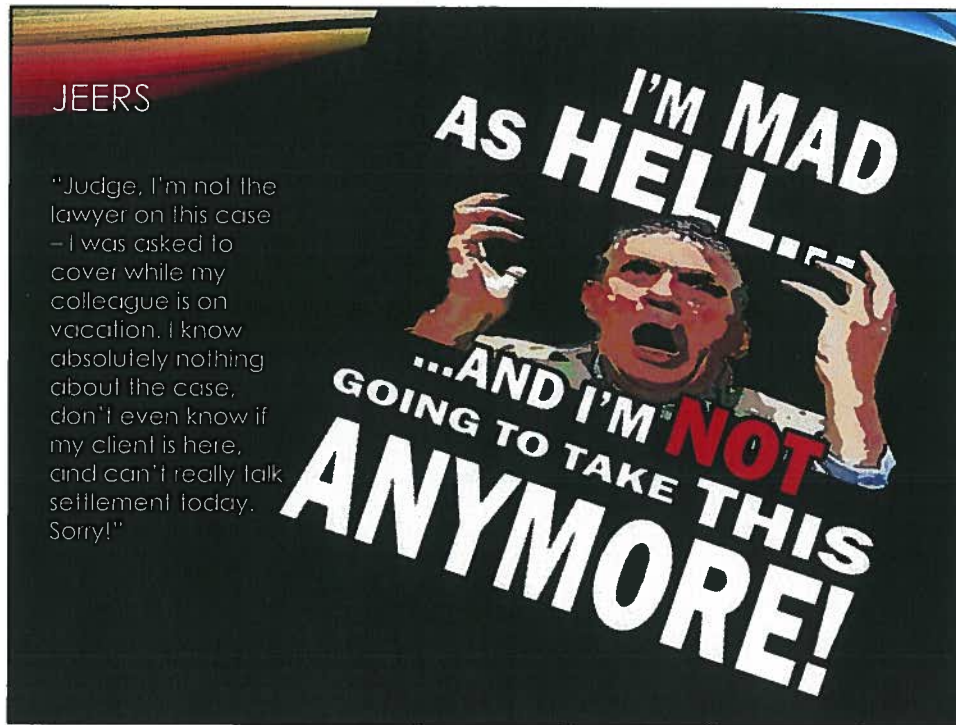
"I don't have the medical bills together yet"

"He needs more treatment..."

"I think his doctor told him he may need surgery!"

"Obviously, I need a continuance!"





## JEERS



- Judge (at FPT): "What is the demand in this case?"
  - PL: Well, it was \$50K at mediation 5 months ago
  - Del: We countered with \$1500, no discussion since. My client may be available by phone but I'm not sure.

## JEERS



- "I don't see any reason to talk to opposing counsel after the mediation....after all, shouldn't she call me?"
- "I'll just wait until a day or two before the final pretrial before I reach out!"

## CHEERS



- Judge (at FPT): "Well, how are we doing on this case? Trial is approaching."
- PL and DEF: "Judge, we've been talking ever since the mediation and at multiple depositions. We're here with our clients AND the Asst AG who has full authority. We're \$10K apart and would like your help resolving this case today."

## CHEERS

- To the Court Reporter:
  - I know this is a case with many medical terms involved, so I am providing you with a list of unusual and complex terminology for our trial next week (or today). That way you can prepare for the frequent use of these terms!
  - Also, here is a copy of the brief I filed in this case so that you will have all the proper case names that I will cite in this motion hearing.

## CHEERS

- To judicial assistant: "We're having some discovery issues, and we'd like an opportunity to schedule a conference call so that we can speak directly with the judge. We know we can't expect to reach her immediately, so can you give us a date and time to call?"
- "We don't want to file a Motion to Compel prematurely and waste the Court's time."

## JEERS



The plaintiff's counsel didn't respond to my Interrogatories. It's been four days since the deadline. I'm not going to call or email with a gentle reminder, realizing that the problem may be the procrastinating client, not the lawyer. I'm filing a Motion to Compel. My client expects me to take a really tough posture on this case. It will look good to him if I do so (and I can charge him for it). While I'm at it, I'll ask for sanctions too!!!

## JEERS

- "I know this Motion for summary Judgment has absolutely NO CHANCE to be granted, as there are many disputed facts in this case. But it's a chance to slow this case down, and build up my billable hours."
- OR: "I know this MSJ is a slam dunk for me, so I don't have to work too hard on it – the judge will see where this case is headed and connect all the dots, even if I write a sloppy, inadequately supported motion."


## CHEERS



TO JUDICIAL ATTY: "Our jury trial is next week and we wanted to make sure and email you our AGREED jury instructions in this case, with proper OJI citations. Oh, and if you need to make any changes, we've sent it in Word Format as opposed to a PDF to allow for easy editing."




## JEERS



(LAST DAY OF TRIAL): "Judge, I'm sorry I was so busy I didn't review the draft of the jury instructions you gave me two days ago. I know we're doing closing right after lunch, but I have about 15 changes I'd like to make, and there's case law to support my requests, which aren't in OJI. I didn't have time to look it up – could ask your staff to do that for me?"

## CHEERS



- "This case is eight months old and it's set for jury trial next week. My client is a jerk, and is unreasonable – he just won't listen to me. But it's too late to withdraw from the case – because I know it would upset the judge, who has cleared her schedule in order to get this case done. Besides, this guy will be trouble for any lawyer to follow. It's better for me to stick it out. What I will do is ask the judge if she can help me resolve this by speaking to the parties before trial."

## CHEERS

- AT BEGINNING OR TRIAL: "Judge, we have whittled down our trial depositions to two. The objections are all tabbed on the side for your quick and easy viewing. We won't be calling this witness until tomorrow, so I hope it won't be any trouble for you to rule on these objections ahead of time!"
- OR - TWO DAYS BEFORE TRIAL: "Judge this trial will be very short, and we may play this videotape on the first day. We are dropping off this transcript of the video deposition so that you have time to rule on the objections before we begin trial. The objections are tabbed for your convenience."