

Lascher at Large
By Edward L. Lascher
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Okay, I know this is a celebratory issue, and I hope to join the fun – if that’s quite what it is – with a little reminiscing about how things have changed during my share of the State Bar’s life. But before that, though, I’d like to sound off a bit in a more serious vein. The subject matter is one not entirely inappropriate to an anniversary of this association’s existence, or at least so I should think.

What’s on my mind is the frequently posed inquiry about why the legal profession should be treated any differently than any other trade or business, or its governing body regarded as differing in the least from any union or trade association. It is a question that is by no means posed exclusively in one quarter or by persons of one frame of mind.

“What’s Different About Lawyers... ?”

Elsewhere in this issue, one of the nonlawyer members of the Board of Governors asserts powerfully that the regulatory body of our profession has some unique, conflicting and even schizophrenic functions, but that in the long run the State Bar “is a public institution . . . created by the people of the State of California.” Thus, when it has come to wide-open advertising and solicitation, opening up lawyers’ files of clients’ confidential information to state investigators, and other such bizarre concepts as requiring attorneys to endorse at the bottom of their “invoices” the address and telephone number of what one of the lay members of the Board describes as “the complaint agency for lawyers”, protests are regularly met with: “Plumbing contractors, dry cleaners and used car dealers have to do it, so why shouldn’t you; what’s different about lawyers?”

From the other flank, any time a proposal arises that the bar undertake some special burden to protect its clients and the public rather than nest-feathering, the protest is bruited about that we are attempting to “put on a hair shirt”. A client security system to indemnify collectively the defalcations of the erring few among us? A statewide plan for a fund which in a year will be the only way victims of the mortal errors of mortal lawyers can be compensated? Not on your tintype. “The structural pest control operators don’t have to do it, the cosmetologists don’t, the doctors don’t, so why should we? Why should lawyers be different?”

“...Plenty!”

I told you everybody was out of step with me, and now I’ll prove it. Lawyers should be treated differently because lawyers are different. My nonlawyer Board colleague is as all wet as she can get when she says the legislature created the bar of this state. The State Bar Act consisted of a particular mechanism for operating the legal profession, but there is far less to that mechanism than there is to the profession. Our calling antedates not only all of the others you see listed in the Business and Professions Code, but also that code itself, the legislature that enacted it, the admission of this state to this nation’s body politic, the government of this nation and the landing of Western Europeans on this continent – and so forth (excluding only the one senior profession, which the Business and Professions Code does not purport to regulate).

Our profession is different. Name any other in which ethics does not just constitute a set of restraints, but is central to the very existence of the calling; identify another which starts from the role of the fiduciary as its very core and then elaborates on the duties of that relationship. (And, by the way, when I say “ethics” I don’t mean what’s written out in those almost unreadable Rules of Professional Conduct, nor the self-revealingly airy ABA Canons, but rather the dictionary sense of “discipline dealing with what is good and bad or right and wrong”.)

When barbers were pulling teeth, Sir Thomas More was defying the world’s most powerful sovereign with only the common law for his strength; when the forebears of today’s supercilious surgeons were bleeding citizens to cure tuberculosis, the legal profession was leading Western man out of the clutches of ignorance and clericalism into a rule of law and self-determination. Even today, what ethics – in the lower-case, non-competition-oriented sense – are really involved in the other learned professions? What problem of right and wrong (as distinct from skillful and unskillful) is there in deciding whether a particular pair of discs should be fused or one antibiotic prescribed instead of another? What fiduciary dilemma is confronted in determining whether to fill a cavity with gold or silver? What moral self-discipline is involved in testing a particular soil area for compaction?

Equally, Oppositely Wrong

My colleagues who say we are no different when recognizing difference would mean taking on added responsibility or unpleasant duty are just as wrong as the outsiders who claim we are no different when denial of the inexorable difference is necessary to their particular social-engineering goals. Indeed, I have less sympathy for the lawyers who deny that difference, because they should know better and because they are denying their own heritage and their own role.

Lawyers are different. Where the difference dictates different treatment, that should be the result – most certainly including differences which impose an added burden, as well as those that confer a benefit. I for one am proud of the difference, but I suppose you already know how odd I am.

Memories, Memories...In Part

From here on, you’re gonna have to suspend disbelief some. Starting with the proposition that I haven’t been a lawyer as long as there’s been a State Bar. Worse, that I haven’t even been alive that long. But I have been both lawyering and living for about half the span of this product of a noble experiment, so maybe I can help celebrate the sliver half of a golden anniversary.

Symbolically enough, or appropriately enough, or whatever, I arrived in California, a dewy-eyed neophyte (but fortified by a year at the Indiana Bar) just about the time our bar reached the half-way point on its journey to this anniversary. What I’d like to do is open the time capsule and disclose the fact that there were some differences in the legal scene back in the early 1950s, as perceived by one of us now-graybeards.

For example, there were 1,619 lawyers in this state in 1952. Seems we admit that many each December now. They practiced basically within a two-block radius of Spring and Montgomery streets, with a small outpost in each of the county seats. True, in Los Angeles, that prototype of megalopolis, there were a couple of clusters of lawyers in such places as Pasadena, Long Beach and even Beverly Hills (although nowadays there are probably more attendants specializing in parking lawyers' cars in that fair city than it lawyer population of 25 years ago), but nobody practiced in such ludicrous climes as Woodland Hills, Downey, San Mateo, Newport Beach, La Jolla, San Leandro or Palo Alto. Nobody who was anybody, at least.

The 137,623 lawyers who now practice in Century City weren't there for a brutally simple reason: Century City wasn't there; it was the back lot of a studio. (Studios, kids, were large, industrial-looking plants that manufactured things called "movies", in which the hero's best friend knocked Gary Cooper out with one punch and then went up on the Dawn Patrol to get shot down in flames and leave Coop to walk off into the mists with Jean Arthur. Today, much of the same thing is produced in somebody's garage, but it's only shown on television and the hero's best friend goes to bed with the hero. But I digress.)

The big were big then, too – but not as much so. Two law firms dominated the Los Angeles skyline: O'Melveny & Meyers with 18 (!) partners and 32 associates (the last of the latter somebody named Warren M. Christopher, whoever he might be), and even an O'Melveny and a Meyers still around for verisimilitude, with Gibson, Dunn close behind at 20 and 16. (Not all the changes have been for the worse. There was a large firm in L.A., Loeb & Loeb, but they weren't considered "real" because – are you ready for this, Third World? – they were all Jewish. A couple decades later and persons of that ancestry and/or faith are Oppressing Anglo Imperialists. (So it goes – Bokonon.)* In San Francisco, Pillsbury, Madison was the undisputed colossus and it did indeed have a Sutro in it – the very same one who is much with us today. The biggest firms in San Diego and Sacramento had 12 and 8 lawyers respectively.

An interesting thing is that if you looked past the giants just mentioned, there was a huge drop-off to the second echelon law firms. In those offices – to be distinguished from the aforementioned "law factories", as they were then called – a lawyer population in two digits was deemed to be getting dangerously large. Some of the household firm-names of today were scarcely more than a couple of guys with a nice office upstairs from the bank, pooling expenses.

For instance, today's colossi of Irell & Manella (57 lawyers) and Kindel & Anderson (51) didn't even exist. Latham & Watkins had 11 lawyers then, 86 today. Joe Ball had two partners and that's all, in one city and that's all; nowadays, it takes different towns to hold him and 48 lawyers, ex-governors and the like.

AGs By the Half-Dozen

The Attorney General's Office had just recently gotten big enough they stopped listing all the lawyers in the front of the California Reports.

* Bokonon, for the information of you agnostics, is a major prophet discovered by Kurt Vonnegut in his testament entitled Cat's Cradle. (That was not published in 1952.) Vonnegut was not an author to speak of then, either; he was flack for the General Electric Company (sort of a verse Ronald Reagan?). He was the scion of Indianapolis' most prominent hardware store-owning family. After all, when Earl Warren let that office get so overstaffed that they had not only an

Assistant and Chief Deputy, but thirty-six (!!) deputy AGs scattered around the state, things were obviously out of hand. (I understand that General Younger hires at least 36 on the first and fifteenth of every month nowadays.)

Because the courts were deciding so incredibly many cases, we had reached the 39th volume of the second series of California Reports and the 114th of Cal.App.2d – but remember, every last word was published in them days, including even the dissents of Carter, J. At the level of the DCA (as it was picturesquely called then), this flood of verbiage was produced by 21 justices – including the first and last female PJ, Annette Abbott Adams.

Down in bucolic Orange County, there was a grand total of 4 superior court judges, including Bob Gardner, who probably had enough time on his hands to whet his current writing talents. Los Angeles County had already become unmanageable with 62 judges; three of them are still active, but all upstairs.

Some of the legal folks who were very big then are gone from the stage: Jake Ehrlich, Jerry Giesler, Leon Yankwich, Clem Shinn (with his occasional opinion about the “case of the stimulated steelworker”), Roger Traynor, Gladys Towles Root, Joe Welsh – a personal saint – and Ray Stanbury (the very model of a trial lawyer). Some of those no longer heard from were perhaps less saintly, such as Oppenheim, Taliaferro and the Finn Twins, plus Judges Charles Fricke and John Hewicker.

Mel Belli hadn't yet been profiled in Life, but he had popularized “the adequate award” and “the more adequate award” – although he had not yet attained “the more than adequate award”. Neither had he promulgated that curious set of volumes called Modern Trials, moved into a mink-accented, window-fronted office, or become an expert on criminal law a la Jack Ruby. On the other hand, Nick DeMeo hadn't discovered either discovery or office efficiency yet.

You could (and did) drive clear from Los Angeles to San Francisco without ever touching a freeway except the bypass around San Luis Obispo. It was a lot more relaxing to take the Daylight or the Lark. If you wanted to head East, you caught a ferry over to Oakland and then took a streamliner – which sometimes got stranded in the snow up at Donner Pass. United Airlines ran “executive flights” between the two cities, on a “for men only” basis. A little outfit named Pacific Southwest Airlines was going into a sort of air taxi business, with some war surplus DC-4s, air-conditioned by fans hanging from the ceiling (but they were a lot cheaper).

Names Not in News

Some folks whose names are officehold words today were unknown then (maybe worse, some of them weren't born) like: Sirica, Rehnquist, Nader, Kunstler, Burger, Hufstedler (either one), Jaworski, Carswell, St. Clair, Hoffman (Julius or Abby), Andrea Ordin, Bailey (as in Flee), Kaus, Raynoso, Pines, Jill Wine Vollner, Raven, Brosnahan, Van de Camp.

Evelle Younger was an employed associate at Sampson & Dryden and dreaming about a spot on the L. A. Muni Court; his wife was the politician in the family. Pat Brown was the DA of San Francisco. Matt Tobriner was practicing labor law, while Stanley Most was a boy-wonder Superior Court judge in Santa Monica; one Judge Wright was holding forth in the Pasadena Muni Court, Frank Richardson was starting out in law practice, Wiley was in law school, Bill Clark was in a seminary somewhere (waiting to be followed by another seminarian from another end of the spectrum) and Rose Bird was in Long Island, whereas Phil Gibson was in his holy temple, so all was right with the Supreme Court.

For that matter, there were some folks whose names have since become legally familiar in other ways who were still locked in obscurity then: Brown (and her Board of Education), Manson, Sirhan, Escobedo, Tahl, Ray, Miranda, Dorado, Merlo, Muskopf, Oswald, Gideon, Li, Vesely, Boykin, Gion, Serrano, Lt. Calley, and the Legal Clinic of Bates & O'Steen. Mammoth had no friends yet. Auto Equity Sales, Inc. was in the used car business, not the jurisdictional one.

Hot Property

When I came to the State Bar, the Los Angeles Bar Association had a gracious custom of inviting all new admittees to a free lunch. (I don't know when that was discontinued, but if it hadn't been we'd be dining today in the Rose Bowl.) The one I went to featured one of the few worthwhile luncheon speakers I've ever heard; I've forgotten his name but I remember the speech vividly. He was an economist and he talked bread and butter, i.e., where were the favorable and unfavorable places for setting up a new law practice.

Economists look at things with the long view; he dismissed out of hand Santa Ana – then a hamlet in the center of the orange groves – as approaching saturation, and described West Covina (!!!) as there already. The ideal place in all Southern California toward which he aimed us (brace yourselves) was Oxnard. Its combination of climate, agriculture, transportation and lack of lawyer population was described as verging on a gold mine. Twelve years later I moved next door to there and, if not gold, I found a great home.

My first job was at the National Broadcasting Company western headquarters on the northeast corner of Sunset and Vine. There I got to work on some hot properties like "One Man's Family" and Chet Huntley's first contract with the net (that one after some heavy checking to make sure he wasn't too pink). I also got to ride shotgun in the control room on Humphrey Board in case he said anything controversial during an interview.

Hollywood was full of TV: ABC was across Vine, CBS a block up Sunset, and Mutual-Don Lee (anybody remember that?) a few doors south. NBC had a sort of northern subheadquarters at the corner of Taylor and O'Farrell in San Fran; it's a parking structure now. There was no such thing as taped shows; everything was either live, prefilmed or on something called kinescopes – a visibility-defying bit of technology. We were also house counsel for RCA and its record plant. The big performer there was Mario Lanza, but Kay Starr was a high seller too. Elvis Presley was in the future. So was the demise of popular music.

Felix's Folly

An inspired if madcap band over in Berkeley, led by an eccentric genius named Stumpf, was just in the process of inventing continuing education of the bar. They put out great, basic, useful handbooks on how to do it that were so valuable people would kill for a used copy. Only a part of the rest of the nation had heard of them, but they had already ignited the spark that generated a hundred thousand brochures. (Today, their staff is ten times the size and they produce one-tenth as much quantity and I'll let you decide as to quality. But I digress.)

There were eight accredited law schools in California: Boalt, Hastings, UCLA (which was in the process of graduating its first class), Loyola, USF, Santa Clara, USC and Stanford. There were two provisionally accredited and six unaccredited schools. (I think there are that many unaccredited schools in Alameda County today.) Eleven LaSalle correspondence grads took the bar exam during a three-year period; none passed. There was much consternation about the October, 1951 exam, in which there was a passing percentage of 37.5. (The electric typewriters didn't break down, however; nobody had 'em.) This generated what the committee called "an atmosphere of hysteria" and three separate articles in one issue of the Journal explaining how such a thing really could happen. About the same time there was an article pointing out that, with 800 new lawyers entering the California ranks annually, we were facing a terrible crisis of unemployment in the profession.

Back when the State Bar was a spritely 25 and I one of its rookies, there were some pleasures that don't exist any longer. Like, for us avid readers, every Friday we could look forward to the delivery of Life Magazine. One could also give Collier's, Look and the Saturday Evening Post a weekly scan, and for the daily goings-on check the Mirror-News, the Call-Bulletin and (if one were an eastern intellectual) the second greatest paper in the country, the New York Herald-Tribune – which happily survives, but only in Europe. You could drive a futuristic-looking Studebaker, a sedate Packard, a garish DeSoto or a raffish Hudson. There was one – count 'em, one – real sportscar: the MG TC (which, some of us think, hasn't been topped all that often).

You could ride a street car all the way from Hollywood to Westwood, inter alia. I did, the first time I visited the Golden State, and still remember it. You could also file a lawsuit in Los Angeles for nineteen dollars and fifty cents.

Unfound Artifacts

There was no such thing as an at-issue memorandum, a trial setting conference, a husband's (or spouse's) questionnaire, a mandatory settlement conference, an MDSO, a declaration, the Brown Act, Proposition 9, fair employment practice laws, or challenging jurors under People v. Hutchinson.

Disqualify a judge by filing some sort of paper? Code of Civil Procedure §170.6? You'd have been out of your mind to suggest such an unimaginably-heretical statute.

Of course, there were some things that were around that aren't any more. Minimum fee schedules and spousal immunity, for example. Indeed, a wife was still enough of a chattel that her negligence was imputed to the husband because it was all his property.

A few more cases that hadn't yet occurred: Dillon, Greenman, Elmore, Crisci, Reich, Siliznoff, Goldfarb, Griswold, Haft, Neel. How about Carol Lane, Maine, Mapp or Emery Newbern? Witherspoon, Bruton, Anderson, Faretta, Ibarra, Estes and Sheppard?

We had to cope without aerosol sprays, Saran wrap, pop-top cans, pocket calculators, the APCD, and computers with their printouts and programmers. Roger Bannister had yet to break the four-minute barrier and Joe Namath hadn't invented the Super Bowl.

Unbelievable!

This one deserves a paragraph to itself. THERE WAS NO SUCH THING AS A XEROX MACHINE. The mind reels.

A lot of people have come and went in that ensuing 25 years. Where are the Nancy/Noel Cannons, the Timothy Learys, the Herb Kalmbachs and Donald Segrettis, and the H. Rap Browns who played their brief moment on our stages? When we were 25, we knew not yet Leonard Janofsky, Charles Alan Wright or Herb Hafif. Ralph Gampell was treating sore throats (mine included) in Los Altos and if he had a plan he hadn't revealed it yet. The words "pro" and "bono" had not yet been linked in popular speech. We didn't know Keeton (either one of them) nor yet O'Connell. We didn't know no no-fault, either.

Inflated Prices Then

A fellow named Emil Gumpert was president of the State Bar, having been elected at the end of his first year on the Board (the only one in history), and then served his third year as treasurer. If you went to the convention in Los Angeles and stayed at the most expensive hotel, you had to face a tariff running all the way from \$7 to \$14, with a presidential suite going at \$33 the copy; in The City, ever more dear, it cost from eight clams up to nest at The Mark. Annual dues for California lawyers were fifteen bucks, motivating the president to write a lengthy apologia but to predict gloomily there might even have to be an increase.

There were no contested elections for the Bar Board; a "public member" was funny way of saying somebody was part of the populace. But there was a committee interestingly styled "The Committee on Ambulance Chasing and Related Problems", as well as the ever popular Committee on Subversive Activities. I wonder what The Committee on Appointment and Election of Judges did? Funny to note that almost all its members were themselves future judges. Things don't change all that much.

Best-Seller

There was a book that was a smash hit among lawyers called "Biography of a Bank: The Story of the Bank of America N.T.&S.A.". I doubt very much that anybody ever read it, but it was conspicuously displayed in some 80% of the offices one visited. (And, arriving in California with the above-noted dew in my eyes, I visited one hell of a lot of offices looking for a job – but I suppress.)

Bernie Witkin had just given over retraining returned-veteran lawyers and was thinking about going into legal writing as a serious business. He did have a "Summary of California Law" at the time, one whole volume big. He didn't have a book on procedure – not even a first series. I wonder how the courts operated. Nor one on evidence; ditto.

Needless to say there were no works on criminal law or procedure, because there really wasn't much of anything to write about. Illegally obtained evidence was of course admissible; Cahan still hadn't been busted (or, more accurately, he hadn't gone to the Supreme Court about it). A person accused of a crime had a right to appointed counsel only if the offense involved the possibility of death or long-term imprisonment.

Misdemeanants had no right to counsel at all. A convicted person didn't get a lawyer to appeal his conviction unless the court looked the case over and decided he would probably win it – which, if you can believe it, didn't happen all that often. A fellow had a right not to take the stand in his own defense, but the prosecutor had equal right to raise hell about the fact that he didn't. If an accused was held for a line-up, that was strictly between him and the police, with no due process significance whatsoever. The writ of habeas corpus was used primarily in movies about English barristers. The death penalty, obviously, was perfectly legal – and covered about fifteen or eighteen crimes in California. It was carried out a dozen or so times a year, too.

There was a lively debate in the State Bar Journal over the merits of comparative negligence, with the proponents' side being urged by a San Francisco lawyer named Ben Duniway, who incidentally seemed to pop up in the middle of everything around that time; wonder what ever became of him? It was still okay to have schools that were separate but equal, but every time those left wingers on the Supreme Court spoke it got harder to be equal. Strict liability in tort meant releasing artificially pent up water or harboring wild animals; the phrase "product liability" would have evoked a blank stare.

Not-Then-Common Law

Medical malpractice litigation was almost unknown, since it took the testimony of 12 board surgeons who had gone to the same medical school and practiced within 100 yards of the defendant to make a prima facie case and, anyhow, the statute of limitations was 90 minutes. (What was that again about the more things change . . . ?) In polite gatherings, people talked about suing a lawyer for negligence exactly as often as they discussed gonorrhea. We had 974 vice and obscenity laws, all of which were taken dead seriously; I was always fascinated by the crime of "resorting". Nobody saw anything in the least wrong with attaching somebody's wages, house or whathaveyou first and then suing; indeed, the court rules were designed to facilitate it and to keep the process secret. The apportionment of cities, counties, states, etc., were political questions and the courts damn well kept their noses out of it.

You got your client a divorce – as we quaintly called the process then – by having her (and it was always her) testify that her husband criticized and spoke harshly toward her which caused her to cry a lot and lose weight; then a neighbor, who was always cretinous, agreed that indeed this had happened. Thus the husband was guilty of "extreme cruelty". At the OSC, the lawyer got an award of attorney's fees and costs, \$250 of the former and \$25 of the latter, payable 25 bucks a month. I understand that occasionally it even got paid, although that's hearsay. I was sitting in court half awake once when a judge made an order for \$400 attorney's fees payable forthwith; everybody in the room seemed galvanized.

By no means all of the changes have been for the better. There existed no interrogatories, requests for admissions or demands for inspection. You could take a deposition, if at all, only of the adverse party. Many ordinary folks could afford to litigate their disputes. Arbitration was a strange process utilized only in certain close-knit industries.

Deep Deprivation

There was no such thing as: the LEAA, the CTLA, the OCJP, the CJER, the Legal Services Corporation, court watchers, ATL, the National Center for State Courts, the National College for Trial Judges, the Federal Judicial Center, the Manual for Complex Litigation, the Rules Relating to the Administrative Director of the Courts and the Administrative Office of the Courts, the California Association of District Attorneys, the California Judges Association, Rules for Coordination of Civil Actions Commended in Different Trial Courts, the Department of Consumer Affairs, CRLA, the Western Center on Law and Poverty, the California Academy of Appellate Lawyers, ABOTA, the Commission on Judicial Performance, the Third World Coalition for Justice in the Bar Examination Process, the Disciplinary Board, or the Association of Former Members of the State Bar Board of Governors. How did we get along?

Making Do Matrimonially

Judges' salaries weren't quite what they are today even without lowered expectations; as a matter of fact, the legislature set the pay seriatim for each county and they differed widely. Still, a judge could attain a handy supplement by doing marriages. I tried my first California case in the bureau run by Ida May Adams in L.A. and saw it with my very own eyes: A telephone extension right up on the bench which constantly interrupted the proceedings for advance bookings and settling on the fee. Once we were interrupted in person, by a soldier and his momentarily-expecting intended, an apparition which produced the apt judicial response of an instant recess. (The case ended up in a tie; I felt lucky. My opponent quit practice and became a law school dean; I don't know if there was a connection.)

Almost literally every issue of the Journal carried an article deploring the low estate of the bar's public image and woeful public relations program. One Robert C. Hays of San Francisco wrote: "One of these days the legal professional is going to gather the full harvest of a colossal accretion of bad publicity which has been conferred upon us gratuitously and, for the most part, by outsiders." After discussing the fact that even Dick Tracy portrayed us unflatteringly, he concluded with the charmingly smug observation: "It is up to us to persuade our dubious countrymen that the lawyer, like the law itself, is truly 'the last result of human wisdom acting upon human experience for the benefit of the public.'" Jeez!

We didn't advertize. We didn't sue each other or paper one another to distraction. We had a lot more fun.

You can't go back, but you can look back. It's been some quarter-century.