

LASCHER AT LARGE
October 1981
By Edward L. Lascher

At Large Again, folks! And happy about it. I missed our chats these last few months. I must admit, though, that in 28 years of practice I've never seen anything like the workload of 1981, so the time off hasn't been all bad. (One thing I've found to fill the void is a special circumstances murder defense, an eye-opener which eventually will supply many a column inch, but currently sub judice.) Now I'll be here the first Wednesday of each month, with an extra now and then – like for the State Bar Convention.

"First Wednesday in October." That seems like a good catchline for this column. Sounds vaguely judicial, a bit portentous and somewhat, well – off. Couldn't describe it better.

SYMMETRICAL SILLINESS

I see by the papers that General Duke is at it again: demanding that a new appointee up in Sacramento – who happens to have been an intrepid prosecutor – tell how he would have voted on 14 cases. (I am not sure if Marbury v. Madison was one, but I'm pretty sure the Danbury Hatters made it – or was it The Mad Hatters?) This is an almost instant replay of the catechism our chief law man posed – with all appropriate modesty and publicity avoidance to Justices Kaus, Broussard, Dalsimer and Lui.

Meanwhile, a bunch of San Francisco self-selected spokesfolks are doing their impression of a flock of enraged lambs over the fact that the attorney general has dared to ask questions of potential appellate judges. The objective, we are told, is legislation or constitutional amendment to forbid anybody on the Judicial Appointments Commission from putting any questions to anybody whose qualifications that group is constitutionally required to determine. Well, at least that gives a sort of symmetry to the whole affair. Nonsense to the left of us, demagoguery to the right, stormed at with shot and shell, we chase half a league onward – into the jaws of farce.

CALLING JUDGE HARDY?

The idea that people investigating judicial candidates should not be allowed to probe candidates' qualifications strikes me as errant, if predictable, nonsense. What are they supposed to do? See if nominees look like Andy Hardy's dad? (Ask your uncle who that was!) Count the number of cards they get for birthdays? Take them to lunch and see if they slurp their soup? Grade the plastic in their clothing? (Has anyone else noticed that if polyesters hadn't been bred in captivity, judges would go naked? But I digress.)

You betcha I want the Duke and the other Commissioners asking questions – more than

they do. "Can you read and write, your Honor? Would you mind illustrating?" "What time do you like to get to work in the morning?" "How many days a week do you think an appellate judge should work?" "What is that I hear about your uncontrollable temper?" And even: "Have you ever been in an appellate court before?" Howcum nobody – the Attorney General very much included – ever asks stuff like that? If one thinks selecting appellate judges involves more than a popularity contest, I should think we want a bundle of answers. But nobody asks. It couldn't be, of course, because substantive questions don't get much ink, win plaudits from Senator Richardson, or do a candidacy any good, could it? Confirming an appellate justice is serious politics, sonny; we can't waste time on qualifications.

DON'T CONFUSE ME

On the other hand, do I understand correctly that the General is looking for people who have the guts to decide cases without knowing anything except what the press tells 'em? People who won't be confused by facts, issues, law or deliberation?

The problem is, that act's stale. It's been done. (No, I don't mean there's a lot of pre-decision in our courts. But there's some, and any is much too much.)

Both points of view are, not to put too fine a point on it, pointedly loony.

LIFE ON HIGH

Big law firm practice has long been one of my major fascinations – not amusement or pleasure, to be sure. Recently, a friend got involved in a situation with one of the biggies that I thought illustrative (of what, I leave to the readership), and was considerate enough to do so under circumstances where I could verify the tale.

Seems that Charlie represents a very successful plaintiff against a national manufacturer represented by a gross of law firms – perhaps in more than one sense. Six months have passed without all of the post trial proceedings being heard.

When, finally, the writs of audita querela, perambulation, and quod permittat prosternere (at least that's what they seem to be) all got filed, Charlie called lead opposing counsel for a three-week extension to respond to the 14 stone of moving papers Bekins had dumped on his doorstep.

"Oh, dear me" said Elmer – senior partner of a firm whose membership is beyond counting, and ex-president of every bar association from West Covina to West Galactica – "I can't agree to more than two weeks without my clients' permission. They feel strongly about this. (I happened to hear this part, and my ulcer awarded me a free play. It always does when a lawyer says his client "feels strongly" about something. That is the second most meaningless phrase in the legal lexicon, only running behind "Thank you for your consideration herein." Now if Elmer had said his clients didn't give a tinker's dam about the multimillion dollar judgment against it, that would have been

news. But I digress.)

After telling Elmer this kind of rooster-dropping should be beneath him, Charlie – worn down – agreed to take only two weeks. Whereupon, Elmer said: "Okay, that sounds all right to me. I'll get back to you as soon as I can talk to Hoboken." (They weren't, mind you, settling the case – just a briefing schedule.)

GANDER SAUCE

At that, Charlie suggested that crosswise might be advisable and dashed off an ex parte application to the judge, who awarded Charlie more time than he asked for at the beginning and gave Elmer nothing. (Yes, Virginia, there still are such judges. Just look in your nearby haystack.)

Which is a pretty neat story, but, as it turns out, not the whole story. Two days later, the phone again.

Elmer: "Uh, Charlie, the judge didn't give us extra time for our response. Uh, how about if we had another week?"

Charlie: (gloating only a reasonably prudent amount): "Okay, Elmer. I don't even have to ask my clients. Send me a stip."

Which is a pretty good item, you must admit; but it's not quite the whole story.

Two days more and Charlie gets a letter from an associate so far down the list at Elmer's firm you'd need an electron microscope to find out how his name is spelled. (Turns out it's Jean-Paul Astor Vanderbilt.) "Here's the stipulation. You'd damn well better get it back within 48 hours in the enclosed envelope, because we insist on filing it then." With a carbon copy to Elmer. (Has anybody else noticed how people in big law firms send carbon copies – shown – to each other? Do you suppose they tape each other's conversations, too? But I digress.)

Two days later, Charlie gets a call from Mr. Astor Vanderbilt's talking office, advising that Mr. Elmer received a copy of a letter from Charlie but Mr. A-V didn't and where in hell is the stipulation that Charlie had already been commanded to produce. Upon Charlie's pointing out it was mailed simultaneously, the Sweet Young Thing says: "Well, maybe you should check your mail room. They may have lost it."

Charlie: "Young lady, it may lie beyond your comprehension, but there are law offices that only have four or five lawyers, and a substantial number of those offices don't maintain mail rooms. The letters were mailed at what we out here call a post office."

Sweet Young Thing: "I don't understand."

Which, you must admit, is quite a story but still two hours later, Charlie told his secretary about the conversation and she, remembering, phoned Ms. S. Y. Thing to advise her that, whereas Elmer's copy went out in Charlie's own envelope, Charlie had been super-obedient and sent the stipulation back in Mr. Astor-Vanderbilt's preaddressed envelope.

Sweet Young Thing: "Oh, that explains it! The Other Girl probably forgot to put initials on the envelope, so it's probably lost in our mail room. It's not your fault, after all."

How beautiful on the mountains are the footsteps of the messengers of peace.

And that, kiddies, is how the other half lives. If that's quite the term.

POTPOURRI

Interesting item in the Lawyers' Club news letter about the retirement of Judge Art Marshall. Among other things to see that "the Executive Committee of the Estate Planning, Probate and Trust Section of the California State Bar also honored him at its June luncheon." After such a long and distinguished career, all they can think about is the Marvin case! . . . Meanwhile, recently retired Justice Macklin Fleming "details causes and remedies for crime" in the September issue of the news journal of the California Judges Association. (Tip to fellow columnists: That publication is a goldmine.) I don't know whether this comes under cause or remedy, but he does inform that: "One burglar can commit 25 separate burglaries, while an accountant is committing one embezzlement." He's got a terrific cure for the crime problem right at hand: Send all the burglars to accounting school, and right there we've got a 96% cut in the burglary rate! . . . This one is neither funny nor least. If there is one strain that seems to run through lawyers' conversation this year, it's the observation that the workload is unbelievable, wearing their heads to the bone (see my comment at the outset of this stanza), while simultaneously going broke (id.) Not that they're all doing pro bono, either. It's just that nobody's paying lawyers' bills these days. Some offices seem tickled by the amount of their receivables; they'd be better off thinking about their receiveds. I have heard this at every corner of the state and in every kind of practice – but not in any of the media of the profession. But, of course, the organized bar has far too much on its hands to bother with a piffle like signs of impending economic disaster.

See you at the convention. Be sure to read your copy of that darling new California Lawyer! There may be a quiz.