

Lascher at Large
By Edward L. Lascher
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Usually, each edition of this column attempts to touch on several different things – and maybe a little trivia to boot. This one will be a bit different, in more than one way. It's all one subject, and there's nothing trivial about it. At least to me. Or to readers, in my opinion.

Almost A Valedictory

Indeed, this didn't even start out to be a column. Instead, it was the outline of a letter of resignation.

Those who have followed this space will recall my initial trepidation upon becoming a certified establishmentarian by joining the Board of Governors, and may have noted fear turning into a glowing pride. The glow has gone; the pride has turned sour, very sour. My head starts to ache and my stomach to knot every time I look at the calendar and see a Board meeting coming up. Potential excuses for nonattendance urge themselves almost irresistibly. It has always been a burden, but now it's a trauma.

In some ways, that might be enough to motivate departure. Who needs it? Why me, oh Lord? Even one as uncursed with modesty as I recognizes that tolerance is not an unlimited virtue, and I have suffered a surfeit.

But there's a bigger reason for bugging out. I simply don't want to be a part of another California first: becoming the first jurisdiction in the Anglo-American legal world in which the legal profession loses its power of self-government. If it's going to happen – and I don't want to make any bets – I can't swallow being a participant in the clown act that's likely to bring it about, the good old Board of Governors.

The New Zoo

Aye, there's the rub. The body that's supposed to be running our profession has become a zoo; the inmates have taken over the asylum, and I am sick at heart.

Back when the principal concern of the Board was whether you should number or letter paragraphs in petitions for probate, the way it went about its business of governing was funny but nothing lose sleep over. Not so today. Just think a moment about the things we're doing (or failing to do) for you, and what we're doing to you, and it will be clear we're not playing for marbles, even if we are acting like mibs. It's a farce that nobody can afford to humor any longer.

Polarity

What's the trouble? As always, there's more than one problem, but the polarization of the outfit is the dominant factor. We have two open and avowed political parties. One is comprised of the appointed, nonlawyer members, plus a couple of lawyers who have found it advantageous to form an alliance with them; the other bloc embraces most of the elected lawyer-governors.

Sure, once in a while, everyone's free to vote his or her own views or convictions, but far too often the party whips enforce stern voting discipline. (One gang even brings along a non-member of the board who sets up shop in a State Bar office and drags members out of the meeting to get their orders, to caucus and to make deals.) Either side can dictate the other's action. If the lawyers say "day", the opposing party immediately thunders "night!" – even if day would work better for them. And vice is very much versa.

Over the centuries, a controlling genius of the legal method has been its pursuit of consensus, accommodation, synthesis and evolution. That does not exist on your Board of Governors, however. There is no center, no perspective, no quest for common cause – there are only poles. (There is vote bartering to an extent that would gladden a Tammany Hall heart – and some of our leaders say "That's the way politics is" – but I am talking about lawyering, not politicking.) We don't have any Anwar Sadats or Menachem Begins; we have only Black Septembrists and Afrikaaners.

Let me emphasize that I am not condemning the fact we have nonlawyer members, nor the people who fill that role. There is nothing about the presence of people from different walks of life which necessitates division into intransigent power blocs; this came about by choice. While it is true the six lay members are guilty of doctrinaire inflexibility and formidably humorless rejection of efforts to produce compromise, they sure aren't alone! The lawyer members at least match their zealotry by regularly courting Armageddon and seeking new ways to burn themselves at the stake (clasping you to their sizzling sides in the process).

From all of which, you may suspect I am a member of neither faction. You're right, and that's why I'm writing this. It's grim being alone in the middle, particularly when you think that's where the majority should be. Two years ago most of the Board was in the center, but graduations, judicial appointments and calls to Washington have left me isolated. The other day, one of the present honchos unloaded a blast at Warren Christopher: "We're well rid of him; he's one of those guys that always wants to fold every napkin twice and come up with a compromise." That, in the speaker's mind, was the most damning accusation possible. I rest.

And So?

No, I guess not. There's no rest for the weary – even the heart-weary. And somehow or other Resigning in Protest just doesn't seem my style. (There's something a little too pompous about it or – gnawing worry – too craven.) I guess I'll buckle on my pen and tell them to bring on another windmill. Of course, this may turn out to be a valedictory after all; a couple of times recently some of my Board colleagues have given none too wistful thought to muzzling this department.

Fortunately, I think I've got some allies, too. They just aren't on the Board of Governors. They're in that rarely-noticed group called "the lawyers of California", of whom you may have heard. They have extravagantly supported my humble efforts and I'll keep trying. For them.

Clean Up the Act

What can we do? It would be nice if we could change human nature, but I don't think we can wait. So, if we're going to try and pull the game out in the last period, we've got to make some changes in the team and the plays. To that end, let me suggest some organizational alterations that should be pursued immediately in the hopes of improving this flawed mechanism.

First – and way ahead of second place – the method of selecting our president needs radical surgery. Just as our national life has become fortunately centered on the presidency, so, too, has our profession in California, so it's the key to the problem. The current method – choosing one out of the five governors about to enter their third year – is asinine, as reflected by the fact no other bar association in the country can even believe our system.

The result is a Board with three classes. The first year people are learning the ropes, the second-year ones are campaigning, and four out of five of us in the third year divide our time among shirking, sulking and sniping. In my brief stint I've seen one guy (of spectacular abilities) who simply dropped out for the third year, showing up about a third of the time to sneer; another (formerly a paragon) went absolutely bonkers, constantly exuding open hatred and paranoia. A third was an outward good sport, but forever after has divided the bar into two irreconcilable categories – those who voted for him and those who didn't – and to this day hasn't hesitated to take any available shot at the wrongies.

That just ain't no way to run a railroad. Apart from the horrific psychological effects, it makes little sense to obsess somebody for one third and alienate him for another third of the time you've got him around.

Instead, the Board should select the president annually from any member of the State Bar except current governors. That not only eliminates the present paranoia, but gives a lot better choice. Why just people with Board service (although they would, and probably should, provide the most likely talent pool)? Why eliminate four out of five people in one class, when the next five might be all turkeys? Besides which, there are different stages in a person's life, and the third year of a concentrated dose of half-time service on the Board may be the least felicitous for becoming almost a fulltime bar officer. Also, the president would then not be required to represent a district (or try to).

Second, we should cut Board terms to two years, but do away with the ban on reelection. People's lives and careers change, and so do their perceptions of public service. Three years may be too long for some to give up to Board service (!!) and not long enough for others. Let the individual make the choice. Much more importantly, let his district make it. This would foster responsiveness, remembering one's own fallibility, and interest in maintaining a dialogue with the lawyers for whom we purport to speak.

Third, we need redistricting, to give one lawyer something that at least vaguely approaches one vote. If it takes a slight expansion in the lawyer component of the Board, so be it; it's already too bloody big, so a couple more would be a small price to pay for fair representation.

Elect By District

Closely related, the multi-member districts should be split and each Board member elected by a specific constituency. The mess in Los Angeles, where one must try and be elected by – and to speak for – 20,000 lawyers is ultra-cynical. It makes money talk, and that, in turn, means the lawyers of Los Angeles don't really have any role in picking governors; the five from that county (one-third of the Board's lawyers) are selected either by the Breakfast Club or the Independent Lawyers Committee, self-appointed electors who tell the great unwashed of the basin whom they'll be allowed to vote for.

The judicial evaluation function must be removed from the Board itself and put in the hands of a comparatively isolated body it appoints. The obvious reason is that we lack time to do a decent job, so governors invariably either produce intolerably slipshod investigations or short-change their other, policy-making tasks. The more subtle (but real) reason is the danger that Board politics – and even vote-swapping – can invade judicial evaluation. Sure, there would be internal politics in a separate body, but they would at least be localized to judge selection; the problem now is that irrelevant controversies impinge on this function, which I believe to be one of the organized bar's most vital.

Finally (for the nonce), members of the Board should be paid a modest but reasonable per diem for their service. (Remember, I'll be off before any of this could go into effect.) It is unconscionable that, currently, the only people who can afford to serve as governors are those whose incomes can use the tax loss, or whose firms are subsidizing them – which is pretty much the same thing. We keep saying we want to broaden participation in governing the bar to include young lawyers, lawyers in public service and the like; then we make it economically impossible to do it. The expenditure involved would be peanuts compared to what we spill in other areas – I'd bet we could bring the whole thing off for about \$75,000 a year, out of a multi-million dollar budget – and the cost of having representation priced out of the market is higher.

Not the Optimum, But...

If I were to redesign the State Bar from scratch, I'd do more than just apply those changes. I'm not talking about theoretical models, though, but changes in the existing structure that really aren't all that drastic and that should be capable of fairly noncontroversial legislative acceptance. Changes, nonetheless, which would make the Board far more responsive to the whole membership and, therefore, which would virtually guarantee a clean-up of the present disaster.

I'll stay on – headaches, queasy stomachs and all – and try to fight a lonesome, rearguard battle. All I ask of the readers is that they think a bit about the way our profession is governed, and maybe about the next Board election. I don't think many of us want to rack up that California first I mentioned.