

Lascher at Large
By Edward L. Lascher
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Folks, this is the season for tigers to be jolly. My columnist cup runneth over. Other people have done most of the work, as you'll see in a moment.

INTERROGATORY INSANITY

The first outside contribution would be the funniest, if it weren't so senselessly hurtful. It comes from one of the most infallible comedy teams working this circuit year in and year out; the incomparable, the one and only, the fabulously funny combo of Senate and Assembly. Their latest riot is a rewrite of the interrogatory statutes. Check these rib-ticklers:

– You will now serve response to interrogs “in the same manner as a summons”. Now that's fascinating; if either is to be served like a first paper, you'd think it would be the interrogs, not the answers, which just shows how imaginative Sacramento humor can get. It's going to be all kinds of jolly fun chasing down the agent for service of process of the South Dakota Sheet Metal Supply Works in order to answer that firm's inquiries. And presumably one leaves the attorney for the propounder in the dark. Oh, this is rich.

– You will be required to maintain all interrogatories and answers in your files for five years, and to allow lawyers and litigants in other cases to come into your office and pore through them if they want to know what somebody said. This practical joke was not entirely original; I understand it was suggested by the File Cabinet Manufacturers' Association, who probably bought and paid for it.

– You will put four questions on a page, no more and no less, leaving the intervening space for the answers. One presumes that, soon, we will have a prescribed number of words per question and per answer.

– You will sign every page of the responses, or else you will have your client do so (I have heard it both ways and don't have the final text our Guv signed), or your answers are no good.

– You don't file interrogs or answers; you just keep them in the aforesaid file drawers, each side becoming a sort of surrogate cestui for the clerk and each other in the finest traditions of the adversary method.

DAMN THE PUBLIC, UP THE CLERKS!

Now, you all know my feelings on discovery. It should be abrogated virtually in toto. But this kind of special interest, ad hoc screwing around is the anthithesis of the public interest. For openers, I predict a need for a 46% increase in the law and motion manpower of every superior court throughout the state. In the major metropolitan centers, anywhere from two to four judges can spend full time contemplating the navel of this new statute in terms of motions for relief, sanction applications, and all the other flim-flam that we've already come to know and love in the interrog process, but doubled, redoubled and very vulnerable. Of course, one of the real funnies of the situation is contemplating how this increased need for more judgeships is going to go down with Jolly Jerry, in view of the fact that he approved this monster.

Don't give the Legislature too much credit for this, however, They really didn't have much to do with the act at all; they just jerked when their strings were pulled. By whom? I thought you'd never ask. By the County Clerk of Los Angeles County, that's who. Aided, abetted and quarterbacked by the Honorable Ronald Deissler of the Riverside Superior Court who, for reasons that are undisclosed (but might be psychologically fascinating), conceived his mission in life as ramming this thing through – preferably as fast as possible and certainly before those affected by it could be heard from.

And boy, did they succeed! There's no getting around the fact that your State Bar drowsed at the switch on this one. We are guilty and we are mortified. But it is equally clear that the judge/clerk bloc did everything in their apparently considerable power to make damn sure this was signed and delivered by our representative before any of us heard about it.

Apart from the tactics, it bothers me a bit, on principle, to see judges and (especially) clerks manipulating the legislative process in any role adverse to that of their chief consumer group: the bar.

I had this odd idea that the role of the court clerk was to assist and serve the litigants and their counsel, but it was made crystal clear to me in reading the legislative history of this gem that I was diametrically wrong. The avowed purpose of this legislation is to transfer the burden of managing the unmanageable discovery from the court's attaches to the court's consumers. The burden of discovery on most average litigants was already intolerable; to transfer the storage and care of all that slag heap to lawyers – who will pass it on to their clients – is bureaucratic cynicism rampant.

WE SHOULD'VE KNOWN

I should have known, though. I remember an episode in Los Angeles a couple of years ago when the clerk decreed you could only see files and exhibits, even in your own case, by advance appointment and then only one lawyer at a time could look at exhibits (yes, out of that whole bloody court complex).

I was told one could not look at the index of who had checked out exhibits, because it was “against company policy” to allow the public to inspect the public records. The State Bar got that jazz squelched, but we should have been forewarned.

Those of us lacking in a sense of humor are trying to mount a drive to get some fast, fast relief at least temporarily from this legislative migraine. If you get a chance, lean on your legislator. And while you're leaning, how about asking him to do something about the real problems in discovery – those that affect the public, instead of those that affect the clerks.

SIMPLE AS ABA

You may recall my ruminations of a few issues back concerning the organization of the American Bar Association. It now develops I am not alone. Writing a publication called “THE INCL BRIEF”, Don M. Jackson of Kansas City (where everything is so up to date that his form has a “Liberty Office” – in Liberty, Missouri), the delegate from the insurance and such-like section to the House of Delegates, attempted to explain the inexplicable in a piece on the governmental structure of that club. The able Mr. Jackson must have an awfully sore cheek and tongue from this elucidation – which, I think, confirms my thesis. I shall quote generously from this guide to the maze.

He starts out by explaining that the club “is substantially controlled by the state delegates, one from each of the fifty states, together with one from Puerto Rico and one from the District of Columbia, regardless of size or lawyer population. In other words, the smallest state and the state having the least number of lawyers have the same voice and power as the delegate from the largest state and the state having the largest number of lawyers. Each state delegate has one vote for the nomination of officers of the Association and the members of the Board of Governors. The remainder of the House of Delegates, consisting of some 400 other members, has no voice in this process. ” Query: Whatinell do they do and what are they for? But I editorialize.

Continuing: “The officers and replacement members of the Board of Governors, who serve staggered terms, are nominated at the mid-year meeting of the House of Delegates. Their election, as well as the election of the officers, takes place at the next annual meeting . . . In even-numbered years, the state delegates have the sole prerogative to nominate the chairman of the House of Delegates, who serves for a two-year term, and who is not eligible for this office thereafter . . . The House of Delegates also is composed of one delegate from each section or division of the Association, except that the Young Lawyers Section has three delegates and the Law Student Division has two delegates. Section delegates serve for terms of two years, but the law student division delegates serve for only one year. . . . The remainder of the composition of the House is rather confusing.”

Mr. Jackson, whose toleration for confusion is heroic, goes on to attempt to delineate that which knows no delineation. “Each state bar association is entitled to at least one delegate, as is each eligible local bar association. However, each state bar association having more than 2000 members is entitled to one additional delegate for each additional 1250 lawyers, until it reaches a maximum of four, unless its membership exceeds 7000, but is not more than 10,000, when it has five delegates.” And in months with an R it gets an extra delegate. But I interrupt. “Between 10,000 and 15,000 lawyers the state is entitled to six delegates; between 15,000 and 20,000, seven delegates, and if more than 20,000 lawyers, it has eight delegates. In addition, at each annual meeting of the Association, the Assembly at large elects five members as assembly delegates, each for a three-year term.”

AND ON THIS SIDE, FOLKS . . .

“There are also miscellaneous delegates, including three representing the conferences of the Judicial Administration Division; the members of the Board of Governors as well as all former elected members of the Board for two Association years following the expiration of their terms; the former president of the Association; the former chairman of the House, and the former secretaries and treasurers who have served four or more years as such, provided, however, that any officer first elected to an office that qualifies him after August 15, 1975, serves only for five Association years thereafter as a member of the House; the Attorney General of the United States and his deputy; the Solicitor General of the United States; the Director of the Administrative Office of the United States Courts, and one delegate from each of the affiliated organizations.” And a partridge in a pear tree.

Mr. Jackson then attempts to explain what the structure (if that is quite the term) just described does, but I think you’ve had enough for one installment. Did anybody else notice that, somewhere along there, something called the “Assembly” cropped up? Does anybody know what the difference between the Assembly and the House might be? And how about the jazz that the members of the Board become members of the House who then elect themselves to the Board? Good grief!

My compliments however are quite sincerely paid to Mr. Jackson for putting right down on paper for all to see just what kind of a mad hatter's tea party this is, and also to the section that had the gumption to publish it. (And my compliments to him, it, and the ABA itself for permitting me to quote from his fine article.) If I wring my hands at the ABA's structure, it's just some crank on the rim of the continent; but Brother Jackson, who is certainly responsible, shows that there are others who are more confused than amused.

A REAL REFORM PROPOSAL

A little while back, while engaged in one of my more unproductive pursuits – reading the advance sheets – I ran across County of San Bernardino v. Doria Mining (1977) (72 Cal.App.3d 776, ___ Cal.Rptr.__), in which the always trenchant and articulate Presiding Justice Robert Gardner put the blast on liberality in granting continuance of civil trials. Having “enjoyed” more than my fill of getting cases ready to go umpteen times because every time we showed up there was no court available, I wrote complaining that it is unreasonable to be chintzy with continuances when, most of the time, the court simply can't accommodate a civil trial. The answer was more than I bargained for, and must be shared.

“Well, dammit, you can't put everything in one opinion. All I wanted to do was bury an obsolete concept. This I did – brilliantly, I submit, albeit somewhat unfairly to the legal profession. At least, I should have dropped a footnote about court congestion.

“However, you made a mistake in writing your letter because it is going to expose you to Gardner's two-phase program to improve the appellate judiciary. I call it ‘Welcome Back, Mr. Justice’. I have been trying it out for years on bartenders, cabbies, my gardener who speaks no English, and my beagle who is a wonderful audience – patient, tolerant and seemingly attentive.

“I start with the basic premise that the life of a justice of a reviewing court is unbelievably sterile, stale and musty. We are as far removed from reality as those legendary monks who sat around contemplating the number of angels who could sit, comfortably I hope, on the head of a pin. As the result, our scholarly renditions delivered after hours, days or weeks of profound and lonely contemplation, often are as far removed from the realities of present day life as a Booth Tarkington character would be from ghetto life in the inner city. The answer? – ‘Welcome Back, Mr. Justice’.

“Step 1: I contend that all justices in the reviewing courts, both the Supreme Court and the Courts of Appeal, should by law be forced to spend one month per year on the trial bench. A few days of exposure to some of our more bizarre offerings such as the ever lengthening list of pretrial criminal motions [citation] might alert us to the reality that while in the abstract these matters may have some merit, in reality all they are doing is slowing the administration of criminal justice to a crawl with a resulting deleterious effect on the administration of justice. I think if we on the reviewing courts would spend one month per year in actually administering the law as we have ordained it, this might have a most healthy effect on the corpus of the law.

SABBATICAL LEAVE?

“Step 2: Every seven years all of us in the reviewing courts should by law take a sabbatical leave which must be spent in private practice. Thus, we will be exposed to the harsh reality of life as it actually exists in the practice of the law, not the tip of the iceberg which we see in the clerk’s and reporter’s transcripts over which we pore. If some of us are so incompetent that we can’t make a living in private practice, perhaps we could be subsidized in some kind of pro bono work. The details I have not worked out. I am an idea man, result oriented, but shaky on detail. The reason that I am lacking in detail is that neither the bartenders, the cabbies, the gardener, nor the beagle have really submitted either plan to honest and searching debate.

“A judge, fresh from practice, would never have written Doria in the way it was written. However, a crotchety Neanderthal with thirty years of judicial hash marks on the black robe acquires tunnel vision. As a presiding judge in the trial court and as a presiding justice in the Court of Appeal, I face only phony ploys for continuances, almost invariably coming from the weak side of the case. Unfortunately, for too many years I have not been exposed to the demoralizing experience of preparing cases over and over, all a seeming exercise of futility because of the lack of an available courtroom to actually try the case.

“The above are but two of my almost limitless suggestions for the improvement of the administration of justice. As a certified judicial eccentric, I have some strong ideas about court reform – and a fully worked out plan. I firmly feel that we have enough judicial manpower to handle the problems of a litigation-happy population almost into infinity. However, I fear that my answers to these problems are so Draconian as to be completely unacceptable to the attorneys and the Legislature. Thus, I return to my bartenders, my cabbies, my gardener and my beagle.”

D’ACCORD

When this column was being tried out in New Haven, so to speak, I wrote much the same proposal in the San Fernando Valley Bar Bulletin. Ergo, Bob Gardner is obviously right! As a matter of fact, he’s even more right than I was ten years ago, since the problems have aggravated themselves. I only have one slight cavil: why restrict the sabbatical idea to appellate judges? It strikes me as appropriate that judges of all courts be reminded of the conditions of the real world (to say nothing of their own lack of divinity) periodically. In any event, these are suggestions which would contribute to real reform – rather than the kind of pompous preaching that is so much in fashion at the moment. Therefore, they are doomed, not just to failure, but also to being totally disregarded.

DUKES

Despite the dyspepsia which he frequently displays toward our profession, I think S.F. Chronicle columnist Charles McCabe is one of the most enjoyable and provocative writers around. He says a lot of stuff that’s uncomfortable-making, but usually tends also to make sense. Most times, my reaction is directed to some of his heavier comments, such as the Bakke case, Carter and the Canal, and the like.

Recently, however, he delighted with a bit on the Dukes of England – prefaced with a disclaimer of being a “morbid lover of Limeys” but an admission that “the breed fascinates me, and endlessly”. As a confessed Anglophile, I got an even bigger boot from his analysis of dukes: “There is nothing in this wide and green earth that is more unnecessary than a duke. This is part of their fascination. They neither spin nor do they weave. They contribute, as a class, almost nothing to society at large. But

they fascinate.”

ANNIVERSARY ANTICS

For a variety of reasons, I'm not going to say anything about the gala 50th anniversary ball we put on in November. Except to mention that we are spectacularly well served by a young lady named Cathy Devaney who makes the mechanics of such State Bar functions purr like clockwork (to metaphor mix). And except also for the fact that Charlie Clifford did a whale of a job in a thankless cause of overseeing.

But that doesn't mean I can't go into a little before-and-after vignette. Scene: The entrance to an unusually packed parking structure, woefully and typically understaffed, where a long line of cars was waiting. All of a sudden, from across the street, some bleep careens right in front of me and the rest of the waiting line -- apparently being in more of a hurry than most. When I got out to procure my parking ticket, this dude was just walking away and encountering some others (obviously not among those formerly in line) who greeted him deferentially: "Good evening, judge".

I will admit saying to myself, "I shoulda known", but I will also take credit for the immediately ensuing thought that this wasn't fair. Still and all, it suggested to me that behavior which would be execrably boorish on the part of someone else is that much more intolerable on the part of a judge. And I'll tell you this; if I ever find out the bleep's name, I'll publish it right here.

No, maybe I won't. Not for the reason you think, either. Because I'd rather tell you the sequel right now. When I left the aforesaid gala, I found another line waiting at the cashier's window to pay. Sure enough, I was just about to reach the window, when along came his nibs again, pushing aside four or five lawyers and demanding that he be served instanter. There was a cool attendant, though, who told him icily (what else would a cool attendant do?) that these gentlemen (italics in the original) were already waiting. Whereupon, a bit abashed (but no more than that, his magistrateship staggered to the back of the line. Or reeled, or stumbled, or whatever your favorite word for a far gone juicer may be.

So I won't publish the name, but it strikes me that a guy who pulls that kind of antic in the company of a potful of judges and lawyers must be a real beaut in less influential society. It strikes me, too, that his brothers of the black sheet must know about him, too. Do you suppose anybody's doing anything about it? Do you suppose a rabbit really lays eggs at Eastertime?

MISCELLANY

Don't say you don't get symbolism here. Don't say you don't get inside scoops from us appellate experts. While musing in the Supreme Court recently, I was assailed (if that's quite the apt word) by a brainstorm. As you know, their lordships sit in stratified order based on seniority, all of it keying on the Chief. The most senior judge at her right hand, the next senioest on her left, the third to the right of the first, the fourth to the left of the seconds, etc. All of this is prologue. What really caught my eye is that we've got strata, sort of like rings in a tree trunk. The senior two are Pat Brown's, the next layer out are Ronnie's, and each outside man is Jerry's. Isn't that beautiful? . . .

Important contribution to the state of learning regarding direct versus circumstantial evidence: Three of us folks from the office caught a recent speech by the Chief Justice and, the next noon hour, were discussing the important impressions we had drawn -- i.e., the state of her couture. We were all satisfied beyond peradventure (as brief writers say) that she was wearing a black dress. We were also equally convinced that she had a large flower on one side. One saw a red flower, one a pink one, and one a yellow one (without even one doubt in three). . . . Also on the subject of observance, I

walked the dog past our new neighbor's truck and growled at what I thought the bumper sticker said for six weeks before somebody told me to read and see what it actually said: "Protect the right to arm bears."