

Lascher at Large
By Edward L. Lascher
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It's a balmy summer day not given to much concentration – which would probably be balmy, too, if it occurred. Let's talk about a lot of things, including some cabbages and kings.

Marvin/Marvin

That case is sort of the judicial Dorian Gray. It started out with quite a commendable proposition, at the time of the Supreme Court proceedings on the demurrer. (It strikes me as somewhat silly that the law of contract should concern itself with sexual morality, purporting to punish lack thereof by destroying contracts – a more relevant form of immorality.) But from there on, it just deteriorated, the disintegration only too effectively portrayed by the interaction of the Fourth Estate at its worst and the antics of Ms. Marvin's counsel at his apparent normal.¹

I am told that various court-related agencies receive almost daily telephone calls from the media asking for statistics and other data on "Marvin cases". (Presumably the Judi Council will start categorizing them in its annual report. So many personal injury suits filed last year, X number of eminent domain cases, Y Marvin cases, thus-many change of name, what-not.)

But the cake was taken by Marv's press conference, wire service release, or whatever it was, to the effect that he was going to ask the taxpayers to pony up a half-million dollars for his services in getting his client her "rehabilitation" dole. Of course, it matters not that this bit of frippery is substantively ludicrous – as I certainly hope will have been judicially determined by the time these words reach print. Aye, there's the rub, the print-reaching.

The world will little note nor long remember what happens to this exercise in asininity; it will not soon forget that the request was made. Indeed, I suspect a substantial segment of the populace will forever assume that the state paid the fee. Thus, the already grimy image of the legal profession will have suffered another body blow: "Her lawyer wants five times as much for himself as he got for her." Thus also will the public concept of what the judicial machinery is for: "Imagine, it's not enough that the taxpayers pay the bill for providing an arena and supporting case for that business-getting circus, but the taxpayers also have to pay the fee for putting the gala on."

Tough All Over

In my opinion, the perpetrator should be drummed out. Yes, folks, I know that's harsh; strong measures are sometimes necessary. We ask 20-year-old kids from the ghettos, who've got plenty of built-in problems, to go over to stinking rain forests and get their limbs blown off in the cause of debatable protection of our institutions; we ask the residents of Harrisburg to go on working next to a bubble-blowing reactor, and to self-insure even the economic risk, let alone the human one; we make all kinds of harsh demands on an individual for the benefit of the institution or the society. What's so wrong about demanding that Marvie get out of our profession to protect it? (After all, he can go into some other line of work – a few for which he is eminently qualified coming readily to mind.) Someone who is this reckless with the safety of his profession and the continued public acceptance of the judicial method is simply too dangerous to keep around. Certainly, wilful, wanton and reckless endangering of the judicial branch is a lot more serious than a little commingling or some of the other things that seem to get our ethical dander up.

Let's talk about something else. If I go on about this, I'm really going to say all I think.²

¹ I guess there's some consolation for us in the fact that the title page has been returned to California after these many years. After all, we invented the fine art of lawyer self-flackery during the heyday of Marvelous Mel, the King of Torts, but lately a bunch of Auslanders like Bailey and Lane, Kuntsler, Percy Foreman and the various corps of air-crash chasers have kept the title away from our rock-ribbed shores. Marvin (given name or surname; take your pick) has brought it back to the Golden State. Whoopee.

² Stop Press Item: As these words were being written, it was announced in the press, not only that Mitchelson is going on the lecture tour to explain palimony, with Michelle as a sort of "visual aid", but also that the judge who tried the case is working on a book – although that is reputed to be only in part about the case. Gadzooks, I think the whole world is falling out of step.

Categorically Wrong

My thoughts on judicial selection by category have certainly been hinted at in these columns, but just in case I've been too subtle, let me add that such a practice (1) threatens the quality of the judiciary, and (2) denigrates and patronizes fellow-citizen lawyers by deeming their gender, race or ethnicity to be their major relevant qualification for office.

We should select the best available judicial prospects for judicial office, period. To do otherwise is not only anti-quality but also anti-American. It is just as racist, sexist or whateverist to identify and select people on the basis of race or gender as it used to be to identify and exclude the same persons. Some will call that a simplistic statement. Nolo contendere. Some things are simple, like equal citizenship.

I am stirred to iterate or reiterate (as the case may be) these observations by recent news items to the effect that Archibald Cox is being passed over for appointment to the U.S. Court of Appeals because he's 67 years old and not a Catholic, and there exists (1) an administration policy against appointing anyone over 67 (an odd number to choose) and (2) "a storm of protest from New England Roman Catholics seeking representation on the bench". I hate to use the phrase, but what is this country coming to? Have we taken leave of our senses? (Don't answer.)

Actually, it surprises me to learn that a lawyer and scholar of Cox's stature would want to take on a judging job, but if he does, I think Congress should confirm him instanter and worry about the nomination later. I hate to quote Dick Nixon (as you might guess), but what he said about Lewis Powell is appropriate here, doubled and vulnerable: Ten years of Archibald Cox would be worth a lifetime of most judges.

And I can hardly think of any judge more likely to be sensitive to the particular needs, problems and aspirations of all groups within our society. To say that one doesn't want him, because one prefers "representation" of a particular religious faith, is to say that one wants an advocate on the bench – an egregious contradiction in terms – or that we want someone who is sensitive only to us. The whole thing is nauseating.

Coward's Corner

I got an interesting letter the other day from somebody in Santa Ana (explanation to follow). He, or they, as the case may be (since most of the time the letter was couched in the regal first person plural), signed himself "Michael Miscreant" and hinted that he doesn't like the column much; among other things, he says I'm old fashioned and concerned about trifles. Too true! He apparently had reference to my views on perjury, which I guess he supports – perjury, that is, not my opinion.

That reminds me of the time I heard a radio editorial calling for a crackdown on the causes of hepatitis, which was followed with the tagline that responsible spokesmen for the opposing view would be given equal time. For weeks, I waited to hear what the American Society for the Propagation of Hepatitis would have to say, but I guess they're keeping their hole card buried. But I digress.

The thing that intrigued me was that the letter was written on expensive bond paper of a type used almost exclusively by large law firms, was carefully typed on a fancy typewriter, and revealed that the writer had spent a lot of time looking up six-bit words in the dictionary.

But the writer had also taken extraordinary pains to conceal his identity, including using the archetypal plain brown mailing envelope.

That saddens me. A person who puts his name out in print as I do monthly is fair game for public disapproval. (Although I must say I prefer my disapproval to be witty rather than obscenely scatological – even if the latter is in big words.) Anyone who reads these lines has the perfect right to write and tell me – and the world – he doesn't like them; indeed, there may be a duty to do so. But for someone in the legal profession – especially one who obviously has pretensions of membership in its gentry – to indulge in the anonymous poison-penning is to self-confess a type of cowardice that disqualifies from the honorable and courage-characterized title of "lawyer".

This sneaky scrivener closes his dirty diatribe with: "Having said all of the above, I feel much better." Just think how much better he'd feel if he'd had the guts to do it outside the closet! Okay, Michael, you got your moment in print. Stick to writing on walls hereafter.

One (1) Bad Habit

If there is one (1) thing that tees me off about my brethren and sistren – and I'll bet you already guessed that there is – it is the use of that written and numeralized number gambit. Every time I see it in a contract I have to count to ten (10), but when it really sets me off is when it occurs in about every third (3rd) line of a letter. For pete's sake, how absurd can one (1) be?

If any among my sixteen (16) readers (?question mark) can give me one (1) good reason for this practice I will be grateful to (2) you (U) for the rest of my numbered days. And, while you're at it, could someone please give me the English translation of that favorite lawyer's letter-ender: "Thank you for your attention herein"? When I see that, I figure it for some sort of lodge password that everybody else understands but me.

Trifles, indeed!

Undress Parade

People who go to court are there on business that is very serious, at least to them. It is – and should be – a dignified and impressive experience. You'll notice that most persons arrive at the courthouse conspicuously "dressed up", maybe not in the highest of fashion and (certainly) not necessarily the newest or most expensive, but usually the best available and highly spruced.

None of this is exactly news, nor should it be considered surprising. What, unfortunately, is not news either, but should be surprising is the appearance with which those folks are met. The judge may be in his black muumuu, but chances are the clerk, reporter and bailiff (unless the latter is in uniform) are ill-fitting and ill-matched pants and loudest colors, string ties or none at all, and garish boots. On the male side, the look runs heavily to just back from the rodeo; on the distaff, to the just awakened (if not just raped). Handlers at a dog show are usually better turned out than court personnel.

I think this is deplorable. It isn't just that such appearance must inevitably tend to lower the opinion of the public regarding the dignity of the process, although goodness knows that's important enough. Indeed, the reason this practice is so perverse is not even entirely functional or result-oriented. Rather, its chief vice is the way it reflects on the way court attaches view the persons they "serve." I submit respect is due from a court just as it is due to it.

I know this is painted with a broad brush. There are many well groomed, tasteful appearing men and women serving in our courts. I make up to them for this overbroad implication by the warm feeling and glow of surprise I bestow whenever I encounter them. The problem is, there are few enough that it is surprising; the gallant part, from their standpoint, is that they are doing a service most don't.

Perplexed Pamphleteering

I note with interest a pamphlet "published in the public interest by the State Bar of California" entitled "What can I do if my lawyer's bill seems too high?", with a subheading "Consumer Rights". You can get one free if you send in a stamped self-addressed envelope to "Communications Division (A)"³ at the San Francisco office of this group or, if you want to mail them to all your clients, you can buy 'em for \$7.50 a hundred, or 50 quid a thousand if you really want to wallpaper the place.

I leave the substance to you, but I was interested in our staff's description of the State Bar, which is said to be: "An organization that regulates the state's lawyers and works to improve the law for Californians". Now, if you folks on the staff will excuse me for a moment, I'd like to lecture. The State Bar does not regulate us; we regulate us. We are the State Bar and it is not the "organization" that works to improve the law, it is the organization's members. I think that's a damned important distinction, and if it's a little subtle for some, I don't think it is too arcane for the mass of California lawyers.

³ How many Communications Divisions does the State Bar have? With all those divisions, I wish they'd communicate with us a little better.

Culinary Corner

A recent mailing from the Bar Association of San Francisco (of which I am a closet member – and no smart aleck remarks!) announced a luncheon honoring retired Justice Kane of the Court of Appeal. Now, Bob is one of the most engaging if outspoken ex-justices you'll run across in many a moon and only distance kept me from attending. Well, not quite only that. The thing was put on at \$8.50 a pop and vouchsafed in advance the menu, to wit: "French Onion Soup, Salad, Bread and Butter, Coffee." I wonder if there was a discount for those who eat bread unbuttered? How much extra for water? Silverware? Attention, Consumer Frauds Division: I strongly suspect the onions employed were not, repeat not, French. (Maybe they could get a conviction on that one.)

A Thought For The Day

The ABA publication Litigation advises (with commendable asperity) that some egghead group called the "Advisory Committee to the Standing Committee on the Rules of Practice of the Supreme Court" (that figures) has studied the matter of discovery and concluded that abuses of that system are "so infrequent and innocuous as to warrant little change". Which just goes to show you that girl Alice gets around, looking-glasswise.

Envoi

To end on a note of sadness, I note the passing of Gale Bishel, Clerk of the California Supreme Court. Bish had many admirable and endearing characteristics, but the one most germane to this audience is the fact that he was outstandingly, unflaggingly and graciously the friend of the lawyers. Devoted to his court and the soul of propriety in serving it, he nevertheless recognized with admirable clarity the fact that lawyers, too, serve the cause of justice and are essential to its achievement, and he showed that recognition in countless ways. We have lost a friend.