

February 3, 1982

LASCHER AT LARGE

By Edward L. Lascher

Well, you probably won't believe it, but the disciplinary system strikes again.

Those of you with long memories and a modicum of interest in these columns. (which narrows the field) may recall my dyspepsia over the State Bar's going into a lather over some motormouth who chided a Court of Appeal in language that wasn't all that temperate, following which the Supremes suspended him for a year (Ramirez v. State Bar (1980) 28 Cal.3d 402). You could look it up in a publication of the State Bar which, in those days, tolerated dissenting opinions from lawyers (567 California State Bar Journal 29, et seq).

This time, the onus, in my opinion (but see infra, as we ponderous folks put it) doesn't belong to the Bar. Given a deputy district attorney who dummed up evidence against a defendant and then cooked up a secret deal to get the latter's complicity in covering up the ploy, conning the defendant out of the right to appeal in the bargain, the Bar actually got worked up again. And, I may say, I should damn well think so.

### EXOTIC EXTENUATION

But what's my opinion compared to that of four members of the Supreme Court, who set aside a disbarment recommendation, holding that, while of course it isn't too grand a thing for lawyers to phony up evidence and solemnly proffer it in a court, there were extenuating conditions (Price v. State Bar, Daily Journal January 28). What, you might ask? The guy was "working long hours under a heavy-caseload". Ah, so. By a 4-3 vote, it is apparently only those of us who sit around eating strawberries, working puzzles, and reading gothic romances who are barred from lying, cheating, corrupting the judicial process and the like. Busy lawyers, understandably, simply can't operate under such constraints. Or so goes the theory.

Justice Richardson, aided and abetted by the Chief Justice and Justice Kaus, naively observed that "most lawyers live honorably under conditions of stress and contention" and consequently that's not much of an excuse. Gee whillikers, how old-fashioned and unrealistic can a judge get?

The Supremes cut the guy down to a two-year suspension and the report of the case observes that he's going to open up a nice neighborhood-general practice as soon as it's over. Let's hope he doesn't get too busy.

It may appear that I'm outraged. Appearances don't always deceive. May I note with interest that this scheme was disclosed to a trial court judge somewhere along the line and that worthy "looked shocked," but did nothing. Given the result in the case, I guess he was on the right track. But not the track I'm on.

## MANY ON WRONG TRACK

Also, I suspect, not the track most lawyers take. The majority of us are all for compassion and understanding and the like; most of us can understand the effects of alcohol abuse, marital turmoil, neuroses and such, and we can forgive them within reason. (We don't necessarily, however, agree that even that type of disability should be ignored at the risk of the victim's client; we can have all the compassion in the world for a typhus carrier, but we don't invite him to the kids' birthday parties.)

But we also tend to think that there are few things which lie more at the heart of a self-governing profession within the judicial branch than abhorrence for any act of a lawyer which perverts the judicial process. We can accept a lot of excuses for co-mingling trust funds, blowing statutes of limitations -- or even criticizing appellate justices. We can't take any dissembling about corrupting justice. I, have sympathy for Mr. Price, although it knows bounds, but it appears he belongs in another profession.

Especially, we cannot agree with the view of our state's highest court that being busy is an excuse for falsifying evidence. (Nixon, Mitchell, Ehrlichman, et al, were busy fellows, too. Maybe even more so than a deputy D.A.) Among many other things, such a statement egregiously insults the huge number of us who are also working long hours under a heavy caseload -- and doing it honestly. That, in my experience describes practically all of the best and most honorable lawyers I've ever met. Indeed, some of us suspect that honor, probity and ability are exactly why those lawyers are so busy. To see this state going on record to the direct opposite is a tragedy.

## DO-IT-YOURSELF DISASTER

With friends like themselves, it strikes me; the judges of this state already have an excess of enemies. Particularly public relations-wise. Yes, Virginia, there is a public relations aspect to the judiciary. Of all our governmental institutions, the least dangerous branch is the one most obviously dependent upon the consent and tolerance of the populace; it doesn't have anything else to keep it in operation. Thus, indifference to public regard -- an indifference which unfortunately often seems to translate "screw you" -- just isn't in the team's best interest.

There is a bunch of cases in point. If that's exactly an apt term. Take "People's Court", in which a retired superior court judge and former president of the California Judges Association does his impression of how a small claims court operates, on the tube, Sunday night. You could tune it in, but shouldn't.

Somehow or other, and despite much provocation, I've clung to the belief that there is a marked difference between wising off and wisdom, and therefore between the judicial activity and the adjudications of the cock pit. It is not surprising that the television industry is incapable of drawing such a distinction and therefore considers the caricature of judging which it puts out on "People's Court" to be a slice of life. Their reserves of bad taste are totally unstrained. But I would think a veteran judge would have sufficient sense not to peddle a portrait of street bickering as a paradigm of how courts operate. If he didn't, I would think a few of his colleagues would be able to get the word to him. People's Court embarrasses me every Sunday evening, but worse, it is an embarrassment to the great majority of dignified, sensitive and thoughtful judges.

## HAPPY HOLIDAYS

Then, too, there was the King Birthday contretemps. In which the Legislature inadvertently gave the superior and municipal court judges the day off -- to go along with Columbus Day, Arbor Day, the vernal equinox, the Bernie Witkin Book Festival, Friday afternoons in August, the day after Thanksgiving, Christmas Week (or Hanukah Week or Tet or whatever), New Year's Week, Spring Vacation Week, the Judges' College Alumni Day, Ben Hogan's birthday, etc. -- without, for pete's sake!, even giving the clerks the day off. Then, when somebody discovered this a week or so before the event, it hit the fan, and the front pages.

Now, I know that, once a holiday is scheduled, it would be a labor of Hercules to try and get it rescinded. (At least so I am told: it's never happened, so that's only speculation.) Jurors are told they aren't going to have to work that day, witnesses aren't scheduled, people arrange for elective open heart surgery, and all that. (Oddly, no such problem seems to arise when the courts close unexpectedly, for some impromptu national holiday or observance, so the problem seems to operate in only one direction. That's odd, but I digress. A little.)

Now, faced with that problem, and with the Legislature looking foolish -- this is, as you will note, a column of opinion, not news -- by scrambling around and trying to hold back the tides of holiday 48 hours in advance, the judiciary's spokespeople had some options open. Like, for example, somebody could have said the court simply lacks the power to override a legislative determination that they should be closed on a particular day, so don't talk to us, complain to your local senateperson. They might even have added that the judges don't like the idea of special holidays for them alone, because they think they should work full time just like everybody else, but their hands were tied. Gutting that statement to a judges' plebiscite, however, probably wouldn't have been too great an idea.)

So what magisterial stand did the judiciary take? Two, that I could discern. In 57 counties, their lordships took no notice whatsoever of the turmoil, thus undoubtedly confirming the suspicion of 87% of the populace that they had probably engineered the whole scheme.

### THE WORLD ACCORDING TO L.A.

But the Los Angeles County supercourt rose to the occasion. Or, perhaps, the bait. Its executive officer issued a statement that the Legislature couldn't repeal the judicial holiday, because "the judges have already made other plans for the day." Hooooooy, boy. Let 'em eat cake -- and keep our Grand Marnier soufflé coming!

All in all, the judges found themselves in an impossible situation. And managed to make it far worse than they found it. A lesson, as it were, in snatching disaster out of the jaws of embarrassment.

## WISHES

I came away from a bar meeting recently with the San Diego legal newspaper, which contained an ad for an illustrated directory of the membership of that community's admirable bar. I am not a member, but I sent for it anyway; after all, I've got a lot of pen pals and other contacts there and have cases in the county's courts from time to time, so it's nice to know what they look like. About the same time, I got in the mail a similar document from the San Mateo Bar Association, since I am also on the mailing list of that club -- which is a co-favorite -- and whose roster was welcome for identical reasons.

Which got me thinking. It's a shame that (1) more bar associations don't put out such documents, and (2) those who do don't make them available (at reasonable price) to those beyond their geographic borders. As for the first, I think it's helpful to the membership to know what so-and-so looks like and what the name of such-and-such that we see in court every week happens to be. (I wish my own local had one.) As for wider distribution, our practices have become so mobile that perhaps we need, even more, this type of information about the neighboring counties and other areas, since there is so much interchange across venue lines these days.

This might be even more useful than some of the frills and furbelows that so fascinate the organized bar and tug so at its purse strings. Ergo, it's probably not a possible idea, but one can hope, or wish.

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